

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 2013

STATE OF LOUISIANA

VS.

CECIL C. DELAUGHTER

JUDGMENT RENDERED: MAY 4, 2007

ON APPEAL FROM THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
DOCKET NUMBER 388561, DIVISION H
PARISH OF ST. TAMMANY, STATE OF LOUISIANA

HONORABLE DONALD M. FENDLASON, JUDGE

WALTER P. REED
DISTRICT ATTORNEY
COVINGTON, LA
AND
KATHRYN W. LANDRY
BATON ROUGE, LA

ATTORNEYS FOR APPELLEE
STATE OF LOUISIANA

FREDERICK H. KROENKE, JR.
BATON ROUGE, LA

ATTORNEY FOR DEFENDANT/APPELLANT
CECIL C. DELAUGHTER

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

Carter

*mm
J-ghm*

MCDONALD, J.

The defendant, Cecil C. Delaughter, was charged by bill of information #388561 with one count of armed robbery, a violation of La. R.S. 14:64,¹ and by bill of information #388562 with one count of attempted first degree murder, a violation of La. R.S. 14:27 and La. R.S. 14:30.² He initially pled not guilty to the charges under both bills of information. Subsequently, however, on both charges, he entered guilty pleas pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976), reserving his right to challenge the constitutionality of the absence of any minorities on the jury panel. Additionally, on the charge of attempted first degree murder, he entered a "best interest" guilty plea, pursuant to **North Carolina v. Alford**, 400 U.S. 25, 37, 91 S.Ct. 160, 167, 27 L.Ed.2d 162 (1970). On the armed robbery charge, he was sentenced to ten years at hard labor without the benefit of probation, parole, or suspension of sentence. On the attempted first degree murder charge, he was sentenced to twenty years at hard labor without benefit of probation, parole, or suspension of sentence. The trial court ordered that the sentences imposed would run concurrently with each other. The defendant now appeals, designating in his sole assignment of error that the prospective jurors were obtained from an unconstitutionally impaneled jury pool. We affirm both convictions and sentences of the defendant.

FACTS

Due to the defendant's guilty pleas, there was no trial, and thus, no trial testimony in this matter. However, the State presented testimony at the **Boykin** hearing from Slidell Police Department Lieutenant Patrick Matthieu.

¹ Brandon M. Edwards was also charged by the same bill of information with the same offense. The record does not reflect the status of this charge against Edwards.

² The record does not indicate that the bills of information were consolidated for trial. See La. Code Crim. P. art. 706. However, the record also does not indicate that the defendant moved for consolidation of the bills of information.

During the early evening hours of September 6, 2004, Lieutenant Matthieu responded to a domestic disturbance call at 2938 Harris Street in Slidell. While he was introducing himself to the residents of the home, Lieutenant Matthieu heard a gunshot behind the home. Lieutenant Matthieu ran down the side of the home to investigate, heard crashing noises coming through the brush at the rear fence line of the property, and saw the defendant and Brandon Edwards coming through a hole in the privacy fence. Lieutenant Matthieu shouted, "Stop[.] Police," but the men continued running. The defendant ran into a clothesline and fell backwards. As the defendant stood up, Lieutenant Matthieu shouted, "Stop. Police. Don't move." The defendant raised a handgun from his waist area, pointed the weapon at Lieutenant Matthieu and fired. Lieutenant Matthieu returned two shots as he took cover behind the house. The defendant and Edwards ran down the opposite side of the house from where Lieutenant Matthieu was taking cover. Lieutenant Matthieu heard additional shots fired from the front of the home. He went to the front of the home and saw Sergeant Benasco on one knee with his weapon pointing in the direction the defendant and Edwards were running. Sergeant Benasco and Lieutenant Matthieu captured Edwards and recovered the wallet of a robbery victim from him.

The State indicated it was prepared to prove that following the capture of Edwards, the victim of the robbery was shown a photographic line-up containing a photograph of the defendant and identified the defendant as one of the men who robbed him.

UNCONSTITUTIONALLY IMPANELED JURY POOL

In his sole assignment of error, the defendant claims he proved a prima facie case of discrimination in the selection of the prospective jurors to hear his criminal case. He argues there were no minorities on the panel of

prospective jurors, and the trial judge indicated, “this problem had occurred in the past.”

At voir dire, the defendant and the State stipulated that the panel had been drawn randomly by computer from the central jury pool. Thereafter, the defendant raised no objection to the jury panel until the second day of trial and after the selection of the jury. The defendant then tendered his guilty pleas under **Crosby**, “in that it is [the defendant’s] belief that the jury panel containing no minorities whatsoever violates [the defendant’s] constitutional rights[.]”

The trial court indicated the jury pool selection process in St. Tammany Parish involved sending out notices to a requisite number of citizens of St. Tammany Parish to form the jury pool to be utilized by the ten judges of the Twenty-second Judicial District Court. The trial court noted, prior to Hurricane Katrina, the population of St. Tammany Parish had been approximately 200,000, of which minority African-Americans comprised approximately ten percent or 20,000. Since Hurricane Katrina, however, the population of St. Tammany parish had grown to approximately 265,000. The trial court had no statistical study indicating the “make up” of the persons relocated to St. Tammany Parish. The trial court stated, “[s]ometimes as a result of the panel selection, minorities may not be included in that number.” The court noted, however, that the citizens who were drawn were drawn through “the luck of the draw, luck of the lottery, luck of random selection.” The defense objected “for the record.”

Initially, we note the defendant’s challenge to the racial composition of the jury venire was raised improperly and untimely. A motion to quash based on the ground the petit jury venire was unconstitutionally drawn should be filed in writing prior to the beginning of the jury selection. La.

Code Crim. P. arts. 521, 532(9), 535(C); **State v. Pooler**, 96-1794, p. 20 (La. App. 1st Cir. 5/9/97), 696 So.2d 22, 39, writ denied, 97-1470 (La. 11/14/97), 703 So.2d 1288.

Moreover, the defendant's argument is without merit. He failed to show that African-Americans were systematically excluded from the venire. A general venire, grand jury venire, or petit jury venire shall not be set aside for any reason unless fraud has been practiced, some great wrong committed that would work irreparable injury to the defendant, or unless persons were systematically excluded from the venires solely upon the basis of race. La. Code Crim. P. art. 419(A). The burden of proving the basis for setting aside the venire rests with the defendant, and this burden requires that he show more than under representation of people of a certain race from the venire; rather, he must prove that this under representation is the result of a systematic exclusion of members of a certain race in the source or sources from which jury venires are chosen. **State v. Wessinger**, 98-1234, p. 5 (La. 5/28/99), 736 So.2d 162, 171-72, cert. denied, 528 U.S. 1050, 120 S.Ct. 589, 145 L.Ed.2d 489 (1999) (superseded on other grounds by amendment of La. Code Crim. P. art. 905.2(A)).

CONVICTIONS AND SENTENCES AFFIRMED.