NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1170

STATE OF LOUISIANA

VERSUS

ERICK DEHART

DATE OF JUDGMENT: May 2, 2012

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 546,682, PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE DAVID W. ARCENEAUX, JUDGE

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Ellen Daigle Doskey Joseph Waitz, D.A. Houma, Louisiana	Counsel for Appellee State of Louisiana
Bertha M. Hillman Thibodaux, Louisiana	Counsel for Defendant-Appellant Erick Dehart

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Erick Dehart, was charged by bill of information with armed robbery, a violation of La. R.S. 14:64. Defendant pled not guilty and, following a jury trial, was found guilty as charged. He was sentenced to thirty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. Defendant now appeals, designating one assignment of error. We affirm defendant's conviction and sentence.

FACTS

On the night of July 8, 2009, Jessica Rabalais went to The Brick House nightclub in Houma. She arrived about 10:15 p.m. to get an admission bracelet. Anyone wearing the Brick House bracelet could get into the nightclub for free before 11:00 p.m. After Jessica got her bracelet, she left to go pick up her friend. As she was walking back to her car, defendant approached her just as she had finished talking on her cell phone.

Jessica testified at trial that defendant knocked the phone out of her hand. Defendant picked up the phone and then pointed a black handgun at her. Defendant put Jessica's phone in his pocket and asked her if she had any money. She said she did not. Defendant searched her right-hand pocket and found twenty dollars. Jessica's wallet was in her car. When they got to her car, defendant took her bracelet. With defendant still pointing the gun at her, defendant told Jessica to open her wallet, which was empty. Defendant then told Jessica to leave before he killed her. Defendant ran away, and Jessica got in her car and drove around until she found the police. Jessica identified defendant in court as the person who took her cell phone and money at gunpoint.

Defendant testified at trial. He admitted that he robbed Jessica of twenty dollars. However, he denied having or using a gun at the time of the robbery, and he denied that he took her cell phone. He also testified that he asked Jessica for her bracelet and she took it off and gave it to him. Defendant had previous convictions for simple burglary and simple battery. The police did not find a gun.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant asserts that the court erred in denying his challenge for cause of prospective juror Karen McCoy. Specifically, he contends that McCoy had "problems" with the presumption of innocence of a defendant and his right to remain silent and, accordingly, could not be fair and impartial.

Defense counsel raised a cause challenge for McCoy, but the trial court denied the challenge. Defense counsel objected to the trial court's ruling. McCoy was peremptorily struck by defense counsel. Thus, McCoy did not serve on the jury of defendant's trial.

An accused in a criminal case is constitutionally entitled to a full and complete *voir dire* examination and to the exercise of peremptory challenges. La. Const. art. I, § 17(A). The purpose of *voir dire* examination is to determine prospective jurors' qualifications by testing their competency and impartiality and discovering bases for the intelligent exercise of cause and peremptory challenges. ***State v. Burton***, 464 So.2d 421, 425 (La. App. 1st Cir.), writ denied, 468 So.2d 570 (La. 1985). A challenge for cause should be granted, even when a prospective juror declares his ability to remain impartial, if the juror's responses as a whole reveal facts from which bias, prejudice, or inability to render judgment according

to law may be reasonably implied. A trial court is accorded great discretion in determining whether to seat or reject a juror for cause, and such rulings will not be disturbed unless a review of the *voir dire* as a whole indicates an abuse of that discretion. ***State v. Martin***, 558 So.2d 654, 658 (La. App. 1st Cir.), writ denied, 564 So.2d 318 (La. 1990).

A defendant must object at the time of the ruling on the refusal to sustain a challenge for cause of a prospective juror. La. C.Cr.P. art. 800(A). Prejudice is presumed when a challenge for cause is erroneously denied by a trial court and the defendant has exhausted his peremptory challenges. To prove there has been reversible error warranting reversal of the conviction, a defendant need only show (1) the erroneous denial of a challenge for cause; and (2) the use of all his peremptory challenges. ***State v. Robertson***, 92-2660 (La. 1/14/94), 630 So.2d 1278, 1280-81. On the other hand, under ***State v. Vanderpool***, 493 So.2d 574, 575 (La. 1986), a defendant who has not exhausted his peremptory challenges must establish that he was prejudiced by a ruling denying a cause challenge, e.g., that he was forced to hoard his remaining peremptory challenges at the cost of accepting a juror he would have peremptorily challenged. ***State v. Davis***, 97-2750 (La. App. 1st Cir. 11/6/98), 722 So.2d 1049, 1051, writ denied, 99-3521 (La. 6/16/00), 764 So.2d 960.

Defendant claims, in his brief, that the cause challenge for McCoy should have been granted because McCoy initially stated she felt defendant must have done something or else he would not be on trial. She also stated that maybe defendant was going to have to prove he did not commit a crime. Subsequently, the trial court questioned McCoy about her concerns. In denying the cause

challenge for McCoy, the trial court stated it was satisfied after questioning her that she was an intelligent woman, that she understood what was expected of her, and that she would follow the law.

Defendant asserts in his brief that he used all of his peremptory challenges. However, the State correctly points out that defendant used only nine of his twelve allotted peremptory challenges. Consequently, we need not reach the issue of whether the trial court's ruling denying the cause challenge of McCoy was correct. Even if the trial court should have granted the cause challenge of McCoy, defendant has not shown, and the record clearly does not reflect, that he was forced to accept any questionable juror by holding his tenth, eleventh, and twelfth peremptory challenges. Furthermore, he has not otherwise established the requisite prejudice under ***Vanderpool***. See ***Davis***, 722 So.2d at 1051-52. Cf. ***State v. Jones***, 623 So.2d 877 (La. App. 1st Cir.), writ denied, 629 So.2d 419 (La. 1993) (on rehearing) (per curiam).

DECREE

For these reasons, the conviction of and sentence imposed against defendant, Erick Dehart, are affirmed.

CONVICTION AND SENTENCE AFFIRMED.