NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 1207

STATE OF LOUISIANA

VERSUS

BARBETTE WILLIAMS

Judgment Rendered: December 28, 2006

* * * * * * * * * *

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 08-03-0710
Honorable Todd W. Hernandez, Judge Presiding

* * * * * * * * * *

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Barbette Williams

* * * * * * * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

HUGHES, J.

The defendant, Barbette Williams, was charged by amended bill of information with: one count of second degree kidnapping (count I), a violation of LSA-R.S. 14:44.1; two counts of attempted first degree murder (counts II and III), violations of LSA-R.S. 14:27 and 14:30; three counts of attempted carjacking (counts IV, VI, and IX), violations of LSA-R.S. 14:27 and 14:64.2; three counts of carjacking (counts V, VII, and X), violations of LSA-R.S. 14:64.2; and one count of attempted second degree murder (count VIII), a violation of LSA-R.S. 14:27 and 14:30.1. He initially pled not guilty on all charges and moved for appointment of a sanity commission. A sanity commission was appointed. Following a sanity hearing, the defendant was found competent to proceed. Thereafter, he was rearraigned and pled not guilty and not guilty by reason of insanity.

Following a jury trial, the defendant was found guilty as charged by unanimous verdict on counts I, II, V, VII, and X; guilty as charged on count III, and not guilty on counts IV, VI, VIII, and IX.[1] On count I he was sentenced to forty years at hard labor without benefit of probation, parole, or suspension of sentence. On count II he was sentenced to thirty-five years at hard labor without benefit of probation, parole, or suspension of sentence, to be served consecutively to the sentence imposed on count I, but concurrently with any other sentence. On count III he was sentenced to thirty-five years at hard labor without benefit of probation, parole, or suspension of sentence, to be served consecutively to the sentences imposed on counts I and II, but concurrently with any other sentence. On each of counts V, VII, and X he

[1] The victims of counts IV, VI, VIII, and IX either could not be located or were unavailable at the time of the trial.

was sentenced to ten years at hard labor, to be served concurrently with any other sentence.

The defendant now appeals, designating three assignments of error:

> 1. The evidence is insufficient to sustain this conviction because no rational trier of fact could have found that the defendant had not shown by a preponderance of the evidence that he was insane at the time of the offense.
>
> 2. The trial court erred in ruling that the defendant was capable to proceed to trial.
>
> 3. The trial court erred in denying defendant's challenge for cause.

We affirm the convictions and sentences on counts I, II, III, V, VII, and X.

FACTS

On March 18, 2003, at approximately 9:30 a.m. or 10:00 a.m., Jeanetta C. Johnson and her mother went to Oliver Eye Clinic on North Boulevard in Baton Rouge. In the parking lot of the clinic, they stopped to talk to a friend, Moses. The defendant approached and told them he needed a ride because he was wanted for murder and was trying to get away. Moses said he did not have a car. Ms. Johnson told the defendant if he jumped the back fence, he could get away. The defendant pulled out a gun, told them that he really did not want to kill them, and told Ms. Johnson to give him the keys she was holding. In response to Ms. Johnson's request, the defendant allowed her to keep her house keys. The defendant also allowed Ms. Johnson to take her mother's purse out of her vehicle before he drove away.

Also on the morning of March 18, 2003, Alfred C. Wilson was backing a leased truck into his driveway on North 39th Street in Baton Rouge, when he saw the defendant jumping over a neighbor's fence. Mr. Wilson told the defendant not to use the neighbor's yard as a shortcut, but to go around and

use the sidewalk. The defendant told Mr. Wilson, "I just killed someone and the police are looking for me for murder." Mr. Wilson testified that the defendant pointed a gun at his chest and pulled the trigger, but "when he pulled the trigger the magazine unseated [sic] out of the weapon." Mr. Wilson began to run at the defendant, but, after hearing the magazine of the defendant's gun click back into the weapon, Mr. Wilson turned and ran toward his home. The defendant threatened to "pop a cap" in Mr. Wilson if he attempted to go in his house, and ordered Mr. Wilson to walk "up the street. " Mr. Wilson started walking across his lawn, and the defendant jumped in the leased truck and drove away.

Also on the morning of March 18, 2003, Billy Jean Edward stopped by the Evangeline Street place of employment of her cousin Lois. As Ms. Edward and Lois stood outside of Lois's office on Evangeline Street, they saw the defendant "come across the fence" with a gun in his hand. The defendant put the gun in his waistband, approached the women, and asked them how they were doing. The defendant said he had thirty police officers behind him because he had done "something bad" and needed a vehicle. When Ms. Edward turned over her car keys to the defendant, he stated, "These better not be the wrong keys ... I don't want to have [sic] kill nobody." The defendant allowed Ms. Edward to get her personal belongings and daughter from her vehicle. Before driving away in Ms. Edward's vehicle, the defendant told Ms. Edward he just needed a get-away vehicle and he would not touch any of her possessions; the defendant stated that he would leave the vehicle on the side of the road.

Marva Spears, Park Elementary School Principal, also testified at trial. On March 18, 2003, the defendant approached Ms. Spears on the campus of the school. He did not have Ms. Spears' permission to be on the campus. The

defendant asked for water, and Ms. Spears directed him to a water fountain. The defendant then began walking off the campus toward Capitol High School. A secretary at Capitol High School subsequently telephoned Ms. Spears to warn her that an intruder was approaching Park Elementary School and the police were chasing him. Ms. Spears immediately ordered a "lockdown" of the school.

Kyla Oliver was a kindergarten teacher at Park Elementary School on March 18, 2003. On that date, the defendant "stormed" into Ms. Oliver's classroom and began mumbling; he had his arms folded and was holding a gun. Ms. Oliver asked the defendant what he wanted, but he ignored her. Ms. Oliver told the children they had five seconds to get into alphabetical order. Tonya Escort, a teaching assistant, then began to lead the children out of the classroom. Before one of the children, B.S., could leave the classroom, the defendant picked him up, stating, "Come on, little one." Ms. Oliver pleaded with the defendant to put B.S. down and not take him away, but the defendant ignored the pleas. Ms. Oliver also volunteered to substitute herself for the child; the defendant stated, "No, I can't carry you." Ms. Oliver testified that B.S. whimpered and looked as though he might cry, so she told B.S., "This is just a drill." Ms. Oliver pleaded with the defendant not to hurt B.S., and the defendant stated, "I'm not going to hurt him[,] I just need him." Police officers had positioned themselves outside the classroom and Ms. Oliver heard the defendant tell the officers, "Don't come in here. You don't want to come in here." The defendant then took B.S. out of the classroom without Ms. Oliver's permission.

On cross-examination, Ms. Oliver indicated when the defendant was in her classroom, he acted similarly to someone on drugs. However, on redirect examination, Ms. Oliver indicated that after the defendant left her classroom,

she concluded he had not been mumbling, but had been talking to the police officers outside the classroom.

After taking B.S. out of the classroom, the defendant used the child to shield himself from the police. He then shot at the Baton Rouge police officers several times, shot his way into a house on 39th Street, and barricaded himself inside the house with B.S. Baton Rouge Police Sergeant Jerry Bloon spoke to the defendant on the telephone while he was in the house. The defendant spoke calmly and indicated he was in the house with B.S. because the police were outside. The defendant did not allow B.S. to speak to the police on the telephone until five or six hours had passed. Subsequently, the defendant released the child. Thereafter, he shot at the police again as they used tear gas and broke into the house.

During the trial of this matter, but outside the presence of the jury, the defendant complained that the restraint on his leg was too tight. After confirming that the restraint had not been attached to the defendant's leg too tightly, the court asked whether the restraint was so unbearable that the defendant could not stay in the courtroom until the completion of trial. The defendant stated, "I'll tell you what I have problems with is sitting here and not having a gun or something so that I can shoot you in your f[---]ing head, shoot the DA in his head, and shoot this f[---]ing lawyer in his head. That's what I got [sic] problem with." After the defense rested its case, the defendant attacked defense counsel with a razor blade and cut him on his face and neck.

SUFFICIENCY OF THE EVIDENCE

In his first assignment of error, the defendant argues the evidence established that he engaged in prolonged alcohol and drug abuse and had a

history of psychosis, schizophrenia, epilepsy, and depression, which rendered him unable to distinguish between right and wrong.

Insanity at the time of the offense requires a showing that because of mental disease or mental defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question. See LSA-R.S. 14:14. The law presumes a defendant is sane and responsible for his actions, and the defendant has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence. See LSA-R.S. 15:432; LSA-C.Cr.P. art. 652.

The State is not required to offer any proof of the defendant's sanity or to offer evidence to rebut the defendant's evidence. Instead, the determination of whether defendant's evidence successfully rebuts the presumption of sanity is made by the trier of fact viewing all the evidence, including lay and expert testimony, the conduct of the defendant, and the defendant's actions in committing the particular crime.

The issue of insanity is a factual question for the jury to decide. Lay testimony concerning defendant's actions, both before and after the crime, may provide the jury with a rational basis for rejecting even unanimous medical opinion that a defendant was legally insane at the time of the offenses. **State v. Thames**, 95-2105, p. 8 (La. App. 1 Cir. 9/27/96), 681 So.2d 480, 486, writ denied, 96-2563 (La. 3/21/97), 691 So.2d 80.

In reviewing a claim of sufficiency of evidence in regard to a defense of insanity, an appellate court must apply the test set forth in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), to determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant had not proven by a

preponderance of the evidence that he was insane at the time of the offense(s). **Thames**, 95-2105 at pp. 8-9, 681 So.2d at 486.

At trial, the defense presented the testimony of Dr. Marc L. Zimmermann, who holds a Ph.D. in Psychology, and who was accepted as an expert in the field of Clinical and Forensic Psychology. Dr. Zimmermann testified about his November 25, 2003 examination of the defendant. The defendant's grooming and hygiene were fair. He did not display any unusual movements. His speech was clear, and he was relevant, logical, rational, and coherent. He was oriented as to where and who he was, but was not oriented as to time. The defendant reported he had previously been stabbed in the left forehead and had surgery to repair the injury. He claimed he had a history of seizures and was taking Haldol and Elavil, anti-seizure medications. He reported visual hallucinations of dead people chasing him. He claimed voices told him to kill himself and other people. The defendant also claimed to smell the odor of dead people. The defendant reported to Dr. Zimmermann that he had killed four people. He claimed to have received treatment in prison for emotional problems, but the defendant's medical records did not substantiate that claim. The defendant also claimed to have been treated for chemical dependency "everywhere he went." The defendant claimed that when he was not incarcerated he would drink until he got drunk and would use as much cocaine and heroin as he could get. He claimed to be charged with "a lot of murders." Dr. Zimmermann noted signs of confusion and a lack of comprehension in the defendant, but did not see any signs of psychosis or a major mental illness. Dr. Zimmermann could not get enough information from the defendant to give an opinion on whether the defendant could distinguish right from wrong on March 18, 2003.

On cross-examination, Dr. Zimmermann conceded that malingering could account for the defendant's bizarre responses. Dr. Zimmermann also could not say that Dr. Blanche and Dr. Silva were wrong to opine that the defendant was malingering.

The State presented testimony at trial from Dr. Robert V. Blanche, an M.D. who is also a Board Certified Psychiatrist. Dr. Blanche testified that he examined the defendant on July 19, 2004 and on October 12, 2004. Dr. Blanche testified that the defendant did a good job of acting psychotic at the first examination, and at that time he assessed the defendant's intelligence as borderline normal. At the second examination, Dr. Blanche retracted his lower appraisal of the defendant's intelligence and found him very intelligent. Dr. Blanche found that the defendant's sentences were organized, and that he had a fluidity of thought and coherency in his ability to argue points in an attempt to manipulate.

After reviewing twenty-five years of the defendant's prison medical records, Dr. Blanche found nothing in the records to support the claim that the defendant suffered from seizures other than the defendant's own claims. The results of neurological examinations of the defendant and evaluations looking at neurological aspects were completely normal.

In Dr. Blanche's opinion, the defendant was malingering and attempting to imitate a mental disease. Dr. Blanche testified that he looks for "clues" in evaluating a patient's ability to tell right from wrong. Dr. Blanche found that the most important clue in the defendant's case was his efforts to flee and evade arrest. According to Dr. Blanche, the fact that the defendant had taken a child as a human shield was evidence that he knew what he was doing was wrong. Dr. Blanche pointed to the fact that the defendant shot at police officers in order to avoid being captured as additional evidence of his

knowledge of wrongfulness, and thus, sanity. As a result of his examination of defendant, Dr. Blanche concluded that the defendant has an anti-social personality disorder, rather than a mental disease or defect. Dr. Blanche explained: the defendant will not conform to any rules; he will not respect rules or relations of society or of authority; he is out for his own end; he will manipulate, malinger, use deceit, and lies to achieve what he wants completely without regard, empathy, or feelings of consequences to any other human being. Dr. Blanche testified that the defendant knew the difference between right and wrong.

On cross-examination, Dr. Blanche conceded that the defendant's medical records indicated he had been diagnosed as suffering from intermittent psychosis, and had been prescribed anti-psychotic medications (Mellaril, Haldol, and Serintil), an antidepressant medication (Doxepin), anti-seizure medications (Dilantin and Phenobarb), as well as a schizophrenia medication (Geodone) that had been prescribed to the defendant for an unspecified psychosis. The defendant's 1980 electroencephalogram report listed as the chief finding that the "patient is probably epileptic with intermittent psychosis[,] possibly explosive personality." The clinical impression stated on the report was: "epileptic with intermittent psychosis. Latent schizophrenic." Dr. Blanche also conceded that schizophrenia is one of the most serious mental illnesses. However, Dr. Blanche indicated that medications taken by the defendant were the most likely cause of the abnormal test results. The defendant's medical records also indicated that in 1975, he had suffered a depressed skull fracture in the left parietal area, which had resulted from the stabbing incident.

Dr. Blanche explained that the diagnosis of "intermittent psychosis" referred to psychosis that was present on some days, but not others. Dr.

Blanche indicated that "psychosis" had been used as a general term and the cause of the psychosis was not identified. Dr. Blanche further explained that psychosis can be a symptom of schizophrenia, but it can also be caused by taking illicit drugs. The defendant admitted receiving and taking illicit drugs from various sources including from other inmates. Dr. Blanche further stated that schizophrenia is a chronic condition, and that psychosis does not come and go in patients with schizophrenia unless it was related to medication noncompliance. Dr. Blanche noted that the defendant's "psychosis" was entirely self-reported; he had also claimed to hear voices and see visions of ghosts or spirits. However, Dr. Blanche testified that seeing visions of ghosts or spirits is rarely ever seen in true schizophrenia.

On redirect examination, Dr. Blanche testified that the relatively low dosage of Mellaril prescribed for the defendant was more consistent with producing a calming effect rather than true anti-psychotic efficacy. Further, in regard to a 1988 prison emergency medical report, stemming from a report of a possible seizure, the treating physician made the assessment that the defendant was "probably faking." Additionally, the defendant's prison records indicated that he made multiple requests to see a psychiatrist. Conversely, Dr. Blanche indicated that one of the traits that characterizes schizophrenia is denial and resistance to treatment. Dr. Blanche also noted the defendant had gone on a hunger strike to change his camp assignment at Angola. Dr. Blanche indicated that, generally, a psychotic person would not go on a hunger strike for any specific purpose, but would rather stop eating for no apparent reason.

When asked if, assuming for the sake of argument the defendant was schizophrenic, whether he knew the difference between right and wrong, Dr. Blanche indicated the defendant did know the difference between right and

wrong. Dr. Blanche also maintained his opinion that the defendant's actions and behaviors were efforts at malingering and manipulation.

After a thorough review of the record, we are convinced a rational trier of fact could have found the defendant failed to rebut his presumed sanity at the time of the offenses. Contrary to the assertions of the defendant, the defendant's medical history and the expert testimony at trial did not sufficiently establish that the defendant was unable to distinguish between right and wrong at the time of the offenses. Moreover, evidence contrary to that conclusion was presented through the testimony of Dr. Blanche, as well as the testimony of the State witnesses concerning the defendant's actions at the time of the offenses.

CAPACITY TO PROCEED

In his second assignment of error, the defendant argues his mental defects rendered him incapable of assisting his attorney in his defense and made him unable to restrain himself from attacking his attorney in front of the jury.

Louisiana Code of Criminal Procedure Article 642 provides:

> The defendant's mental incapacity to proceed may be raised at any time by the defense, the district attorney, or the court. When the question of the defendant's mental incapacity to proceed is raised, there shall be no further steps in the criminal prosecution, except the institution of prosecution, until the defendant is found to have the mental capacity to proceed.

Louisiana Code of Criminal Procedure Article 647 provides:

> The issue of the defendant's mental capacity to proceed shall be determined by the court in a contradictory hearing. The report of the sanity commission is admissible in evidence at the hearing, and members of the sanity commission may be called as witnesses by the court, the defense, or the district attorney. Regardless of who calls them as witnesses, the members of the commission are subject to cross-examination by the defense, by the district attorney, and by the court. Other evidence pertaining to the defendant's mental capacity to proceed may be introduced at the hearing by the defense and by the district

attorney.

Mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense. LSA-C.Cr.P. art. 641. The law presumes the defendant's sanity. LSA-R.S. 15:432. The defendant bears the burden of proving by a preponderance of the evidence that, as a result of his mental infirmity, he is incompetent to stand trial. **State v. Billiot**, 94-2419, p. 4 (La. App. 1 Cir. 4/4/96), 672 So.2d 361, 366, writ denied, 96-1149 (La. 10/11/96), 680 So.2d 655.

While a court is permitted to receive the aid of expert medical testimony on the issue of a defendant's mental capacity to proceed, the ultimate decision of competency is the court's alone. LSA-C.Cr.P. art. 647. The ruling of the district court on a defendant's mental capacity to proceed is entitled to great weight on appellate review and will not be overturned absent an abuse of discretion. **Billiot**, 94-2419 at p. 5, 672 So.2d at 367.

On November 12, 2003, the defense moved for a sanity hearing. When the court initially received two conflicting reports concerning the defendant's sanity and competency, the court appointed Dr. Blanche on April 7, 2004, to examine the defendant and report on his sanity and competency.

On July 26, 2004, the State and the defense submitted the matter on the basis of the three doctors' reports. After reviewing the reports and noting the difference of opinion of the doctors, the court found the defendant competent to proceed.

In his November 26, 2003 report concerning a November 25, 2003 evaluation of the defendant, Dr. Zimmermann concluded the defendant did not appear to be competent and should be transported to a facility for

treatment. In regard to the defendant's ability to understand the nature of the proceedings, Dr. Zimmermann noted:

> 1. He does not understand the nature of the charge nor can he appreciate its seriousness. (He believes he is charged with four murders.)
>
> 2. He does not understand what defenses are available.
>
> 3. He can not distinguish a guilty from a not guilty plea and [understand] the consequences of each.
>
> 4. He does not have an awareness of his legal rights.
>
> 5. He does not understand the range of possible verdicts and the consequences of a conviction.

In regard to the defendant's ability to assist in his defense, Dr. Zimmermann found:

> 1. He can not recall and relate facts pertaining to his actions and whereabouts at certain times.
>
> 2. He can not assist counsel [with] locating and examining relevant witnesses.
>
> 3. He is able to maintain a consistent defense.
>
> 4. He is not able to listen to the testimony of witnesses and inform his attorney of any distortions or mistakes.
>
> 5. He has the ability to make simple decisions in response to well explained alternatives.
>
> 6. He is not capable of testifying in his own defense.
>
> 7. It is unlikely that his mental condition will deteriorate significantly under the stress of trial.[2]

In his April 6, 2004 report concerning his February 3, 2004 and March 1, 2004 evaluations of the defendant, Dr. F. A. Silva concluded the defendant was malingering. At the February 3, 2004 evaluation, the defendant told Dr. Silva that he was accused of killing four people in New Orleans. When Dr. Silva inquired as to the defendant's knowledge of the

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[2] See **State v. Bennett**, 345 So.2d 1129, 1138 (La. 1977) (on rehearing).

function of the officers of the court, the defendant reported to Dr. Silva that the judge "did a lot of talking," and the prosecutor tried to "help defense counsel." The defendant claimed not to know the function of the jury. The defendant also denied to Dr. Silva that he had any knowledge of the pleas available to him.

At the March 1, 2004 evaluation, the defendant claimed not to remember Dr. Silva from the February 3, 2004 evaluation. He also claimed not to remember any of the facts related to the offenses listed in the affidavit of probable cause. When Dr. Silva challenged the defendant's claims of lack of memory, the defendant became increasingly angry, stopped the interview, and left Dr. Silva's office.

In his July 19, 2004 report concerning his examination and evaluation of the defendant on that date, Dr. Blanche also concluded the defendant was malingering or exaggerating a mental illness. Dr. Blanche noted:

> It is my opinion that Mr. Williams is currently able to assist his attorney in his defense (if he chose to) and he ... also seems to be able to understand the nature of the charges against him, the basic functions of the court, the role of the attorneys involved, and the basic proceedings against him. He answered questions and used words that indicate that he has at least a rudimentary or basic understanding of the legal process. For example, [h]e understood what it meant when I asked him what he was going to plead and when I asked if there was evidence against him, he made reference to having a gun.

There was no abuse of discretion by the trial court in finding the defendant competent to proceed. The defense failed to prove that the defendant was incompetent to stand trial.

This assignment of error is without merit.

CHALLENGE FOR CAUSE

In his third assignment of error, the defendant argues the trial court erred in denying the defense challenge for cause against prospective juror

Lawrence Addy because the totality of his statements indicated he was unable to be impartial due to his strong feelings.

Louisiana Code of Criminal Procedure Article 797, in pertinent part, provides:

> The state or the defendant may challenge a juror for cause on the ground that:
>
> * * *
>
> (2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;
>
> * * *
>
> (4) The juror will not accept the law as given to him by the court[.]

In order for a defendant to prove reversible error warranting reversal of both his conviction and sentence, he need only show the following: (1) erroneous denial of a challenge for cause; and (2) use of all his peremptory challenges. Prejudice is presumed when a defendant's challenge for cause is erroneously denied and the defendant exhausts all his peremptory challenges.[3] An erroneous ruling depriving an accused of a peremptory challenge violates his substantial rights and constitutes reversible error. **State v. Taylor**, 2003-1834, pp. 5-6 (La. 5/25/04), 875 So.2d 58, 62.

A trial court is vested with broad discretion in ruling on challenges for cause and these rulings will be reversed only when a review of the voir dire record as a whole reveals an abuse of discretion. A trial judge's refusal to excuse a prospective juror for cause is not an abuse of his discretion,

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[3] The rule is now different at the federal level. See **United States v. Martinez-Salazar**, 528 U.S. 304, 120 S.Ct. 774, 145 L.Ed.2d 792 (2000) (exhaustion of peremptory challenges does not trigger automatic presumption of prejudice arising from trial court's erroneous denial of a cause challenge).

notwithstanding that the juror has voiced an opinion seemingly prejudicial to the defense, when subsequently, on further inquiry or instruction, he has demonstrated a willingness and ability to decide the case impartially according to the law and the evidence. **Taylor**, 2003-1834 at p. 6, 875 So.2d at 62-63.

Lawrence Addy was on the first panel of prospective jurors. During the State's discussion of presentation of evidence concerning insanity of the defendant, a colloquy occurred between Mr. Addy and the Assistant District Attorney, during which the following questions were asked:

> **Q:** ...Yes, Sir, Mr. Addy?
>
> **A:** I have to be honest. I've never really been a juror before anywhere for anything. I've always -- when I've seen insanity pleas I've always gone, yeah, right --
>
> **Q:** So does the State as attorneys.
>
> **A:** I just don't -- I never bought it.
>
> **Q:** That's what [defense counsel is] going to talk to you about.
>
> **A:** Okay.
>
> **Q:** I would suggest to you that your professional skepticism is warranted. Of course, [defense counsel] may disagree with me.
>
> **A:** I understand.

In a colloquy that subsequently occurred between defense counsel and Mr. Addy, the following questions were asked:

> **Q:** But what I'm asking is, are you going to put a higher burden of proof than just normal burden of proof on me[?]
>
> **A:** I'll do my best, Sir, within the law.
>
> **Q:** Okay.
>
> **A:** But I am -- I'm not going to lie to you. I am skeptical about it. You're talking about PCP drug use. Well, you held that young man responsible for a difference. What's the

difference? That's my opinion. I'm going to be honest with you.

Thereafter, the trial judge questioned Mr. Addy as follows:

Q: ...Mr. Addy, concerning your questioning on the issue of insanity, everyone -- is everyone starting on a level playing field?

A: I'd like to think so, yes.

Q: Okay. Well that's what we're going to try to get to. We talked about the instructions on the law. I would instruct you on the law --

A: Right.

Q: --and whether you agreed with it or not the law requires you to accept the law as given to you by the court.

A: Correct. Yes, Sir.

Q: You've been given some general outlines of what the law is and what is required. Will you be able to accept the law as given to you by the court and apply it to the facts in this case on the issue of insanity?

A: I certainly would want to say, yes, Sir; I could. But I'm like that gentleman there. I'm not a hundred percent sure. He's presumed innocent now.

Q: Correct.

A: That's a later -- the insanity would come later; correct?

Q: That's --

A: Wouldn't I have to decide from that point on?

Q: Well, you would be instructed on the issue of insanity and what the law is on the issue of insanity defense.

A: Yes, Sir.

Q: And regardless of what your personal feelings are in regards to the issue of insanity --

A: Right.

Q: --my question to you would be, would you be able to put aside any personal beliefs that you have and accept the law as given to you and apply it to the facts in this case and render a just verdict?

A: I'd like to say I could. I'm not -- I'd like -- I want to say yes. But I have a natural skepticism that I --

Q: And that's --

A: I know the law --

Q: --that's okay.

A: The law is --

Q: We all have certain beliefs, we all have certain skepticism on different issues.

A: Right.

Q: And there's nothing wrong with that. But we all also have common sense that we're asked to bring back into the jury room as well.

A: Right.

Q: And it's your common sense that is requested of you once you have listened to all the evidence and are about to go into the jury room and begin your deliberations.

A: Right.

Q: But the deciding factor is whether or not someone would be able to put aside any of those skepticisms or personal differences with what the law might be and say --

A: Right.

Q: --yes, I will accept the law as given to me and I will apply it to the facts in this case. Will you be able to do that?

A: I think so. Yes, Sir.

The defense challenged Mr. Addy for cause, arguing he could not accept the law as to the insanity defense. The court denied the challenge for cause, citing Mr. Addy's responses to the court's questioning concerning his ability to follow the court's instructions. The defense objected to the denial of the challenge for cause and thereafter used a peremptory strike against Mr. Addy.

Initially, we note that the defendant exhausted his peremptory challenges in this matter. Thus, if he has established an erroneous denial of a defense challenge for cause, prejudice is presumed, and there is reversible trial court error.

Considering Mr. Addy's responses to the voir dire examination as a whole, there was no abuse of the great discretion of the trial court in regard to the ruling on the defendant's challenge for cause against Mr. Addy. Although Mr. Addy initially expressed skepticism concerning accepting the law in regard to the insanity defense, on further inquiry and instruction, he demonstrated a willingness and ability to decide the case impartially according to the law and the evidence.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.