NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 1649

STATE OF LOUISIANA

VERSUS

FLOYD L. JEFFERSON

Judgment Rendered: March 26, 2010

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case Number 10-05-412
Honorable Richard D. Anderson, Presiding

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Floyd L. Jefferson

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BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

GUIDRY, J.

The defendant, Floyd L. Jefferson, Jr., was charged by bill of information with, and pled not guilty to, three counts of attempted second degree murder, violations of La. R.S. 14:27 and 14:30.1, and one count of armed robbery, a violation of La. R.S. 14:64. After a trial on the merits, a jury found him guilty of all counts as charged. The trial court sentenced the defendant to fifty years at hard labor on counts one, two and three (attempted second degree murder) and to ninety-nine years at hard labor on count four (armed robbery), all to be served concurrently without benefit of parole, probation, or suspension of sentence. The defendant did not appeal in a timely manner. After having been granted an out-of-time appeal, the defendant designates two assignments of error. Finding no error, we affirm the convictions and sentences.

FACTS

Around 5:30 on the morning of Sunday, August 21, 2005, Lois Jordan and her children, 16-year-old Kimberly Kelly and 12-year-old Reginald Lee, were sleeping in their home on Greenwell Street in Baton Rouge, when a fire started in the yard of a house next door. Jordan heard popping sounds and looked out the window to discover the fire. She then started waking the children and searching for her cell phone to call the fire department when she heard a "boom," and then saw the defendant walking down the hall with a gun, yelling, "Get back. Get back in the room." The defendant forced them all into a room and onto the floor. He then shot each of them, demanded Jordan's purse, and shot each of them again. He shot Jordan in the head and leg, Kelly in each leg, and Lee in the chest and head. The defendant took Jordan's purse and left. Lee went down the street to find help. A neighbor, Ronald Butler, saw Lee and called 9-1-1. Kelly found her mother's cell phone and also called 9-1-1. Although they suffered serious injuries, Jordan, Kelly, and Lee all survived the attack.

Although Jordan, Kelly, and Lee had not seen the defendant before that morning, Jordan and Kelly were able to give to the police a description of the assailant from which a sketch was made and posted to the public. The police received an anonymous tip that the person in the sketch was "Floyd Junior," which led them to create a photographic line-up that included the defendant's picture. Both Jordan and Kelly identified the defendant from the photographic line-up as the man who broke into their house, robbed and shot them.

CHALLENGES FOR CAUSE

In his first assignment of error, the defendant alleges that the trial court erroneously granted five challenges for cause raised by the State. Specifically, he contends that the court erred in granting the challenge as to three panel members[1] who indicated they could not convict solely on the credible testimony of one eyewitness, and as to two panel members[2] who equivocated as to whether they could convict on the credible testimony of a single witness.

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

[1] Panel members Danielle Ruffin, Sandra Brown, and Elizabeth Smart-Aymond.
[2] Panel members Darryle Lawrence and Lawrence Ricketts.

discretion. State v. Martin, 558 So.2d 654, 658 (La. App. 1st Cir.), writ denied, 564 So.2d 318 (La. 1990).

Louisiana Code of Criminal Procedure article 800(B) provides that a defendant cannot complain of the trial court's erroneous allowance to the State of a challenge for cause unless the effect of the ruling is the exercise by the State of more peremptory challenges than it is entitled to by law. An examination of the record reveals that the State only exercised seven peremptory challenges in selecting the twelve-person jury that heard the case against the defendant. Since any error in granting the five complained-of challenges for cause did not afford the State more than the twelve challenges to which it is entitled under Article 799, the defendant has failed to allege an error that would entitle him to relief and, therefore, has no basis for complaint on appeal. See State v. Thibodeaux, 97-1636, pp. 20-21 (La. App. 3d Cir. 11/18/98), 728 So.2d 416, 426-27, writ denied, 98-3131 (La. 5/7/99), 741 So.2d 27, cert. denied, 528 U.S. 936, 120 S.Ct. 341, 145 L.Ed.2d 266 (1999).

Furthermore, Louisiana Code of Criminal Procedure article 841(A) provides that "[a]n irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence." When the State presented a challenge as to Ruffin, Brown, and Smart-Aymond, defense counsel responded, "That's not enough for cause for me, Judge. I mean, that's your call on that one, but that's not enough for me on cause right there. I mean, they all said that they could be fair, all of them." After more discussion, counsel stated "When I asked them, they said that they would follow the law, and they should not be struck for cause. I mean, they strictly said that they would follow the law." The record reflects that defense counsel failed to object after the court granted these challenges for cause. Thus, the issue as to these prospective jurors was not properly preserved for appellate review.

Moreover, the whole of the answers from each of the challenged panel members revealed they would hold the State to a higher burden of proof than that required by law by, among other things, requiring more than the testimony of one credible witness before convicting. The defendant contends that this was not a basis to support a challenge for cause in this case because the State intended to offer more than one eyewitness. However, the number of witnesses actually testifying is irrelevant to the review of the trial court's rulings on voir dire. The answers given during voir dire by each of the challenged panel members indicated an inability to render judgment in accordance with the law. See La. C.Cr. P. art. 797(4). Thus, the court committed no error in granting the challenges.

This assignment of error is without merit.

EXCESSIVE SENTENCE

In his second assignment of error, the defendant contends that his sentences are constitutionally excessive. Specifically, he argues that the trial court gave him a *de facto* life sentence by imposing the maximum of ninety-nine years for armed robbery and the maximum of fifty years for each count of attempted second degree murder. The defendant argues that his youth and criminal history should have mitigated against the maximum sentences.

A thorough review of the record indicates that counsel did not make a written or oral motion to reconsider the defendant's sentences. The procedural requirements for objecting to a sentence are provided in Louisiana Code of Criminal Procedure article 881.1, which provides, in pertinent part, as follows:

> A. (1) In felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence.
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> B. The motion shall be oral at the time of sentence or shall be in writing thereafter and shall set forth the specific grounds on which the

motion is based.

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> E. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, **shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.** [Emphasis added.]

The failure to make or file a motion to reconsider sentence **shall preclude** the defendant from raising an objection to the sentence on appeal, including a claim of excessiveness. The defendant, therefore, is procedurally barred from seeking review of this assignment of error. See State v. Duncan, 94-1563, p. 2 (La. App. 1st Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam); see also State v. LeBouef, 97-0902, p. 3 (La. App. 1st Cir. 2/20/98), 708 So.2d 808, 809, writ denied, 98-0767 (La. 7/2/98), 724 So.2d 206.

This assignment of error has no merit.

REVIEW FOR ERROR

The defendant asks that this Court examine the record for error under Article 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under Article 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See State v. Price, 2005-2514, pp. 18-22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONCLUSION

Having found no merit in the defendant's assignments of error, the convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.