

Fifth Circuit Court of Appeal
State of Louisiana

No. 24-KA-564

STATE OF LOUISIANA

VERSUS

COREY T. IVEY

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 20-3938, DIVISION "K"
HONORABLE ELLEN SHIRER KOVACH, JUDGE PRESIDING

December 19, 2025

STEPHEN J. WINDHORST
JUDGE

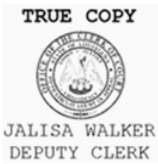
Panel composed of Judges Marc E. Johnson,
Stephen J. Windhorst, and John J. Molaison, Jr.

**CONVICTIONS AFFIRMED ON COUNTS ONE, TWO AND
FOUR; SENTENCES AFFIRMED ON COUNTS ONE AND TWO;
CONVICTION ON COUNT THREE REVERSED AND
SENTENCE SET ASIDE; JUDGMENT OF NOT GUILTY FOR
COUNT THREE RENDERED; SENTENCE ON COUNT FOUR
VACATED AND REMANDED FOR RESENTENCING; AND
REMANDED FOR CORRECTION OF THE UNIFORM
COMMITMENT ORDER**

SJW
MEJ

**CONCURS IN PART, AND DISSENTS IN PART, WITH
REASONS**

JJM



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COREY IVEY

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WINDHORST, J.

Defendant, Corey T. Ivey, appeals his convictions and sentences. For the reasons that follow, defendant's convictions for second degree murder (count one), possession of a firearm by a convicted felon (count two), and aggravated battery (count four) and his sentences on counts one and two are affirmed. Because the evidence was insufficient to convict defendant on obstruction of justice (count three), defendant's conviction on count three is reversed, his sentence on count three is set aside, and we render a judgment of not guilty on the obstruction of justice charge (count three). Additionally, defendant's sentence for aggravated battery (count four) is vacated and the matter is remanded for resentencing. This matter is further remanded for correction of the Uniform Commitment Order ("UCO").

PROCEDURAL HISTORY

On November 19, 2020, a Jefferson Parish Grand Jury indicted defendant, Corey T. Ivey, with second degree murder of Keith Ellis in violation of La. R.S. 14:30.1 (count one), possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1 (count two), and obstruction of justice in violation of La. R.S. 14:130.1 (count three). Defendant was arraigned and pled not guilty to all counts. Subsequently, on November 18, 2022, the State amended the indictment to also charge defendant with aggravated battery in violation of La. R.S. 14:34 (count four). Defendant was arraigned and pled not guilty.

On August 19, 2021, after an evidentiary hearing, the trial court denied defendant's motions to suppress evidence and statement. On the same day, the trial court took up the State's Notice of Intent to Introduce Evidence under La. C.E. Article 404 B/*Res Gestae* ("first notice"), concerning incidents involving defendant that occurred on July 18, 2013, June 24, 2019, October 25, 2019, October 26, 2019, and February 15, 2020. The trial court held that it was "granting the State's motion, both as to the *res gestae* and all of the 404 B incidents offered."

On November 29, 2021, after an evidentiary hearing on the State's Second Notice of Intent to Introduce Evidence under La. C.E. Article 404 B/*Res Gestae* ("second notice"), concerning a 2010 incident in which defendant was questioned about a murder as a person of interest ("the 2010 incident"), the trial court granted the State's motion, finding the evidence admissible.

Defendant subsequently filed a motion to waive jury trial, which was granted. On November 30, 2022, at the conclusion of defendant's bench trial, the trial court found defendant guilty as charged on all counts.

On December 8, 2022, defendant was sentenced to life imprisonment on count one, twenty years on count two, forty years on count three, and ten years on count four. Defendant's sentences were ordered to run concurrently with each other and with any other sentence he was currently serving.

This appeal followed.

TRIAL EVIDENCE

Detective Jacob Robarts with the Jefferson Parish Sheriff's Office ("JPSO") testified that on July 26, 2020, at 8:47 A.M., a 9-1-1 call was received regarding a possible shooting at 1900 Clearview Parkway, Apartment B. After arriving at the scene, Detective Robarts walked between two apartment buildings and saw the leg of the victim, later identified as Keith Ellis, in an open doorway. Upon closer inspection, he observed that the victim was lying on his back on the floor inside an apartment. The victim had sustained several gunshot wounds, a black handgun was located above his head on the floor, and fired cartridge casings were outside the door. The victim was transported to the hospital where he later died. Detective Robarts conducted a security sweep of the apartment and located a young girl sleeping in an upstairs bedroom. He also learned there was surveillance footage of the incident.

Stephanie Stout testified that she lived in the Clearview area in July of 2020. On the morning of July 26, 2020, she was getting ready for work when she heard

gunshots on the other side of her residence. Ms. Stout recalled going into the kitchen and looking out the window, which was directly adjacent to the victim's door, and seeing the top of the victim's feet sticking out of his open door. Ms. Stout testified that she called 9-1-1 and then spoke with the police after they arrived.

Emily Terrebonne, an expert in the field of firearm and tool mark examination, testified that on July 26, 2020, she responded to the crime scene, along with the crime scene technicians, where she took measurements and located evidence. Ms. Terrebonne stated that they found seven .45 caliber fired cartridge casings at the crime scene (*i.e.*, six fired cartridge casings were found outside the victim's front door and one was found inside his apartment) and that seven projectiles were collected during the autopsy. Ms. Terrebonne testified that two firearms, a magazine for the Taurus, and two cell phones were also located and collected as evidence from the victim's apartment. Specifically, a loaded Taurus 9 mm handgun was found on the floor near the front door and an unloaded, inoperable .380 Hi-Point pistol¹ was found on the kitchen countertop. Ms. Terrebonne stated that neither firearm fired the .45 caliber cartridge casings found on the scene and that all the .45 caliber cartridge casings were fired from the same weapon. While all the projectiles collected during the autopsy were fired from the same weapon, Ms. Terrebonne testified that she could not determine whether they were fired from the same weapon that fired the .45 caliber cartridge casings. Ms. Terrebonne then stated "[a]nd that weapon was consistent with a 45-claiber class ammunition. And they were fired from the barrel of the firearm that possessed eight polygonal lands and grooves with the right twist." Ultimately, Ms. Terrebonne testified that she was able to conclude that both the cartridges and projectiles were fired from a .45 caliber weapon.

¹ Dr. Marcela Zozaya testified she was employed by the JPSO DNA lab. She further testified that the Hi-Point pistol, which was found on the kitchen countertop in the victim's apartment, had a statistically higher amount of defendant's DNA on it than Mr. Ellis' DNA.

JPSO Detective Kurt Zeagler, the lead investigator, testified he went to the bureau upon notification of Mr. Ellis' death, and met with Ericka Lewis, the victim's fiancé, who provided a recorded statement. Ms. Lewis informed him that she had seen a portion of the surveillance video of the shooting from a neighbor and she provided him with a still photo from the video. Detective Zeagler testified that Ms. Lewis came to them voluntarily, before they knew her relationship to the victim, and she positively identified her ex-husband/defendant, Corey Ivey, as the shooter. He stated that Ms. Lewis endorsed the back of the photo, confirming her identification of defendant as the shooter. He then issued an arrest warrant for defendant.

Detective Zeagler testified that defendant was subsequently arrested by two other detectives and transported to the bureau. Defendant was searched after his arrest and two cell phones were located on his person, to which search warrants were subsequently issued for those cell phones. Detective Zeagler stated he advised defendant of his rights again at the bureau, defendant waived his rights, and defendant made a recorded statement. Defendant's recorded statement was admitted into evidence and played. Detective Zeagler said that Ms. Lewis provided them with a photo of defendant wearing the same hat that is seen in the surveillance video. Detective Zeagler testified that the hat was not located during the execution of the search warrants and the murder weapon was never found. Additionally, he stated that they were not able to locate any of the clothes or the blue umbrella shown in the surveillance videos.

Former JPSO Detective William Roniger testified that he arrived at the bureau where Detective Zeagler was interviewing Ms. Lewis, who had identified defendant as the shooter and had provided them with defendant's cell phone number. An arrest warrant for defendant was obtained and Detective Roniger recalled that a search warrant was issued for the location of defendant's phone, which was subsequently located at 6300 Riverside Drive. Detective Roniger stated that he then relocated to

that area in an effort to locate defendant. He saw defendant walking down the street and stopped his vehicle in front of him. Detective Roniger stated he exited his police unit, told defendant to put his hands on the trunk, and that defendant “blurted out that he had not killed anyone” and “that he was simply a drug dealer.” Detective Roniger asserted that he had not asked defendant any questions or identified himself as a homicide detective before defendant made the spontaneous statement. He placed defendant under arrest and advised him of his rights. During a search incident to arrest, Detective Roniger retrieved two cell phones. Defendant was then transported to the bureau.

Detective Roniger stated a search warrant was obtained for 6315 Riverside Drive, Apartment A-75, in Metairie, and defendant’s apartment on St. Thomas Street in New Orleans, but no evidence was seized. He further testified that he went to the Riverside apartment and contacted the occupants, Corey Brisco and Donna Ivey. Detective Roniger asserted Mr. Brisco was transported to the bureau where he gave conflicting details about his and defendant’s whereabouts that day. Mr. Brisco was unable to provide an alibi for defendant at the time of the homicide. Detective Roniger also asserted that search warrants were issued to AT&T for defendant’s cell phone number to receive historical data for the cell phone, including cell phone tower locations, and he testified regarding the calls and towers used the day before and the morning of the shooting. Detective Roniger pointed out that despite all the activity shown in the cell phone records, there was a “gap” from 7:19 A.M. to 9:55 A.M., during the time of the homicide, where there was no activity on defendant’s phone.

On cross-examination as to whether it was his testimony that defendant must have turned his phone off for the specific purpose of committing this homicide, Detective Roniger contended that he did not state that; however, that would be his “deduction based on years of homicide experience.” Nevertheless, Detective

Roniger testified that “for that timeframe, what encompasses the timeframe, the homicide is committed, [defendant’s] cellphone is powered off.”

JPSO Lieutenant Solomon Burke, an expert in the field of mobile device forensics, testified that he is the Commander of the Digital Forensics Unit and he extracted information from defendant’s cell phone. He testified that the last active interaction between the cell tower and the device was on July 26, 2020, at 7:22:01 A.M. Prior to that time, there was a lot of activity on the cell phone. Lieutenant Burke explained that the next active communication from the tower to the device was a missed or incoming call on July 26, 2020, at 10:00:14 A.M, wherein, at that time, continuous activity resumed on the phone. He could not state whether the phone was turned off or disconnected from the network and admitted that there may have been no activity on the phone due to a dead battery.

JPSO Detective Ryan Vaught, with the Homicide Section, stated he responded to the crime scene, canvassed the area, and collected multiple surveillance videos from nearby businesses and residences of the Clearview area near the homicide. Detective Vaught testified that he assisted the District Attorney’s Office in preparing composites of the relevant videos related to the time immediately prior to, during, and after the shooting, which resulted in the victim’s death.² Detective Vaught testified that in one of the videos, dated July 26, 2020 at 8:35 A.M., the subject/perpetrator is seen walking in the rain on the sidewalk with a blue umbrella. He stated that this suspect was later identified by another individual as defendant, Corey Ivey.

Detective Vaught explained that immediately prior to this, a video showed a vehicle park. The vehicle’s front passenger door was a different, darker color, than the rest of the vehicle. The driver exited the vehicle and then got into the front

² The surveillance videos collected during the investigation (exhibits 70-76) and the composite videos that Detective Vaught assisted with preparing (exhibits 77 and 78) were admitted into evidence.

passenger side. Detective Vaught stated that he believed that the passenger got into the driver's seat at that time. He testified that the video showed that the driver "wore the same clothing and body style as the shooter, the hat and the car we later learned from other surveillance video was involved."

Detective Vaught admitted that he was unable to see the suspect's face clearly due to the umbrella and the suspect was wearing a Covid mask. However, he testified that other surveillance videos assisted him in identifying the perpetrator's description and the vehicle involved. Skipping forward in the videos, Detective Vaught explained that this same vehicle, as seen by the discolored or different colored passenger side door, is shown "[a]s it turned from Clearview to the driveway." Detective Vaught testified that you could see the person in the front passenger seat exiting the suspect vehicle and "[t]he person is wearing the same clothing and carrying a blue umbrella as the shooter we see walking back towards the crime scene" in another video. The subject started walking back northbound on Clearview parkway toward the crime scene, which Detective Vaught testified was consistent with the initial video shown of the suspect, identified as defendant, who was seen walking in the rain on the sidewalk with a blue umbrella.

Detective Vaught testified that the surveillance video showed defendant knock on Mr. Ellis' door and engage in a conversation with Mr. Ellis for several minutes. Mr. Ellis then shut his door, defendant knocked on a nearby door, and no one answered. He explained that the video showed defendant then go back to Mr. Ellis' door and knock again. When Mr. Ellis opened the door, defendant pulled out a gun, and shot Mr. Ellis several times. Another video immediately following the murder showed defendant returning to the same vehicle, wearing the same clothing that was observed in the "shooting video," carrying a blue umbrella. Detective Vaught stated that based on the clothing and body stature, he believed it was the same individual in all the surveillance videos. He testified that a white Nissan with

a grey door was shown in many of the surveillance videos, pointing out that the surveillance videos showed the perpetrator getting in and out of it prior to and after the murder and the driver of the vehicle was seen on various videos making “several spins around the block,” like he was waiting for someone. Detective Vaught said that he did not know who the registered owner of the Nissan was.

Ms. Lewis testified that defendant was her ex-husband, the father of her children, and that they were together from 2003 to 2018. Ms. Lewis recalled that in 2013, she was married to defendant and he thought she was having an affair. This resulted in a physical fight between them while they were in a car on Jefferson Highway. Ms. Lewis recalled exiting the car, calling 9-1-1 and reporting the domestic violence. At that time, she was pregnant and had to go to the hospital because of the “beating” she received from him. She initially pursued charges against defendant for the 2013 incident but later dropped the charges. Ms. Lewis testified that she and defendant were married until 2018, and that she divorced defendant because she met Mr. Ellis. She asserted that defendant was in prison for possession of heroin when she met Mr. Ellis.

Ms. Lewis testified that she initially communicated with defendant while he was in jail but stopped toward the end of his sentence because she met Mr. Ellis. She stated that Mr. Ellis did not have any conflicts with anybody. Ms. Lewis testified that she and Mr. Ellis started living together but she was going back and forth between her mother’s and Mr. Ellis’ home. She testified that when she and Mr. Ellis got engaged in May of 2019, defendant was home from jail and she still interacted with defendant because they shared children. She also admitted that she maintained feelings for both defendant and Mr. Ellis but stated that defendant and Mr. Ellis did not know each other.

Ms. Lewis testified that in June of 2019, she called the police because she was afraid defendant was going to kill Mr. Ellis. However, she did not press charges

against defendant because she was scared defendant would kill her or send someone else to do it. Ms. Lewis also testified about another incident that occurred in October of 2019, where she called the police from Mr. Ellis' address to report that defendant was stalking and threatening to kill Mr. Ellis.

Ms. Lewis testified that in February of 2020, she called the police again to report that defendant had smashed the window of her vehicle with a rock and the police came out and took photographs of the damage. She dropped those charges against defendant because he said he would pay for the broken window. Ms. Lewis further testified that she continued to communicate with defendant in texts and by talking to him because of their children and stated that they talked about getting back together. Although Ms. Lewis admitted to flirting with defendant via text in March of 2020, she testified that she did not seriously consider leaving Mr. Ellis. Ms. Lewis denied asking defendant to have Mr. Ellis killed and denied getting back together with defendant even after they slept together.

Ms. Lewis testified that on July 25, 2020, defendant called her cell phone and Mr. Ellis answered because she was sleeping. Defendant arrived a few minutes later, so she called the police, who came to Mr. Ellis' apartment. This incident occurred in the early morning hours of July 25, 2020, just after midnight between 12:00 A.M. and 1:00 A.M. Ms. Lewis said she was aware that there was surveillance video of the incident and was subsequently shown the same. Ms. Lewis testified that the video showed defendant arrive, Mr. Ellis had a gun pointing down, defendant pushed her into the wall, defendant grabbed the gun, and she told him to put the gun down. Ms. Lewis testified that defendant hit Mr. Ellis on his left side with the gun. She and Mr. Ellis then tried to take the gun away from defendant, after which defendant hit Mr. Ellis on the head with the gun. Ms. Lewis said that she subsequently picked the gun up off the ground and brought it inside, pointing out that the gun clip was broken. Ms. Lewis claimed that Mr. Ellis was injured during this incident and that

defendant attempted to contact her afterwards. Ms. Lewis testified that the “next” day³ she and Mr. Ellis went to different pawn shops to purchase another firearm because the other one was broken. She said she was scared of defendant and needed a gun for safety. Ms. Lewis asserted that defendant tried to get in touch with her after the altercation in the middle of the day, but she did not answer because she was with Mr. Ellis.

Ms. Lewis recalled that Mr. Ellis slept on the sofa that night because they were afraid defendant would come back again. Ms. Lewis testified that she left early the next morning, “about 6, 7, 7:30” A.M., to get a Covid test for her employer and that was the last time she spoke to Mr. Ellis. When she left, Mr. Ellis was downstairs, and her daughter was upstairs sleeping. Ms. Lewis testified that since she was by herself, she tried to call defendant twice, but it went to his voicemail, and it was not normal for defendant not to have his phone on. Ms. Lewis asserted that she subsequently received a call from her next door neighbor that her boyfriend’s residence had been “shot up.” She testified that she immediately called defendant’s mother because she knew defendant was the perpetrator. She tried to call Mr. Ellis but he did not answer. She then returned to Mr. Ellis’ apartment where she spoke to the police.

Ms. Lewis further testified that her neighbor showed her a screenshot from surveillance video of the shooting, and she quickly recognized defendant as the perpetrator based on his face and eyes. She stated she provided that photograph to the police on July 26, 2020. Ms. Lewis viewed the State’s composite video, and testified that she identified defendant as the shooter based on his body, posture, and walk. She recognized his voice on the video, explaining that she heard defendant say something he commonly said. She also recognized defendant’s body

³ The testimony states the “next day” although it is clear from the time line that Ms. Lewis meant that she and Mr. Ellis went to the pawn shop later that day on July 25, 2020, as the shooting occurred on July 26, 2020.

movements, explaining he always talked with his hands. Ms. Lewis testified the shooter in that video was defendant, and she had no doubt in her mind it was him. She further recognized the hat the perpetrator was wearing in the video as defendant's hat. Ms. Lewis said that she provided a photograph of defendant wearing that particular hat to the police.

Ms. Lewis testified that on July 26, 2020, she gave a recorded statement to the police positively identifying defendant as the perpetrator of the shooting after seeing the screenshot from the video. Ms. Lewis testified that the State provided her with relocation assistance after Mr. Ellis' murder because she was scared for her safety. Ms. Lewis also acknowledged that she received a monetary benefit from Mr. Ellis' life insurance policy; however, she claimed that she did not know Mr. Ellis had a life insurance policy. Ms. Lewis testified that she has had contact with defendant while he has been incarcerated for the instant offense because she was scared and has children with him. She explained when she spoke to defendant "last week," she felt he threatened her after she told him she was going to testify, and she informed the State about his threat. Ms. Lewis also stated that she was aware jailhouse calls were recorded, and she identified her and defendant's voices in the State's exhibit.

Dr. Michael Defatta, an expert in the field of forensic pathology, testified that in July 2020, he was working as a forensic pathologist in Jefferson Parish. Dr. Defatta stated that he conducted the autopsy on Mr. Ellis. He explained that Mr. Ellis sustained ten gunshot wounds in his left arm, left chest, left abdomen, and left hip and that seven projectiles were recovered during the autopsy. Dr. Defatta testified the cause of death was multiple gunshot wounds, and the manner of death was homicide.

JPSO Deputy Todd Bordelon testified that on July 25, 2020, the day before the murder, at approximately 12:46 A.M., he responded to a call and arrived on the scene at 1900 Clearview Parkway. Deputy Bordelon explained the call involved a

disturbance between two individuals fighting outside an apartment complex. He stated that when he arrived, another deputy had already separated the individuals. Deputy Bordelon testified that he spoke to the suspect, defendant, first, but the suspect told him nothing had occurred. He then talked to the victim, Mr. Ellis, who told him that he and the suspect had an argument over a late-night phone call to Mr. Ellis' girlfriend, after which the suspect went to the victim's residence and a physical altercation occurred. Specifically, Mr. Ellis informed him that when he walked outside, defendant struck him. Deputy Bordelon asserted that he was also told that no weapons were involved, the victim did not want to press charges, and no arrests were made at that time.

Deputy Bordelon testified that he learned that the same victim, Mr. Ellis, was murdered about thirty hours later and that there was a surveillance video regarding the incident he responded to on July 25, 2020. Upon viewing, he noticed that the video was not consistent with what he was told had happened at the time. Deputy Bordelon asserted that if he had seen the video at the time of the incident, had the victim wanted to file charges, he would have arrested the suspect and charged him with aggravated battery, pointing out defendant struck Mr. Ellis multiple times in the head with Mr. Ellis' gun. He stated that the video showed that Mr. Ellis brought the gun outside and defendant subsequently took the gun from him. Deputy Bordelon testified that defendant then attacked Ms. Lewis, Mr. Ellis tried to defend and get defendant off Ms. Lewis, and then defendant struck Mr. Ellis in the head with the gun.

On cross-examination, after viewing the video again, Deputy Bordelon admitted it was possible he got Mr. Ellis and defendant confused, it was hard to tell who was who after they went to the ground, and he was not one hundred percent sure defendant was beating Mr. Ellis in the head. He further admitted that he was not sure he would have arrested defendant for aggravated battery based on the video.

However, on redirect examination, after viewing the video again, Deputy Bordelon testified that he saw defendant on the ground “striking up and back” towards Mr. Ellis. He testified that he then saw Mr. Ellis respond by striking defendant.

JPSO Deputy Brett Beavers testified regarding the other crimes evidence, the 2010 incident, admitted pursuant to the State’s second notice. Deputy Beavers stated that in 2010, when he was a homicide detective, he investigated a crime wherein defendant was interviewed as a person of interest. Deputy Beavers asserted he had met with defendant, who told him he was at his residence the entire night. Deputy Beavers testified that he subsequently obtained defendant’s cell phone records, which indicated defendant left the crime scene moments after the 2010 incident occurred and then came back later. Deputy Beavers stated that defendant’s statement was not consistent with the cell phone records obtained in that case.

FIRST ASSIGNMENT of ERROR

In his first assignment of error, defendant contends that the evidence was insufficient to support his four convictions. Defendant argues that there was reasonable doubt regarding Ms. Lewis’ identification of him as the shooter due to the inconsistencies in her testimony and the pecuniary benefit she received from the victim’s life insurance policy. Defendant also contends that the evidence was insufficient to prove he obstructed justice because there was no showing made that the shooter removed the firearm from the scene, pointing out that no weapon was found. Additionally, defendant asserts that the State failed to prove he committed an aggravated battery upon the victim because the officer viewed the surveillance video but was unsure of who was hitting who.

In reviewing sufficiency of the evidence, an appellate court must determine if the evidence, whether direct or circumstantial, or a mixture of both, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proven beyond a reasonable

doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Lane, 20-181 (La. App. 5 Cir. 01/27/21), 310 So.3d 794, 804. Under the Jackson standard, a review of the record for sufficiency of the evidence does not require this court to determine whether the evidence at the trial established guilt beyond a reasonable doubt but rather whether, upon review of the whole record, any rational trier of fact would have found guilt beyond a reasonable doubt. State v. McKinney, 20-19 (La. App. 5 Cir. 11/04/20), 304 So.3d 1097, 1103.

The resolution of conflicting testimony rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. State v. Burnham, 16-468 (La. App. 5 Cir. 02/08/17), 213 So.3d 470, 474, writ denied, 17-664 (La. 04/06/18), 240 So.3d 184. Thus, in the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. McKinney, 304 So.3d at 1103.

Evidence may be either direct or circumstantial. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. State v. Gatson, 21-156 (La. App. 5 Cir. 12/29/21), 334 So.3d 1021, 1034. When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 provides that “assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence.” State v. Woods, 23-41 (La. App. 5 Cir. 11/15/23), 376 So.3d 1144, 1155, writ denied, 23-1615 (La. 05/29/24), 385 So.3d 700. This is not a separate test from the Jackson standard but rather provides a helpful basis for determining the existence of reasonable doubt. Id. All evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt. Id. Evidence of flight, concealment, and attempt to avoid

apprehension is relevant and admissible to prove consciousness of guilt from which the trier of fact may infer guilt. State v. Davis, 18-485 (La. App. 5 Cir. 04/10/19), 269 So.3d 1123, 1132, writ denied, 19-716 (La. 11/12/19), 282 So.3d 229.

Encompassed within proving the elements of an offense is the necessity of proving the identity of the defendant as the perpetrator. Where the key issue is identification, the State is required to negate any reasonable probability of misidentification in order to carry its burden of proof. State v. Lopez, 23-335 (La. App. 5 Cir. 08/21/24), 398 So.3d 167, 176-77, writ denied, 24-1187 (La. 01/14/25), 398 So.3d 650.

Second Degree Murder

In the instant case, defendant was convicted of second degree murder in violation of La. R.S. 14:30.1, which, at the time of the crime, was defined, in pertinent part, as the killing of a human being when the offender: 1) has specific intent to kill or to inflict great bodily harm; or 2) is engaged in the perpetration or attempted perpetration of one of several enumerated felonies, even though the offender has no intent to kill or to inflict great bodily harm.⁴ See State v. Davis, 22-281 (La. App. 5 Cir. 03/08/23), 360 So.3d 82, 89-90, writ denied, 23-507 (La. 01/10/24), 376 So.3d 133.

Specific criminal intent is “that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal

⁴ At the time of the offense, 14:30.1 A also provided that an offender could be convicted of second degree murder:

(3) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law,¹ or any combination thereof, which is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance.

(4) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, or any combination thereof, to another who subsequently distributes or dispenses such controlled dangerous substance which is the direct cause of the death of the person who ingested or consumed the controlled dangerous substance.

Because the case did not involve defendant unlawfully distributing or dispensing a controlled dangerous substance listed in the above schedules, which was ingested and was the direct cause of death of the victim, these provisions are not discussed in this opinion.

consequences to follow his act or failure to act.” La. R.S. 14:10(1). Specific intent need not be proven as a fact but may be inferred from the circumstances surrounding the offense and the defendant’s conduct. Lopez, 398 So.3d at 181. Specific intent to kill may be inferred from a defendant’s act of pointing a gun and firing at a person, as well as the extent and severity of the victim’s injuries. State v. Bannister, 11-602 (La. App. 5 Cir. 02/14/12), 88 So.3d 628, 634, writ denied, 12-628 (La. 06/15/12), 90 So.3d 1060.

Here, it is unknown under which paragraph of La. R.S. 14:30.1 the State proceeded. There are no jury charges from which it could be determined since defendant waived a jury trial and the case was tried by the judge. On November 30, 2020, defense counsel filed a request for discovery and bill of particulars, and on December 15, 2020, the State filed an answer, providing open file discovery. However, it appears the State proceeded under the specific intent provision because there does not appear to be any evidence that defendant perpetrated or attempted to perpetrate an enumerated felony under La. R.S. 14:30.1 A(2).

Upon review, we find a rational trier of fact could have found the evidence was sufficient under the Jackson standard to support defendant’s conviction of second degree murder. The evidence shows that in 2018, Ms. Lewis divorced defendant while he was in prison because she had formed a relationship with Mr. Ellis. It further shows that at the time of the shooting in July 2020, there was tension between defendant and Mr. Ellis since defendant had been released from prison in the middle of 2019. Ms. Lewis testified that in June 2019, she called the police because she was afraid defendant was going to kill Mr. Ellis. She also testified that in October 2019, she called the police to report defendant was stalking and threatening to kill Mr. Ellis. Ms. Lewis further described an incident that occurred on July 25, 2020, the day before the victim’s murder, where defendant came to Mr.

Ellis' residence, after which a physical altercation occurred between defendant and Mr. Ellis.

Additionally, video of the shooting was admitted at trial, and Ms. Lewis positively identified defendant as the shooter. Although part of the shooter's face was covered by a mask, Ms. Lewis explained she recognized defendant by his face, eyes, body, posture, walk, voice, and hat. Ms. Lewis said she provided a photograph of defendant wearing that hat to the police. She had no doubt defendant was the shooter. Defendant's specific intent to kill may be inferred from defendant's act of pointing the gun at Mr. Ellis and firing at him. Dr. Defatta testified the victim sustained ten gunshot wounds, which caused his death.

Considering the foregoing, we find a rational trier of fact could have found the evidence was sufficient under the Jackson standard to support defendant's conviction of second degree murder, and that the State negated any reasonable probability of misidentification.

Felon in Possession of a Firearm

Defendant was also convicted of being a felon in possession of a firearm in violation of La. R.S. 14:95.1. To support a conviction under La. R.S. 14:95.1, the State must prove beyond a reasonable doubt that defendant had: (1) possession of a firearm; (2) a prior conviction for an enumerated felony; (3) absence of the ten-year statutory period of limitation; and (4) the general intent to commit the offense. With respect to the third element, the State must prove that ten years has not elapsed since the date of completion of the punishment for the prior felony conviction. Woods, 376 So.3d at 1156. With respect to the fourth element, general criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted

to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. La. R.S. 14:10(2).

Here, we find that a rational trier of fact could have found that the evidence was sufficient under the Jackson standard to support defendant's conviction of possession of a firearm by a convicted felon. The State proved beyond a reasonable doubt defendant possessed a firearm when he shot the victim, as was set forth above. Also, the State and defense counsel stipulated to State's Exhibit 1, the certified conviction record in case number 16-950 in the 24th Judicial District Court, Division "K," for defendant's conviction of possession of heroin, an enumerated felony under La. R.S. 14:95.1, on August 26, 2016, which occurred less than ten years before the instant offense on July 26, 2020. Lastly, it appears defendant had the general intent to possess the firearm when he went to the victim's residence and shot him.

Considering the above, we find a rational trier of fact could have found the evidence was sufficient under the Jackson standard to support defendant's conviction of possession of a firearm by a convicted felon.

Obstruction of Justice

Defendant was also convicted of obstruction of justice in violation of La. R.S. 14:130.1, which provides in pertinent part as follows:

A. The crime of obstruction of justice is any of the following when committed with the knowledge that such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding as described in this Section:

(1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance either:

(a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers[.]

Under La. R.S. 14:130.1 A(1), obstruction of justice is a specific intent crime. Lopez, 398 So.3d at 181. A defendant acts with specific intent when circumstances

indicate the offender actively desired the prescribed criminal consequences to follow his act. La. R.S. 14:10(1).

In count three, the State alleged that on July 26, 2020, defendant violated La. R.S. 14:130.1 in that he obstructed justice by tampering with evidence, to wit: removing the firearm from the scene of a second degree murder when this action was committed with the knowledge that such act had, reasonably may, or will affect an actual or potential present, past, or future proceeding.

In State v. Ramirez-Delgado, 24-119 (La. App. 5 Cir. 12/18/24), 409 So.3d 953, 962, this court found the evidence was insufficient to support the obstruction of justice charge. In that case, this court asserted that even if the defendant removed the gun from the scene of the shooting, the evidence was insufficient to prove beyond a reasonable doubt that he had the specific intent to distort the results of a criminal investigation or proceeding. Id. at 963. We pointed out that the defendant did not collect the shell casings from the crime scene, destroy any surveillance footage of him, or harm the person who witnessed the shooting. Id. Further, there was no testimony or evidence that defendant discussed hiding or destroying the gun from the scene with anyone after the shooting. Id. Also, the evidence presented did not show that in taking the gun with him the defendant gave any thought to interfering with the results of a criminal investigation or proceeding. Id. Considering those factors, this court held that the evidence was insufficient to prove the required elements of obstruction of justice beyond a reasonable doubt, reversed defendant's obstruction of justice conviction, set aside his sentence, and rendered a judgment of acquittal on the obstruction of justice charge. Id.

In the instant case, we conclude that the evidence was insufficient under the Jackson standard to support defendant's conviction of obstruction of justice. The video showed defendant shooting the victim, after which he walked away from the scene with the gun, which was never recovered. Even though defendant removed

the gun from the scene of the shooting, similar to the defendant in Ramirez-Delgado, the evidence was insufficient to prove beyond a reasonable doubt that defendant had the specific intent to distort the results of a criminal investigation or proceeding. Defendant did not collect the shell casings from the crime scene or destroy any surveillance footage of him. Also, there was no testimony or evidence showing defendant discussed hiding or destroying the gun with anyone after the shooting. Thus, the evidence did not show that in taking the gun with him defendant gave any thought to interfering with the results of a criminal investigation or proceeding. Accordingly, because we find the evidence was insufficient to support this conviction, we reverse defendant's obstruction of justice conviction and set aside his sentence on count three. We further render a judgment of acquittal on the obstruction of justice charge. See Ramirez-Delgado, *supra*.

Aggravated Battery

Lastly, defendant was convicted of aggravated battery in violation of La. R.S. 14:34. "Battery is the intentional use of force or violence upon the person of another," and "[a]ggravated battery is a battery committed with a dangerous weapon." La. R.S. 14:33; La. R.S. 14:34. A dangerous weapon includes any instrumentality which, in the manner used, is calculated or likely to produce death or great bodily harm. La. R.S. 14:2 A(3).

To support a conviction of aggravated battery, the State must prove: 1) the defendant intentionally used force or violence against the victim; 2) the force or violence was inflicted with a dangerous weapon; and 3) the dangerous weapon was used in a manner likely to cause death or great bodily harm. State v. Cuza, 18-187 (La. App. 5 Cir. 11/28/18), 260 So.3d 754, 758, writ denied, 19-17 (La. 11/12/19), 282 So.3d 232.

Based on the evidence, we find a rational trier of fact could have found the evidence was sufficient under the Jackson standard to support defendant's

conviction of the aggravated battery of Mr. Ellis occurring in the early morning hours of July 25, 2025. Here, Ms. Lewis testified that on July 25, 2020, the day before Mr. Ellis was killed, defendant called her phone, but Mr. Ellis answered because she was sleeping. She explained that defendant arrived a few minutes later, so she called the police, who came out that night. Ms. Lewis watched surveillance video of the incident and testified that Mr. Ellis had a gun but it was pointing down, defendant pushed her into the wall and grabbed the gun, and she told him to put the gun down. Ms. Lewis further testified defendant hit Mr. Ellis on his left side with the gun. She explained that she and Mr. Ellis then tried to take the gun away from defendant, after which defendant hit Mr. Ellis on his head with the gun. She stated she subsequently picked the gun up off the ground and brought it inside.

Additionally, Deputy Bordelon testified that although defendant told him that nothing happened, Mr. Ellis told him that he and the suspect had an argument over a late-night phone call to the victim's girlfriend, after which the suspect went to the victim's residence where they had a physical encounter. Mr. Ellis told him that when he walked outside, defendant struck him. Deputy Bordelon asserted he was told no weapons were involved, and the victim did not want to press charges. After learning that there was surveillance video of the incident, Deputy Bordelon testified that had the victim wanted to press charges, he would have arrested defendant for aggravated battery upon seeing defendant hit Mr. Ellis multiple times in the head with Mr. Ellis' gun. Although Deputy Bordelon admitted it was possible he got Mr. Ellis and defendant confused, and could not state for sure if he would have arrested defendant for aggravated battery based on what he saw on the video, he did testify that he saw defendant on the ground "striking up and back" to Mr. Ellis.

SECOND ASSIGNMENT of ERROR

In his second assignment of error, defendant argues that the trial court erred in admitting evidence of the 2010 incident in which defendant was questioned about

a murder as a person of interest, as contained in the State’s second notice. Defendant states that the State argued the other crimes evidence was admissible under La. C.E. art. 404 B and *res gestae* to prove defendant knew to turn his phone off while committing a murder so his phone could not be tracked. Defendant claims this “other crimes” evidence was prejudicial and used to show defendant was a bad person. Defendant maintains that the error in admitting the other crimes evidence was not harmless because the verdict was not solely unattributable to the error.

In the second notice,⁵ the State pointed out that on July 26, 2020, at approximately 8:50 A.M., JPSO deputies responded to a report of gunshots in the area of 1900 Clearview Parkway, after which they found the victim in the instant case. The State asserted that in the course of the investigation, JPSO obtained cell phone records for defendant’s phone, which showed on July 26, 2020, at 7:19 A.M., his phone was in the Gretna area, and after that point, there was no activity on his phone, which indicated that defendant had turned his phone off. The phone remained off for approximately two hours and forty-five minutes, *i.e.*, the time of the murder of Mr. Ellis, during which time approximately thirty calls were forwarded to voice mail. The State showed that at 10:03 A.M., the phone was turned back on, and phone data placed defendant in New Orleans when he made that call.

The State contended that Ms. Lewis told them there was a homicide investigation in 2010 in which she and defendant were interviewed. Detectives researched the homicide and determined it was documented under JPSO Item #D-23472-10 (“the report”). The State asserted that an integral part of the prior investigation was the cell phone records of defendant, which showed the GPS location of his phone at the time surrounding the murder to be inconsistent with his statement he was at home asleep at the time of the murder. The State pointed out

⁵ Defendant’s appellate counsel is not challenging on appeal any of the other crimes evidence included in the State’s first notice and which were testified to by Ms. Lewis.

that Ms. Lewis disclosed to them that defendant learned during that investigation that detectives could not track a phone if it was turned off, and “whenever someone is doing a murder, turn your phone off because its [*sic*] untrackable.”

The State argued that this prior act is admissible to show knowledge, intent, preparation, plan, absence of mistake, and identity. Defendant was charged with second degree murder, which the State asserted was a specific intent crime requiring proof of intent to kill. The State contended that under the law, where the element of intent is at issue, evidence of similar unrelated conduct is admissible to negate a defense theory that the defendant acted without criminal intent and to show that he intended to commit the charged offense. Given the “clear connection” between defendant’s phone being traced in a prior murder investigation and his phone being turned off in order to be “untrackable” in the current investigation, the State submitted that the other crimes evidence showed that defendant acted with the requisite criminal intent in this case. Additionally, the State argued that the prior act establishes “how” defendant acquired the knowledge that turning one’s cell phone off prohibits law enforcement from obtaining GPS data. The State further argued that this knowledge and the consistent acts demonstrated in the present investigation go to the identity of defendant and the fact that defendant specifically turned off his phone strongly evidences his preparation and plan to kill Mr. Ellis.

On November 29, 2021, at the hearing, the State made the same arguments contained in the second notice. The State claimed that defendant made a statement to his ex-wife, Ms. Lewis, in the prior act regarding “whenever someone is doing a murder, turn your phone off because its [*sic*] untrackable.” The State asserted that this was a statement against interest made by defendant to Ms. Lewis. The trial court admitted into evidence the report regarding the prior incident. Defense counsel responded that the prior incident was irrelevant, there was no statute requiring someone to have his cell phone turned on at all times, the prior incident was an

unrelated homicide investigation for which defendant was not charged, and the prior incident was unduly prejudicial and hearsay. The State pointed out the prior statement regarding turning off a phone to commit a murder was a statement against interest defendant made to his ex-wife in the prior investigation. After hearing arguments of counsel, the trial judge granted the State's motion and allowed defendant's prior statement to be admitted at trial. The trial court ruled that the officer could testify about the statement without disclosing it was a murder investigation.

The fundamental rule in Louisiana governing the use of evidence of other crimes, wrongs, or acts is that such evidence is not admissible to prove that the accused committed the charged crime because the defendant has committed other such crimes in the past. State v. Thomas, 19-582 (La. App. 5 Cir. 07/29/20), 300 So.3d 517, 526, writ denied, 20-1503 (La. 03/02/21), 311 So.3d 1053. However, while the State may not admit evidence of other crimes to prove the defendant is a person of bad character, evidence of prior crimes may be admitted if the State establishes an independent relevance aside from proving the defendant's criminal character. State v. Frickey, 22-261 (La. App. 5 Cir. 3/1/23), 360 So.3d 19, 49, writ denied, 23-468 (La. 11/8/23), 373 So.3d 59. Evidence of other crimes, wrongs, or acts is allowed to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or when it relates to conduct, formerly referred to as *res gestae*, that constitutes an integral part of the act or transaction that is the subject of the present proceeding. Id. See also La. C.E. art. 404 B(1).

Res gestae events constituting other crimes are deemed admissible because they are so nearly connected to the charged offense that the State could not accurately present its case without reference to them. State v. Rodney, 19-195 (La. App. 5 Cir. 10/23/19), 282 So.3d 395, 403. The *res gestae* doctrine is designed to allow the story of the crime to be told in its entirety by proving its immediate context

of happenings in time and place. Id. Close connexity in time and location is required between the charged and uncharged conduct to ensure that “the purpose served by admission of the other crimes evidence is not to depict the defendant as a bad man, but rather to complete the story of the crime on trial by proving its immediate context of happenings near in time and place.” State v. Smith, 23-263 (La. App. 5 Cir. 12/27/23), 379 So.3d 206, 212. The test of whether *res gestae* evidence is admissible is not simply whether the State might somehow structure its case to avoid any mention of the uncharged act or conduct, but whether doing so would deprive its case of narrative momentum and cohesiveness, with power not only to support conclusions, but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict. Id.

Even when the other crimes evidence is offered for a purpose allowed under Article 404 B(1), the evidence is not admissible unless it tends to prove a material fact at issue or to rebut a defendant’s defense. Frickey, 360 So.3d at 50. Thus, in order for other crimes evidence to be admitted under La. C.E. art. 404 B(1), one of the factors such as those enumerated in the article must be at issue, have some independent relevance, or be an element of the crime charged. La. C.E. art. 404 B(1); State v. James, 24-508 (La. App. 5 Cir. 7/30/25), 417 So.3d 103, 112; See also State v. Taylor, 16-1124, 16-1183 (La. 12/01/16), 217 So.3d 283, 288 (The Louisiana Supreme Court referred to La. C.E. art. 404 B as “a non-exclusive list instances where such evidence may be admissible.”) The State is only required to make some showing of sufficient evidence to support a finding that the defendant committed the other independently relevant acts. State v. Breaux, 22-581 (La. App. 5 Cir. 05/10/23), 366 So.3d 727, 736 (citing Taylor, 217 So.3d at 291-292). Lastly, the probative value of the extraneous evidence must outweigh its prejudicial effect. La. C.E. art. 403; State v. Shorter, 23-128 (La. App. 5 Cir. 11/29/23), 377 So.3d 421, 436, writ denied, 23-1669 (La. 05/29/24), 385 So.3d 704.

The defendant bears the burden to show that he was prejudiced by the admission of the other crimes evidence. State v. Miller, 10-718 (La. App. 5 Cir. 12/28/11), 83 So.3d 178, 187, writ denied, 12-282 (La. 05/18/12), 89 So.3d 1191, cert. denied, 568 U.S. 1157, 133 S.Ct. 1238, 185 L.Ed.2d 177 (2013). Absent an abuse of discretion, a trial court's ruling on the admissibility of evidence pursuant to La. C.E. art. 404 B(1) will not be disturbed. State v. Maize, 16-575 (La. App. 5 Cir. 06/15/17), 223 So.3d 633, 649, writ denied, 17-1265 (La. 04/27/18), 241 So.3d 306.

The erroneous admission of other crimes evidence is subject to harmless error analysis. State v. Loggins, 23-519 (La. App. 5 Cir. 10/30/24), 397 So.3d 1265, 1287. In determining harmless error, it is "not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in the trial was surely unattributable to the error." Id. An error is harmless beyond a reasonable doubt if it is unimportant in relation to the whole. Loggins (citing State v. Brown, 16-998 (La. 01/28/22), 347 So.3d 745, 791, reh'g denied, 16-998 (La. 03/25/22), 338 So.3d 1138, cert. denied, — U.S. —, 143 S.Ct. 886, 215 L.Ed.2d 404 (2023)).

Although we agree with defendant that the trial court erred in admitting the 2010 incident contained in the State's second notice, we find defendant did not show he was prejudiced by the admission, especially considering (1) the evidence and testimony adduced at trial; and (2) the matter was tried before the trial judge, not a jury, and it is extremely doubtful that the trial judge gave this other crimes evidence any weight. Under the facts of this case, we find the admission of the other crimes evidence contained in the State's second notice was harmless error, and that the convictions were surely unattributable to this other crimes evidence. As discussed above, the evidence was sufficient to support defendant's convictions on counts one, two, and four without consideration of the other crimes evidence. The surveillance video showed the perpetrator knock on Mr. Ellis' door, pull out a gun, shoot Mr.

Ellis, and then leave the scene. Ms. Lewis, defendant's ex-wife and the victim Mr. Ellis' fiancée, testified that (1) she previously called the police to report defendant's threats to kill the victim; and (2) she positively identified defendant as the shooter after viewing the surveillance video, which contained the shooting, and she informed the police. Thus, this assignment of error is without merit.

ERRORS PATENT

The record was reviewed for errors patent according to the mandates of La. C.Cr.P. art. 920; State v. Oliveaux, 312 So.2d 337 (La. 1975); and State v. Weiland, 556 So.2d 175 (La. App. 5 Cir. 1990). The following errors patent require correction.

Hard Labor

First, the record reveals that the trial judge did not specify whether any of defendant's sentences were to be served at hard labor or in the Department of Corrections.

La. C.Cr.P. art. 879 requires a court to impose a determinate sentence. State v. Horton, 09-250 (La. App. 5 Cir. 10/27/09), 28 So.3d 370, 376. If the applicable sentencing statute allows discretion, the failure to indicate whether the sentence is to be served at "hard labor" is an impermissible, indeterminate sentence. Id. at 376-377. La. R.S. 14:30.1, second degree murder (count one), and La. R.S. 14:95.1, possession of a firearm by a convicted felon (count two), both mandate that the sentences are to be served at hard labor. Because the underlying statutes required defendant's sentences to be served at hard labor for counts one and two and did not allow any discretion to the trial judge, the errors as to counts one and two were harmless and require no corrective action. See State v. Adams, 11-1052 (La. App. 5 Cir. 5/16/13), 119 So.3d 46, 58, writ denied, 13-1413 (La. 12/06/13), 129 So.3d 531.

However, the trial judge also did not specify whether the sentence for aggravated battery (count four) under La. R.S. 14:34, was to be served with or without hard labor. Where the applicable sentencing statute allows discretion, the sentencing court's failure to include whether the sentence is to be served with or without hard labor is an impermissible, indeterminate sentence. State v. Brignac, 17-455 (La. App. 5 Cir. 03/14/18), 241 So.3d 528, 535, writ denied, 18-564 (La. 02/11/19), 263 So.3d 894. Defendant's sentence on count four is therefore indeterminate. Accordingly, we vacate defendant's sentence on count four, aggravated battery, and remand to the trial court for imposition of a determinate sentence on count four in accordance with La. C.Cr.P. art. 879. See State v. Gilbert, 23-121 (La. App. 5 Cir. 11/08/23), 377 So.3d 378, writ denied, 23-1640 (La. 05/29/24), 385 So.3d 704.

Concurrent Sentences

Secondly, the transcript and the sentencing minute entry commitment reflect that the trial court ordered the sentences to run concurrently with each other and with any other sentence defendant was currently serving. However, the UCO shows that the sentences were to run concurrently with any other sentence defendant was currently serving. The UCO is silent as to the sentences being ordered to run concurrently with each other.

When there is a discrepancy between the minute entry and the transcript, the transcript must prevail. State v. Lynch, 441 So.2d 732, 734 (La. 1983). Accordingly, we remand this matter to the trial court with instructions to correct the UCO to reflect that the sentences are to be served concurrently with each other as ordered by the trial court. See State v. Lyons, 13-564 (La. App. 5 Cir. 01/31/14), 134 So.3d 36, writ denied, 14-0481 (La. 11/07/14), 152 So.3d 170. We further direct the Clerk of Court for the 24th Judicial District Court to transmit the corrected UCO to the appropriate authorities in charge of the facility in which defendant has been

incarcerated and the DOC's legal department. See State v. England, 18-623 (La. App. 5 Cir. 04/03/19), 268 So.3d 1178, 1189.

Statutory Restrictions

Thirdly, La. R.S. 14:30.1, second degree murder (count one), and La. R.S. 14:95.1, possession of a firearm by a convicted felon (count two), require the sentences imposed to be served without benefit of parole, probation, or suspension of sentence. Here, the record indicates that defendant's sentences on those counts were not imposed with the required restriction of benefits. La. R.S. 15:301.1 A provides that the statutory restrictions, even if they are not recited at sentencing, are deemed to be contained in the sentence and are therefore statutorily effective. State v. Davis, 17-81 (La. App. 5 Cir. 6/29/17), 224 So.3d 1211, 1219. Therefore, no corrective action is necessary.

Mandatory Fine

Fourthly, the trial court did not impose the mandatory fine of "not less than one thousand dollars nor more than five thousand dollars" on possession of a firearm by a convicted felon (count two) under La. R.S. 14:95.1. Nevertheless, this court has previously exercised its discretion to decline to correct an illegally-lenient sentence in the case of an indigent defendant. In the instant case, defendant is represented by the Louisiana Appellate Project, which represents indigent defendants in non-capital felony cases. Therefore, due to defendant's indigent status, we decline to remand this matter for imposition of the mandatory fine. See State v. Manuel, 20-172 (La. App. 5 Cir. 06/02/21), 325 So.3d 513, 570-71, writ denied, 21-926 (La. 10/12/21), 325 So.3d 1071.

DECREE

For the reasons stated above, defendant's convictions for second degree murder (count one), possession of a firearm by a convicted felon (count two), and aggravated battery (count four) and his sentences on counts one and two are

affirmed. Because the evidence was insufficient to convict defendant on obstruction of justice (count three), defendant's conviction on count three is reversed, his sentence on count three is set aside, and we render a judgment of not guilty on the obstruction of justice charge (count three). Additionally, defendant's sentence for aggravated battery (count four) is vacated and the matter is remanded for resentencing. This matter is further remanded for correction of the UCO.

**CONVICTIONS AFFIRMED ON COUNTS ONE, TWO AND FOUR;
SENTENCES AFFIRMED ON COUNTS ONE AND TWO;
CONVICTION ON COUNT THREE REVERSED AND SENTENCE
SET ASIDE; JUDGMENT OF NOT GUILTY FOR COUNT THREE
RENDERED; SENTENCE ON COUNT FOUR VACATED AND
REMANDED FOR RESENTENCING; AND REMANDED FOR
CORRECTION OF THE UNIFORM COMMITMENT ORDER**

Fifth Circuit Court of Appeal State of Louisiana

No. 24-KA-564

STATE OF LOUISIANA

VERSUS

COREY T. IVEY

MOLAISON J., CONCURS IN PART, AND DISSENTS IN PART, WITH REASONS

I agree with the majority’s opinion that the defendant’s convictions for second degree murder (count one), possession of a firearm by a convicted felon (count two), and aggravated battery (count four), should be affirmed. I also agree to affirm the defendant’s sentences on counts one and two, and to vacate the sentence for count four with a remand for resentencing. I dissent from the portion of the opinion that vacates the defendant’s conviction and sentence for obstruction of justice (count three).

The majority relies on *State v. Ramirez-Delgado*, 24-119 (La. App. 5 Cir. 12/18/24), 409 So.3d 953, as a basis for finding that the State must show an act by a defendant, beyond merely removing the murder weapon from the scene of a crime, to establish specific intent to commit obstruction of justice.¹ However, recent cases from our circuit and others have upheld convictions for obstruction of justice in connection with a murder, without such a finding. For example, in *State v. Lee*, 24-419 (La. App. 5 Cir. 5/28/25), 415 So.3d 487, 493, *writ denied*,

¹ The majority uses the examples that the defendant “did not collect the shell casings from the crime scene or destroy any surveillance footage of him,” and “there was no testimony or evidence showing defendant discussed hiding or destroying the gun with anyone after the shooting.”

25-870 (La. 12/9/25), 2025 WL 3525261, we affirmed that specific intent need not be proven as fact but may be inferred from the circumstances of the transaction and the actions of defendant. In that case, we reasoned:

[W]e can infer that the defendant murdered the victim and removed murder weapon from the scene of the crime. We can also infer that, when removing the gun from the crime scene and making it impossible to locate, the defendant intended to thwart the police investigation that followed.

See also, State v. Bethley, 22-0849 (La. App. 4 Cir. 6/21/23), 368 So.3d 1148, 1156, *writ denied*, 23-00965 (La. 1/17/24), 377 So.3d 242, in which the Fourth Circuit found under similar facts presented:

Thus, it is reasonable to infer that Mr. Bethley left the scene of an incident, with the firearm, that he knew would be the subject of a criminal investigation. Viewing the evidence in the light most favorable to the prosecution, specifically, the undisputed fact that Mr. Bethley fled the scene with the firearm, a rational trier of fact could have found, beyond a reasonable doubt, that Mr. Bethley obstructed justice by tampering with evidence. See *State v. Powell*, 2015-0218, p. 11 (La. App. 4 Cir. 10/28/15), 179 So.3d 721, 728 (removal of weapon from the scene of the shooting sufficient to support obstruction of justice conviction).

In reviewing the sufficiency of the evidence, an appellate court must determine if the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all the elements of the crime have been proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). In the instant case, evidence presented at trial consisted of a video that showed defendant shooting the victim, after which he walked away from the scene with the gun, which was never recovered. Based on these facts, I find that the jury had sufficient evidence to convict the defendant of obstruction of justice.

Accordingly, I would affirm the defendant's conviction and sentence for count three.

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
DECEMBER 19, 2025 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES
NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-KA-564

E-NOTIFIED

| | | |
|--|-------------------------------|------------------------------------|
| 24TH JUDICIAL DISTRICT COURT (CLERK) | | |
| HONORABLE ELLEN SHIRER KOVACH (DISTRICT JUDGE) | | |
| JANE L. BEEBE (APPELLANT) | DARREN A. ALLEMAND (APPELLEE) | DOUGLAS E. RUSHTON, JR. (APPELLEE) |
| JULIET L. CLARK (APPELLEE) | THOMAS J. BUTLER (APPELLEE) | |

MAILED

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