

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-296

STATE OF LOUISIANA

versus

ELIJAH M AUGUSTUS

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 21-6718, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

February 25, 2026

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Timothy S. Marcel

AFFIRMED

SMC
JGG
TSM

TRUE COPY



JALISA WALKER
DEPUTY CLERK

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STATE OF LOUISIANA

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ELIJAH AUGUSTUS

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CHEHARDY, C.J.

Defendant-appellant, Elijah Augustus, appeals his convictions and sentences for second-degree murder and conspiracy to commit armed robbery. For the reasons that follow, we affirm defendant's convictions and sentences.

PROCEDURAL HISTORY

On December 16, 2021, a Jefferson Parish Grand Jury indicted defendant, Elijah Augustus, for the second-degree murder of Hassan Veal in violation of La. R.S. 14:30.1 (count one), and conspiracy to rob Hassan Veal while armed with a firearm in violation of "La. R.S. 14:26:64" (count two).¹ The same indictment charges Trenton Tatum and Tyron Edwards with second-degree murder in count one and conspiracy to commit armed robbery in count two. Defendant Augustus and co-defendant Tatum were tried simultaneously.² Defendant was arraigned on December 20, 2021, and pled not guilty to both counts.

On January 6, 2025, the case proceeded to trial before a twelve-person jury. On January 10, 2025, the jury found defendant guilty as charged on both counts.

On February 5, 2025, defendant filed a "Motion for Post-Verdict Judgment of Acquittal Motion for Arrest of Judgment Motion for New Trial." Also on that date, he filed "Trial Counsel's Notice of Evidence" in connection with his post-trial motions. The trial court denied these motions the same day. After delays were waived, the trial court sentenced defendant to life imprisonment without benefit of parole, probation, or suspension of sentence on count one, and to forty-nine years imprisonment without benefit of parole, probation, or suspension of sentence on count two, with the sentences to run concurrently. On February 18, 2025, defendant filed a Motion for Reconsideration of Sentence. Also on that date, defendant filed a written motion for appeal, which the court granted on February

¹ This citation format references both La. R.S. 14:26 and La. R.S. 14:64.

² Tatum's appeal currently is pending in this Court in case number 25-KA-295.

19, 2025. On February 25, 2025, the trial court issued an order denying defendant's Motion for Reconsideration of Sentence.³ This appeal followed.

FACTS

On August 5, 2021, Hassan Veal traveled to Pard Playground in Marrero to engage in a drug transaction. During that encounter, Mr. Veal was shot and killed. Tyron Edwards, who was present at the time of the shooting, later identified the two remaining individuals who perpetrated the shooting as defendant Elijah Augustus and co-defendant Trenton Tatum.

Edwards, who knew Mr. Veal from school, testified that earlier on August 5, 2021, he had traveled to Houston, where Tatum was located, before returning to the New Orleans area that same day.⁴ Later that evening, Edwards received calls from Tatum and defendant requesting a ride for a marijuana sale. Defendant and Tatum arrived at Edwards' residence between 8:00 and 8:30 p.m., wearing dark clothing. Edwards drove them to Pard Playground and parked. Defendant then stated to Edwards and Tatum that they were going to commit an armed robbery of an arriving buyer, and Edwards agreed but remained in the car.⁵

Defendant and Tatum hid beside a nearby house until the buyer approached. Edwards had a Glock 21 (.45), defendant had a Glock 35 (.40), and Tatum had a sawed-off rifle. They waited approximately fifteen to twenty minutes, and after receiving a text that the buyer was on the way, defendant and Tatum went to the side of the house. About ten minutes later, Edwards saw a Honda Accord arrive,

³ Although the trial court granted the motion for appeal before ruling on the motion to reconsider sentence, the court retained jurisdiction to rule on the motion to reconsider sentence pursuant to La. C.Cr.P. art. 916(3).

⁴ Under a plea agreement, Edwards pled guilty to manslaughter and agreed to testify in this case in exchange for a twenty-five-year sentence, which he is currently serving. He also pled guilty to conspiracy to commit armed robbery and received an additional twenty-five-year sentence.

⁵ Edwards later testified that he did not notice any bulges or assault rifles on defendant or Tatum when they came to his residence. He also denied knowing about any arrangements involving money or payments between defendant and Mr. Veal and further denied that Tatum was aware of any such payments.

and the driver of the Accord approached the passenger-side window of Edwards' car. Edwards did not initially recognize Mr. Veal and was shocked when Mr. Veal called his name. Defendant and Tatum then arrived and pointed a gun at Mr. Veal, who ran to the other side of Edwards' vehicle. Defendant and Tatum chased him, and Edwards got out and stopped Mr. Veal by pointing his .45-caliber handgun at him. Edwards denied firing at Mr. Veal, but stated that he fired one warning shot away from him. Mr. Veal said upon questioning that he did not have anything. Tatum instructed Edwards to check his pockets, and Edwards found nothing. Defendant kept his weapon pointed at Mr. Veal the entire time.

After realizing Mr. Veal did not have any valuables on him, Tatum went to check Mr. Veal's vehicle for valuables. Mr. Veal said, "I don't have anything. Please don't kill me." Edwards heard another voice coming from inside the vehicle and thought someone else might be present. Tatum approached Mr. Veal's vehicle, then returned, and asked Mr. Veal if he had any valuables. Mr. Veal replied that he had none. Tatum then said: "Man f*ck it, man f*ck it," and began shooting at Mr. Veal, followed by defendant also shooting at him. Edwards testified that he stood there "watching it all play out," then ran to his vehicle while the shooting occurred. After the shooting, Edwards left the playground with defendant and Tatum and returned home. According to Edwards, defendant and Tatum discarded the masks and gloves they had worn as Edwards drove away. The next day, he saw Tatum at his paternal grandmother's house, where Tatum told him: "you know, don't let it get to you, don't say nothing, just stay to yourself[.]" Edwards went to work and later returned home.

Edwards said that he had a gray iPhone 11 and later discovered it was missing after returning to his residence. He realized the phone and his slipper were left at the crime scene. He kept the .45-caliber handgun after the incident and had it with him until his arrest on August 7, 2021. He said Tatum last had the .40-caliber

gun used by defendant and explained that he saw defendant give it to Tatum after the shooting. He did not know what happened to the rifle.⁶ Edwards confirmed that he knew Jawan Harris, a childhood friend who lived on Sweet Gum Street, and that he had been at Harris' residence earlier on August 7. He was arrested later that day.

Edwards confirmed at trial that surveillance video depicted him, Tatum, and defendant at Pard Playground during the crime. He identified himself, his vehicle, Tatum, Veal, and defendant. He acknowledged that the video showed him firing his gun and that his brakes illuminated while the shooting continued.⁷ Edwards also identified multiple text message exchanges from shortly before the incident, including messages with defendant about the approaching vehicle;⁸ messages with his girlfriend stating he was with Tatum and "finna go with the move";⁹ and messages with Tatum, whom he referred to as "Unc." Edwards acknowledged giving multiple inconsistent statements to police and during his proffer, including denying having a gun, misstating who was present at the playground, and changing his identifications of Tatum and defendant, even though he signed the district attorney's notes as accurate. He admitted discrepancies between those statements

⁶ Edwards denied having or firing the .40-caliber handgun that night and denied possessing it after August 5, 2021. He testified that he did not remember touching the .40 and had no explanation for why his DNA might be on it. If he did touch it, it "probably" happened after August 5, 2021, but he maintained that he did not touch the gun. He denied firing the rifle.

⁷ Edwards testified that the footage showed the three sitting in his vehicle before the robbery, after which Tatum exited first, followed by defendant. He identified Mr. Veal arriving and stated that he was standing at the driver's door when a flicker of light visible in the video reflected his own gunshot. Edwards testified that defendant stood near the vehicle while Tatum walked toward Mr. Veal's vehicle.

⁸ Edwards said that defendant was saved in his phone as "E" and identified his own number under the contact as "Ty." He said that on August 5, 2021, at approximately 7:20 p.m., defendant texted him, "WYA," meaning "where you at," and he replied, "Crib RN." Defendant later texted: "I'm trying to hold him," which Edwards said meant that defendant was attempting to stall Mr. Veal so that he would not leave. Edwards denied communicating with Mr. Veal and said defendant handled those communications. He also sent defendant two messages at 10:21 p.m., stating: "Say" and "Ya'll seen that car?" to ask whether they saw Mr. Veal's silver car pulling up. He said he wrote "ya'll" because Tatum was with defendant on the side of the house while Edwards remained in his vehicle. Edwards also denied sending the message to any unknown number.

⁹ Edwards confirmed that he communicated with his girlfriend, Shantiane Cotton, and that she knew about the planned marijuana sale but not about the robbery or murder.

and his trial testimony, but maintained that his trial testimony identifying Tatum and defendant was truthful.¹⁰

Aviann Taylor testified that she and Mr. Veal lived together at his Primwood Drive residence. On the day of the shooting, they ran errands and later met defendant near Mr. Veal's home while riding in his Honda Accord. She had never met defendant before and did not know the purpose of the meeting. Veal parked a few houses away, and defendant entered the back seat and asked: "You got that or whatever?" and Mr. Veal sent him \$666 on Cash App. Defendant then exited the vehicle. Ms. Taylor did not know whose account received the money and did not see defendant with a weapon. At trial, she identified defendant as the person she saw earlier that day.

Ms. Taylor and Mr. Veal then went to his friend CJ's home. While there, Mr. Veal received repeated calls from an unknown number, which he initially ignored. He later answered and said that he would be "on his way in a few." Ms. Taylor estimated that they left around 10:00 p.m. and drove to Pard Playground. When they arrived, Mr. Veal backed into a parking space near the street. Another vehicle was already parked nearby. After receiving another call asking whether he was there, Mr. Veal exited his vehicle and walked toward the driver's door of the parked car.

Ms. Taylor testified that once Veal approached the parked vehicle and its driver's door opened, one man emerged from behind the fence and another from behind the vehicle. One approached her on the passenger side of Mr. Veal's

¹⁰ Edwards admitted that he initially lied to police, including denying that he had a gun, inventing a nonexistent additional participant, and giving conflicting accounts of who was present at the playground. He acknowledged further inaccuracies in his statements, including inconsistent references to individuals he identified as "Unc," "Trent," and "D Money," and conflicting accounts regarding firearms, the exchange of the .40-caliber handgun, and whether he fired a weapon. Edwards also admitted inconsistencies between his statements to police and his proffer, despite signing the district attorney's notes as accurate. He testified that he ultimately identified Tatum and defendant before receiving any deal, acknowledged responsibility for Mr. Veal's death, and admitted that his cell phone and slipper linked him to the crime.

vehicle, while the other two positioned themselves on the driver's side near Mr. Veal, whose back was toward the fence. She stated that Mr. Veal first moved toward the passenger side, but after seeing the man near the fence, he went around the back of the car, where the open driver's door blocked his path. She testified that all three men held him at gunpoint with guns equipped with lasers, and that she clearly saw the man who emerged from behind the fence and the one holding Mr. Veal at gunpoint.

Ms. Taylor stated that she exited Mr. Veal's vehicle when one of the men began pulling on the door. She stayed with that man, while the other two were with Mr. Veal near the other vehicle. Mr. Veal stood with his hands up. The man with her wore a ski mask and all black clothing, was approximately 5'6" or 5'7", and held a rifle she referred to as a "stick." The two men near Mr. Veal were taller and wore black hoodies, ski masks, and gloves. She later explained that the man who approached her had brown eyes. Ms. Taylor identified defendant as the man who stood next to her, based on his eyes and having seen his face earlier when he entered Mr. Veal's vehicle. She added that the man next to her was not the person who started the shooting.¹¹

Ms. Taylor testified that the man with her opened the door and asked about wallets, money, and guns. She looked towards Mr. Veal, who stood with his hands raised and said they did not have anything. She saw the men pat his pockets, and Mr. Veal yelled, "She ain't got nothing, she ain't got nothing," as the man questioned her about guns and her purse. She recalled that the scene then went silent before she heard multiple gunshots. She returned to Mr. Veal's vehicle,

¹¹ Ms. Taylor later acknowledged that she did not initially tell detectives that she recognized the individual pointing the gun at her. She explained that the interview occurred thirty minutes to an hour after the incident. During the interview, she was extremely upset, crying, and scared, and she provided limited information. She denied telling detectives that the person was a "tall, goofy kid, not over 21."

drove away in fear, ensured she was not being followed, and later returned to the scene, where police were already present.

Ms. Taylor testified that police detained her when she returned and that she told them she had been present. She spoke briefly with two detectives, but she was too scared to tell them everything. She then went to Mr. Veal's residence. She stated that she had no idea anything was going to happen when they went to the park, and she did not recall being asked to identify anyone. She testified that Mr. Veal was known to carry a gun and that she believed he had one that night; after the shooting, she looked for it in the vehicle, did not find it, and assumed he had it on himself.

Deputies from the Jefferson Parish Sheriff's Office (JPSO) responded to the shooting at Pard Playground on August 5, 2021, where Mr. Veal was found near the canal bank with multiple gunshot wounds and spent casings nearby. Dr. Dana Troxclair conducted the autopsy and found nine distant-range gunshot wounds, including a fatal wound to the head. She recovered projectile fragments from the victim's back and concluded that the cause of death was multiple gunshot wounds, and the manner of death was homicide.

Ms. Taylor told the lead investigator, Sergeant Steven Keller, that she and Mr. Veal had met defendant earlier that day for a Cash App exchange and later went to the park to meet someone who had been calling Mr. Veal. Sergeant Keller stated that the scene contained one .45-caliber casing, four .40-caliber casings, and multiple .223 and 5.56 casings, with ballistic analysis indicating three firearms. He also described surveillance footage showing Edwards' vehicle arriving, Mr. Veal arriving shortly afterwards, and a confrontation near the driver's side of Edwards' vehicle, with multiple visible muzzle flashes.

A black iPhone was found near Mr. Veal's body and determined to belong to Edwards, making him a suspect. Data extracted from the device included

photographs confirming Edwards' identity and images of a black vehicle matching the one seen leaving the area, having a license plate number and VIN linked to Edwards.¹² Officers obtained a warrant for the Primwood Drive residence, located Edwards' vehicle during surveillance, and arrested him after he left a residence on Sweet Gum Drive. A search of Edwards' vehicle revealed his wallet and driver's license between the driver's seat and door frame, as well as a Glock Model 21 .45-caliber pistol under the driver's seat with a round chambered. Officers also recovered a magazine with seven rounds and additional .45-caliber ammunition.¹³

Sergeant Keller testified that after Edwards was advised of his rights, he admitted to being present during the incident, driving the vehicle, knowing a robbery would occur, and dropping his cell phone and a slipper at the scene. He stated that Edwards was "truthful to a point," as he initially denied being armed and gave false names, including a nonexistent "Demarcus Augustus," before eventually identifying defendant and Tatum. Investigators identified defendant's phone number through a 10:21 p.m. message sent from Edwards' phone and, through associated phone records, identified Tatum's number. After identifying Edwards, defendant, and Tatum as suspects, he reviewed Edwards' social media, obtained search warrants for defendant's and Tatum's Facebook accounts, and confirmed photographs showing the three together.

Tatum was taken into custody at the Siesta Motel. Investigators recovered a .40-caliber Glock handgun with a green laser attachment from the room. Sergeant Keller noted that this was significant because Ms. Taylor had described one of the men at the scene as carrying a rifle with a green laser.

¹² ALPR data confirmed the license plate on Edwards' vehicle, showing the vehicle at 10:30 p.m., approximately three minutes after the first 9-1-1 call, and less than half a mile from the scene.

¹³ JPSO deputies executed a search warrant at a Sweet Gum Drive residence associated with Harris, where they recovered ammunition and magazines for various firearms.

Detective Ryan Vaught, who participated in the search of Room 121 at the Siesta Motel, testified that the search was conducted on August 11, 2021, at approximately 11:15 a.m. He stated that officers recovered a .40-caliber Glock handgun from beneath the bed's headboard. The firearm was loaded with one round in the chamber and additional ammunition in the magazine. A blue duffel bag in the room contained a flashlight and a green laser attachment compatible with a handgun. A separate black bag contained items bearing Tatum's name, an identification card, and a Samsung cell phone, which was collected as evidence. Another individual, Anthony Jones, was present in the room and was questioned after being advised of his rights. Buccal swabs were collected from Jones and from the firearm.¹⁴

Investigators recovered a rifle magazine, which contained twenty-eight .223/5.56 rounds, from a Clover Street residence associated with defendant. Sergeant Keller noted that similar brands were recovered at the homicide scene. The U.S. Marshals Service assisted in locating defendant's Ford Fusion at a Metairie motel, and officers seized and searched the vehicle on August 12. Sergeant Keller noted that the vehicle's license plate had been removed, which he believed was an attempt to conceal its identity.¹⁵ A .40-caliber Smith & Wesson cartridge was photographed on the front passenger door handle and a black and gray Rockbros mask was recovered from the trunk. Mail addressed to defendant was also found inside the vehicle.¹⁶ After defendant's arrest, a buccal swab was

¹⁴ Detective Vaught stated that the ammunition was seized but not fingerprint-tested or swabbed for DNA. He testified that he did not personally observe Tatum possessing the firearm and could not confirm whether it belonged to Tatum or to Jones. He explained that the absence of DNA on the weapon did not mean it had not been handled.

¹⁵ Sergeant Keller testified that ALPR cameras captured defendant's vehicle with a license plate both before and after the homicide. He explained that investigators identified the plate through vehicle registration records.

¹⁶ Sergeant Keller noted that Ms. Taylor had stated one of the perpetrators wore a mask, but he did not follow up with her regarding whether she recognized the Rockbros mask recovered from the vehicle nor did he request DNA testing on it.

obtained and his iPhone was seized. Sergeant Keller testified that Cash App records for the account “La E” confirmed a \$666 payment from Mr. Veal on August 5 and established that the account belonged to defendant through his personal identifiers and listed address. He also noted additional Cash App transactions between defendant and Tatum, including a \$40 transfer on August 6 at 1:38 p.m.

Extensive cell phone evidence was introduced at trial.¹⁷ JPSO Detective Dustin Ducote, an expert in digital device analysis, testified that Edwards’ iPhone reported its location in Houston earlier on August 5 and near Pard Playground at approximately 10:19 p.m. that night. The extraction confirmed messaging between Edwards and defendant throughout the evening, including communications coordinating the meeting and Edwards’ inquiry shortly before the shooting about whether they had seen the victim’s vehicle.¹⁸ It also confirmed Edwards’ 10:08 p.m. message to his girlfriend stating that he was “with Unc...finna go with the move.”¹⁹ It showed communications between Edwards and Tatum consistent with Edwards’ testimony.

¹⁷ Out of an abundance of caution, the phone numbers are redacted. *See State v. Murray*, 17-534 (La. App. 5 Cir. 3/14/18), 242 So.3d 821, 825 n.3. *See also State v. Ross*, 24-102 (La. App. 5 Cir. 12/18/24), 409 So.3d 939, 945 n.2 (where this Court redacted the phone numbers of the defendant and the deceased victim). The digital forensics unit extracted data from phones belonging to Edwards, defendant, and Tatum. Edwards’ iPhone recovered at the scene was associated with 504-***-4597; defendant’s iPhone used 504-***-9508; and Tatum’s Samsung, seized from the Siesta Motel, used 504-***-7525. Mr. Veal’s phone was too damaged to be extracted. Edwards’ device was labeled “Tyron’s iPhone.” Tatum’s Samsung phone was associated with the username “TrentomTatum91@gmail.com,” and defendant’s iPhone XR was associated with the Apple ID “ElijahAugustus@iCloud.com.”

¹⁸ The extraction showed that Edwards and defendant exchanged messages throughout the evening, including Edwards’ 10:21 p.m. message asking whether they had seen the vehicle. Sergeant Keller testified that this message coincided with Mr. Veal’s arrival and occurred approximately six minutes before the first 9-1-1 call. He further testified that T-Mobile returned no GPS data because defendant’s phone was off or inactive at the time and that iPhone-to-iPhone messages would not appear in T-Mobile’s call detail records. He confirmed that he was certain the 10:21 p.m. message was sent to defendant.

¹⁹ Sergeant Keller testified that Ms. Cotton identified Tatum and confirmed that Edwards left the house with Tatum on the night of the homicide, though she did not know what Edwards was doing.

Detective Ducote testified regarding the Samsung device associated with Tatum and confirmed that the same message thread previously recovered from Edwards' phone appeared on this device. Tatum's phone also contained messages exchanged with the contact saved as "E," which used defendant's number, including messages from August 2 and August 5, 2021. Detective Ducote testified that these messages had been deleted from the phone, but were recovered through the extraction.

On August 2, 2021, at approximately 3:19 p.m., Tatum messaged defendant, "Need a lic tonight. Son for real. A lil nice something ASAP." Later that evening, defendant responded: "Dude got the yeahs?" Tatum replied that they could "just get the AR and one hand thing" and followed with a message stating: "Or just get the AR for us 4 gone go," to which defendant responded, "Ightt it's good."

Sergeant Keller confirmed that he reviewed the extracted messages between Tatum and defendant. He testified that based on his experience, although the term "lick" can have multiple meanings, he believed that here it refers to committing a robbery to obtain money, and that the August 2 message, "Need a lick tonight," reflected this. He stated that the phrase "yeahs" in defendant's message is slang for guns. He stated that he did not ask Tatum to clarify these terms, as Tatum was combative and did not provide information during the interview.

On the morning of August 5, 2021, Tatum messaged defendant to "Set something up for tonight," and defendant replied, "Bet that." Defendant later followed with: "Might got some in mind call me." That evening, defendant asked where Tatum was located, and Tatum responded that he was "at Tyron house."²⁰

²⁰ Sergeant Keller explained that the messages confirmed Tatum texted defendant that he was at Edwards' residence, and that this coincided with both Ms. Cotton's and Edwards' statements that he was with his uncle at the time of the homicide.

On August 6, 2021, Tatum messaged defendant, “Ima need u to pull up by ant,” to which defendant responded that he was coming. Later that evening, defendant messaged Tatum, and Tatum directed him to the Siesta Motel, stating, “k street the siesta motel room 227 just knock on the door.” At the same time, Tatum sent the message: “He need a 40,” and defendant replied that he was “10 mins away.”²¹

Detective Ducote reviewed the internet search history on Tatum’s Samsung device. On August 6, 2021, shortly after the 9-1-1 call, the device searched “WGNO, JPSO, man killed in late night Marrero shooting.” On August 8, 9, and 10, 2021, the device conducted multiple searches related to murder investigations, evidentiary requirements, criminal liability, cooperating witnesses, and background information, including searches for Edwards, Tatum, and himself through an online inmate and background search service.

Detective Ducote testified that the device also contained videos depicting an individual holding a firearm, which was accessed several months before the homicide. Sergeant Keller further testified that one video showed Tatum holding a .40-caliber handgun with a visible serial number and confirmed that it was the same .40-caliber firearm recovered from the Siesta Motel and linked to the homicide.

As to the iPhone associated with defendant, Detective Ducote testified that the device’s location data placed it at Pard Playground on August 5, 2021, from

²¹ Detective Ducote testified that the Samsung phone contained messages in which the user identified himself as “Ant,” including messages sent on July 20 and August 7, 2021, stating, “This Ant.” He testified that he could not determine whether “Ant” referred to Tatum, Anthony Jones, or another individual.

Sergeant Keller testified that messages between Tatum and defendant included a reference to Room 227 at the Siesta Motel and that Tatum’s August 6 message stating “He need a 40” referred to a .40-caliber handgun. He further testified that the murder weapon was a .40-caliber firearm and that text messages showed defendant brought the .40-caliber firearm to the motel where Tatum was located. Sergeant Keller also testified that messages sent the day after the homicide discussed another individual seeking to obtain the .40-caliber firearm and referenced meeting at the Siesta Motel, including directions to a specific room.

approximately 10:02 p.m. to 10:27 p.m., corresponding with the time of the first 9-1-1 call. The phone contained the same text message conversations previously described, and Detective Ducote noted that some communications sent via iMessage would not appear in carrier call detail records. The device also showed that Cash App had been installed and later deleted.

Sergeant Keller testified that the first 9-1-1 call reporting the shooting was placed at 10:27 p.m. Phone-record analysis showed multiple calls between Mr. Veal's phone and defendant's phone that night, including an outgoing call from defendant to Mr. Veal at 9:58 p.m. and a return call from Mr. Veal at 10:24 p.m., approximately three minutes before the homicide. The records also showed a thirty-second incoming call from Edwards to defendant at 8:35 p.m. and an outgoing call from Tatum to defendant at 7:24 p.m.

Sergeant Keller testified that the only forensic testing performed involved DNA swabs from the .45-caliber handgun recovered from Edwards' vehicle and the .40-caliber Glock recovered from the Siesta Motel. Buccal swabs from the three suspects and from Jones were compared to the .40-caliber Glock, and the DNA report showed that Jones's DNA was present on the weapon.²² Sergeant Keller confirmed that Edwards sent the message "Did ya'll see that car" to defendant's phone only, and that Ms. Taylor identified only defendant as present during her earlier meeting with Mr. Veal.²³ He could not verify Jones's location on August 5, 2021, and did not know whether Jones was at Pard Playground. He further explained that Harris purchased the .40-caliber firearm recovered from the

²² April Solomon, a forensic DNA analyst, testified that DNA testing of the Glock .45-caliber pistol provided strong support for Edwards as a contributor, while defendant, Tatum, and Jones were excluded. She further testified that DNA testing of the Glock .40-caliber pistol provided very strong support for Jones as a contributor, while defendant and Tatum were excluded.

²³ Sergeant Keller denied that Ms. Taylor told him she had identified defendant or anyone else as the person who pointed a gun at her during the robbery, and denied having any conversation with her about identifying or describing the perpetrator.

Siesta Motel and told Keller that he had given the weapon to Edwards. He testified that Edwards never identified Jones or Harris as participants in the offense and confirmed that, apart from the firearm recovered at the motel, there was no evidence linking Jones to the crime.

Jene Rauch, a firearm and toolmark examiner, testified that twenty-six 5.56 or .223 casings, four .40-caliber casings, and one .45-caliber casing were recovered at the scene, along with thirteen unfired 9 mm cartridges and projectile fragments from the autopsy. The Glock Model 21, Gen 4, .45 auto, which was recovered from Edwards' vehicle, was not the source of the .45 casing recovered at the scene. The Glock Model 35, .40 S&W, which was recovered from the Siesta Motel, fired the four .40-caliber casings recovered at the scene of the shooting. The twenty-six 5.56 or .223 casings were fired from the same unrecovered 5.56-caliber weapon, and the unfired .223 ammunition recovered from defendant's residence was consistent with those casings. The cartridge case that was found in the firearm in the motel was a .40 S&W case consistent with the .40 casings from the scene, and the autopsy projectiles were .22-caliber class, consistent with .223 or 5.56, and fired from the same weapon. No conclusions could be drawn regarding any lead-like projectiles recovered during the autopsy of the victim.

ASSIGNMENT OF ERROR NUMBER ONE

In this assignment of error, defendant raises several challenges to the admission of the "second extraction" data obtained from his cell phone. He argues that the warrantless second extraction should have been suppressed, that the State failed to timely produce the voluminous raw data and did not disclose its intent to rely on geo-positioning information or an expert, that the Cellebrite program used to extract GPS data was not shown to be reliable under *Daubert*,²⁴ and that the

²⁴ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

detective who testified lacked the specialized expertise required to interpret geolocation data. Defendant also asserts that the trial court erred in denying his pretrial motions, overruling his trial objections, and rejecting his motion for new trial based on these same evidentiary challenges. Defendant's discussion of this assignment of error is divided into five subsections: (A) Lack of Warrant for the Second Extraction, (B) Untimely Production of Voluminous Raw Data and Failure to Disclose Intent to Use Geo-Positioning Evidence or an Expert, (C) Cellebrite Extraction of GPS Data Not Shown to Be Reliable, (D) Detective's Lack of Expertise in Geo-Data Tracking and Location, and (E) Not Harmless Error.

Because these arguments overlap and fall within broader, distinct legal questions, we address them as: (1) Fourth Amendment: Whether the Second Extraction Required a Warrant; (2) Discovery and Article 719: Untimely Production & Lack of Expert Notice; and (3) Admissibility of Geolocation Evidence Under *Daubert* and Article 702.

Fourth Amendment: Whether the Second Extraction Required a Warrant

Defendant argues that a white iPhone seized at the time of his arrest and introduced in evidence was subjected to an unlawful second search. He argues that the first extraction, conducted pursuant to a warrant, produced no geolocation data. The State provided those results to the defense. Defendant contends that law enforcement then performed a second extraction on December 16, 2024, specifically to obtain GPS and geolocation information, without obtaining a warrant, in violation of the Fourth Amendment. He maintains that the resulting location data and related testimony should have been excluded and that the trial court erred in denying his motion to suppress.

The record reflects that defendant filed omnibus motions to suppress in June 2022 and May 2023, which the trial court denied after a suppression hearing. The record does not indicate that defendant challenged any Cellebrite extraction as an

unconstitutional search or seizure. Immediately before and during trial, defendant filed a Motion in Limine and Supplemental Memorandum seeking exclusion of Cellebrite-derived evidence on evidentiary reliability and discovery-notice grounds. At trial, Detective Ducote explained that defendant's iPhone was extracted twice—first as a “BFU” (partial) extraction on February 22, 2024, and later as a full extraction on December 16, 2024, after the passcode was cracked, which allowed access to the encrypted user partition where location data is stored. The record further reflects that during trial, defendant objected to Cellebrite-related evidence on evidentiary grounds, but he did not assert a Fourth Amendment violation. Following the verdict, defendant again challenged Cellebrite-derived GPS evidence in a “Motion for Post-Verdict Judgment of Acquittal Motion for Arrest of Judgment Motion for New Trial,” asserting discovery violations under La. C.Cr.P. art. 719, but he did not claim the December 16, 2024 extraction was unconstitutional. The trial court denied defendant's motions.

The Fourth Amendment to the United States Constitution and Article 1, § 5 of the Louisiana Constitution protect individuals against unreasonable searches and seizures. *State v. Abrego*, 21-166 (La. App. 5 Cir. 12/1/21), 334 So.3d 883, 888, writ denied, 21-1949 (La. 2/22/22), 333 So.3d 450. A defendant who is adversely affected may move to suppress evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. La. C.Cr.P. art. 703(A); *State v. Fuentes*, 22-89 (La. App. 5 Cir. 11/2/22), 353 So.3d 911, 915.

A defendant bears the burden of asserting the basis for his motion to suppress in order to give the State adequate notice so that it may present evidence and address the issue. *State v. Lobo*, 11-51 (La. App. 5 Cir. 10/25/11), 77 So.3d 427, 436, writ denied, 11-2586 (La. 3/30/12), 85 So.3d 117. The trial court is afforded great discretion in ruling on a motion to suppress, and its ruling will not be disturbed absent an abuse of discretion. *State v. Isaac*, 17-87 (La. App. 5 Cir.

10/25/17), 229 So.3d 1030, 1038, *writ denied*, 17-2106 (La. 6/15/18), 257 So.3d 679.

La. C.Cr.P. art. 841(A) provides that “[a]n irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence.”

Articulating a new basis for the motion to suppress for the first time on appeal is prohibited under La. C.Cr.P. art. 841, because the trial court has not been afforded an opportunity to consider the merits of the particular claim. *State v. Berroa-Reyes*, 12-581 (La. App. 5 Cir. 1/30/13), 109 So.3d 487, 496. Louisiana courts have long held a defendant may not raise new grounds for suppressing evidence on appeal that he did not raise at the trial court in a motion to suppress. *Id.*

Although defendant filed omnibus motions to suppress and later filed motions in limine and post-verdict motions addressing Cellebrite-derived evidence, those filings challenged the evidence on evidentiary reliability, discovery, and notice grounds; defendant did not assert that the December 16, 2024 extraction constituted an unconstitutional search or seizure. Further, during trial, defendant objected to Cellebrite-related evidence on evidentiary grounds, but did not object on the basis that the extraction violated the Fourth Amendment. In short, the specific constitutional argument that defendant raises on appeal was not raised pretrial, during trial, or in any post-trial motion. As such, defendant waived the issue for appellate review.

Nevertheless, even assuming the issue had been preserved for review and further assuming that the trial court erred in admitting the evidence, any such error was harmless. The erroneous admission of evidence requires reversal only where there is a reasonable possibility that the evidence might have contributed to the verdict. *State v. Stockstill*, 19-1235 (La. 10/1/20), 341 So.3d 502, 507. An error is harmless beyond a reasonable doubt if it is unimportant in relation to the whole, and the verdict rendered is surely unattributable to the error. *State v. Brown*, 16-

998 (La. 1/28/22), 347 So.3d 745, 791, *cert. denied*, -- U.S. --, 143 S.Ct. 886, 215 L.Ed.2d 404 (2023).

Here, the Cellebrite-derived location evidence was not the only evidence linking defendant to the offense. Independent of the Cellebrite extraction, the State presented testimony from Edwards regarding communications with defendant on the night of the offense, cellular provider records reflecting communications in close temporal proximity to the homicide, identification testimony from Ms. Taylor, and surveillance footage corroborating Edwards' testimony. We find the verdict was supported by substantial evidence independent of the December 16, 2024 extraction. Accordingly, even if admission of this evidence was erroneous, the verdict rendered is surely unattributable to this error.

Discovery and Article 719: Untimely Production & Lack of Expert Notice

Defendant next argues that the State's disclosure of the second search of his phone violated discovery rules due to its timing and manner. He asserts that three weeks before trial, the State sent voluminous Cellebrite extraction data in multiple emails during the holiday period, leaving defense counsel unable to access or meaningfully review the data until the second day of trial. Defendant contends that the State failed to provide reports explaining how the geolocation data would be used, failed to identify a qualified expert or provide expert disclosures under La. C.Cr.P. art. 719, and did not update its notice to reflect that Detective Ducote would testify regarding geolocation evidence. According to defendant, these failures deprived him of a fair opportunity to prepare a defense, including the ability to seek a *Daubert* hearing or retain an expert, and violated statutory discovery requirements, as well as his Fifth and Sixth Amendment rights.

The record reflects that on March 4, 2024, the State filed a Notice of Intent to Call Expert Witness pursuant to La. C.Cr.P. art. 719, advising that it intended to call Detective Ducote of the JPSO Crime Laboratory as an expert in mobile device

analysis. The notice stated that Detective Ducote would rely on his training and experience and on cellular telephone extractions performed in this case. The State attached Detective Ducote's curriculum vitae, which reflected training related to Cellebrite forensic software. In 2024, prior defense counsel filed multiple motions seeking access to electronic evidence, including Cellebrite extractions of cellular telephones. On November 15, 2024, Mr. Brown was appointed as defendant's counsel. On December 17, 2024, approximately three weeks before trial, the State tendered discovery materials to defense counsel, including a Cellebrite extraction of defendant's cellular telephone dated December 16, 2024, transmitted through multiple emails.

On January 3, 2025, prior to trial, defendant filed a Motion in Limine to Exclude Text Messages Derived From Cellebrite Forensic Imaging, asserting that the evidence constituted scientific or technical evidence subject to La. C.E. art. 702, and claiming that the State failed to provide usable reports or expert explanations identifying or interpreting the data. Counsel also raised authentication and discovery objections and alternatively requested production of PDF-formatted Cellebrite reports. The trial court set the motion for a hearing on January 6, 2025, the first day of trial. At that time, defense counsel advised the court that he had filed motions seeking to exclude Cellebrite-derived evidence. The prosecutor responded that the Cellebrite extractions had been tendered in discovery and that the State had filed an Article 719 notice identifying Detective Ducote as an expert. The trial court deferred ruling until objections were raised during trial.

On January 7, 2025, during opening statements, the prosecutor referenced a text message and asserted that defendant's cellular telephone location data showed defendant was at the scene of the homicide. Defense counsel objected and moved for a mistrial, asserting that this was the first reference to geolocation data derived from Cellebrite imaging and that he had not been provided notice of such evidence.

Outside the presence of the jury, defense counsel acknowledged receiving the Cellebrite extraction on December 17, 2024, but asserted that his concern involved his ability to identify and interpret the relevant information. The prosecutor maintained that the information referenced was contained within the extraction and had been disclosed in discovery. The trial court denied the motion.

On January 8, 2025, defense counsel filed a Supplemental Memorandum in Support of the Motion in Limine, asserting that the State intended to introduce location-related data derived from the December 16, 2024 extraction and arguing that the data differed from information obtained during a February 22, 2024 extraction. Counsel renewed objections under La. C.E. arts. 702 and 901 and requested a hearing to determine admissibility.

That same day, the trial court heard argument. The prosecutor explained that initial extractions may yield partial data and that additional data may be obtained once a device is fully accessed. The prosecutor further stated that the additional data was provided to defense counsel and that he met with counsel at the court's request to review the Cellebrite materials. The trial court denied the motion to exclude, ruling that any issues could be explored through cross-examination.

At trial, Detective Ducote testified that defendant's cellular telephone underwent a partial extraction on February 22, 2024, and a full extraction on December 16, 2024, after the passcode was obtained. He explained that location data of the type presented at trial would not appear in a partial extraction because it is contained within the encrypted user partition of the device. Sergeant Steven Keller testified that he was aware of both extractions and that no separate report documenting the extraction results was prepared because the Cellebrite data itself was turned over for review.

Defendant's February 5, 2025 "Motion for Post-Verdict Judgment of Acquittal Motion for Arrest of Judgment Motion for New Trial," asserting that the

State failed to comply with discovery obligations regarding Cellebrite-derived text message and location data, argued that the December 16, 2024 extraction was disclosed without an accompanying expert report or summary, and that the defense first learned that the State intended to rely on location data during opening statements. Defense counsel also filed Trial Counsel's Note of Evidence, attaching documentation related to the December 17, 2024 discovery tender and asserting that the communications did not identify or explain GPS data. Prior to sentencing, the trial court denied defendant's post-trial motions.

The issue on appeal is whether the State's disclosure of Cellebrite derived evidence, particularly location-related data, complied with the requirements of La. C.Cr.P. art. 719. The Louisiana Supreme Court has previously held that discovery rules are intended to eliminate unwarranted prejudice arising from surprise testimony to permit the defense to meet the State's case and to allow proper assessment of the strength of its evidence in preparing a defense. *State v. Bradstreet*, 16-80 (La. App. 5 Cir. 6/30/16), 196 So.3d 876, 892, *writ denied*, 16-1567 (La. 6/5/17), 220 So.3d 752 (citing *State v. Harris*, 00-3459 (La. 2/26/02), 812 So.2d 612, 617).

A defendant has the right, upon motion, to inspect and copy results or reports of physical or mental examinations or scientific tests in the possession or knowledge of the State and intended for use at trial. La. C.Cr.P. art. 719. However, the State has no obligation to disclose information that it does not possess. *State v. Joekel*, 19-334 (La. App. 5 Cir. 12/20/19), 2019 WL 7044739, at *1, *writ denied*, 20-86 (La. 1/14/20), 286 So.3d 430 (citing *State v. McGinnis*, 04-1286 (La. App. 5 Cir. 10/6/05), 917 So.2d 471, 485, *writ denied*, 05-2469 (La. 4/28/06), 927 So.2d 283; *State v. Small*, 29-137 (La. App. 2 Cir. 4/2/97), 693 So.2d 180, 191). The State has a continuing duty to disclose additional evidence that it discovers or decides to use at trial. *See* La. C.Cr.P. art. 729.3.

La. C.Cr.P. art. 719 states in pertinent part:

A. Upon written motion of the defendant, the court shall order the district attorney to permit or authorize the defendant to inspect and copy, photograph, or otherwise reproduce any results or reports, or copies thereof, of a physical or mental examination, and of scientific tests or experiments, made in connection with or material to the particular case, that are in the possession, custody, control, or knowledge of the district attorney and intended for use at trial. If the witness preparing the report will be called as an expert, the report shall contain the witness's area of expertise, his qualifications, a list of materials upon which his conclusion is based, and his opinion and the reason therefor. If the expert witness has not reduced his results to writing, or if the expert witness's written report does not contain the information required of an expert as provided in this Article, the state must produce for the defendant a written summary containing any information required to be produced pursuant to this Article but absent from a written report, if any, including the name of the expert witness, his qualifications, a list of materials upon which his conclusion is based, and his opinion and the reason therefor.

In *Joekel, supra*, this Court found that the trial court did not err in ruling that the State was required to give the defendant a written report of its expert's findings. 2019 WL 7044739, at *2. The trial court ordered the State to create a report concerning the opinion testimony of its expert witness, Mr. Scanlan, who was to testify regarding the consistencies of the evidence with the investigating deputies' eyewitness accounts. *Id.* at *1. This Court stated that pursuant to La. C.Cr.P. art. 719, a defendant has the right, upon motion, to inspect and copy results or reports of physical or mental examinations or scientific tests in the possession or knowledge of the State and that are intended for use at trial. This Court also stated, however, that the State has no obligation to disclose information that it does not possess, although the State has a continuing duty to disclose additional evidence that it discovers or decides to use at trial. *Id.* at *2 (citing La. C.Cr.P. art. 729.3). This Court stated that disclosure of the various examinations and/or test results used by the expert to formulate his conclusory opinions were necessary for the

defendant's adequate preparation for trial and to cross-examine the expert, and that the evidence must be given to the defense. *Id.*

Here, although the State's expert notice referenced a report generated under a JPSO item number, the record does not clearly reflect that Detective Ducote prepared a separate expert report setting forth conclusions or results derived from the December 16, 2024 extraction. Sergeant Keller testified that he did not prepare a report or supplemental report documenting the extraction results, explaining that the Cellebrite extraction data itself was turned over for review.

Further, Detective Ducote's testimony reflects that his role at trial primarily involved explaining the Cellebrite extraction process, the distinction between a partial and full extraction, and identifying information displayed within the Cellebrite report generated from defendant's cellular telephone. His testimony focused on why additional data became available once the device was unlocked, and on what information appeared within the Cellebrite output, including data associated with the phone's enabled location services. Based on the record before us, it does not appear that Detective Ducote conducted additional examinations or tests beyond the Cellebrite extraction itself, or that he formulated independent conclusions separate from the information reflected in the Cellebrite-generated report. Rather, his testimony explains and contextualizes data contained within materials disclosed to defendant in discovery, as opposed to presenting opinions memorialized in a separate expert report.

Moreover, even if the State did not fully comply with the disclosure requirements of La. C.Cr.P. art. 719 with respect to Cellebrite-derived evidence, we find the trial court did not err in allowing Detective Ducote's testimony. In the event of a discovery violation, the trial court is afforded broad discretion to order disclosure, grant a continuance, declare a mistrial upon motion of the defendant, prohibit introduction of the undisclosed evidence, or enter such other order as may

be appropriate. La. C.Cr.P. art. 729.5(A). A conviction will not be reversed on the basis of a discovery violation absent a showing of prejudice. *Bradstreet*, 196 So.3d at 892.

In *State v. Arnaud*, 412 So.2d 1013 (La. 1982), at approximately 4:30 p.m. on the day before testimony began, the defendant was given a report of a physical examination that had been conducted within hours of the crime. The trial court allowed the State to call the reporting doctor to testify. The trial court informed the defendant that if he presented medical reports after trial that contradicted what the State had, the trial court would give the defendant a new trial. *Id.* at 1016. On review, the Louisiana Supreme Court first stated that the record revealed that the district attorney made the report available to the defendant as soon as he received it. Even assuming that there had been a violation of La. C.Cr.P. arts. 718 and 719, the court went on to recognize that La. C.Cr.P. art. 729.5 permits the trial court to choose from a wide range of alternative sanctions, and that the defendant did not pursue other available remedies, such as requesting a continuance or recess. *Id.* Furthermore, the Court found the defendant had not shown prejudice where the record showed that he had every opportunity to present any and all exculpatory evidence, had the opportunity to fully cross-examine the doctor, and “was given the opportunity to obtain evidence before testimony began and to present evidence to the jury during the trial and even to the judge after trial.” *Id.* at 1017.

In this case, defense counsel objected to the timing and use of the Cellebrite materials, but he acknowledged receiving the full extraction of defendant’s cell phone on December 17, 2024. The trial court denied the motion for mistrial, and at its request, the prosecutor met with defense counsel prior to Detective Ducote’s testimony and walked him through the Cellebrite materials that the State intended to rely upon at trial. The trial court ruled that any issues concerning the data could be explored through cross-examination. Defense counsel did not request a

continuance, recess, or an order compelling the State to produce a written expert report or summary pursuant to La. C.Cr.P. art. 719 as an alternative remedy. Under *Arnaud*, where an available remedy is not pursued, the defendant has not demonstrated actual prejudice resulting from the alleged discovery violation.

Additionally, defendant was able to fully cross-examine Detective Ducote at trial. The effects of a discovery violation may be remedied by effective cross-examination. *See State v. Sosa*, 04-507 (La. App. 5 Cir. 12/12/06), 948 So.2d 236, 243 (finding that the defendant was not prejudiced by the late disclosure of a special agent's written report where, during cross-examination, he challenged the agent's investigation methods, emphasized the lack of physical evidence collected and analyzed, and exposed the fact that the agent did not know how the fire in question started).

Here, defense counsel extensively cross-examined Detective Ducote regarding the Cellebrite extraction process, the distinction between partial and full extractions, and the nature of the data obtained once the device was unlocked. Detective Ducote explained that the earlier extraction was conducted "before first unlock" and that the later extraction contained additional data once the passcode was obtained. Counsel also questioned Sergeant Keller further about the fact that no separate report was generated to document the extraction results, because the Cellebrite extraction itself was turned over and, in his view, spoke for itself.

Under these circumstances, defendant has not demonstrated prejudice arising from the manner in which the Cellebrite-derived evidence was disclosed or presented. Defense counsel acknowledged receipt of the Cellebrite extraction before trial; the prosecutor reviewed the extraction with counsel at the court's direction and identified the information the State intended to rely upon; and defense counsel was afforded an opportunity to cross-examine the State's witnesses regarding the extraction process, the timing of the data recovery, and the

interpretation of the information presented to the jury. Thus, defendant's right to a fair trial was not violated by the introduction of the Cellebrite-derived evidence. Moreover, the trial court did not abuse its discretion in allowing Detective Ducote's testimony, and defendant was not prejudiced by the court's ruling, even assuming a violation of La. C.Cr.P. art. 719.

Admissibility of Geolocation Evidence Under Daubert and Article 702

Defendant contends the trial court erred in admitting Detective Ducote's geolocation testimony derived from the second Cellebrite extraction without satisfying La. C.E. art. 702 and *Daubert*. He argues that the State failed to establish the reliability of the geolocation data, that Detective Ducote conducted no independent testing or verification, and that he was not qualified to interpret or opine on geolocation evidence, as the State identified him only as an expert in mobile device analysis. Defendant further argues that the denial of a *Daubert* hearing relieved the State of its burden to demonstrate the scientific reliability of its methodology, allowing the jury to overestimate the precision of the evidence. According to defendant, these errors distinguish this case from *State v. Saltzman*, 13-276 (La. App. 3 Cir. 10/23/13), 128 So.3d 1060, *writ denied*, 14-11 (La. 6/13/14), 140 So.3d 1187, *cert. denied sub nom. Davis v. Louisiana*, 574 U.S. 1014, 135 S.Ct. 678, 190 L.Ed.2d 393 (2014), and constitute an abuse of discretion.

On March 4, 2024, the State filed a Notice of Intent to Call Expert Witness pursuant to La. C.Cr.P. art. 719, identifying Detective Ducote of the JPSO Crime Laboratory and advising that he would be tendered as an expert in the field of mobile device analysis. The notice provided that Detective Ducote would rely on his training and experience, as reflected in his curriculum vitae, and on his work executing and analyzing the cellular telephone extractions conducted in this case, which were documented in a report and provided to defense counsel in discovery.

Detective Ducote's curriculum vitae reflects that he was assigned to the Digital Forensic Unit of the JPSO and holds certifications as a Cellebrite UFED Certified Operator and in Cellebrite Advanced Smartphone Analysis (CASA). The curriculum vitae further reflects that he previously was qualified and accepted as an expert in mobile device analysis in multiple divisions of the Twenty-Fourth Judicial District Court.

On January 3, 2025, defendant filed a Motion in Limine to Exclude Text Messages Derived From Cellebrite Forensic Imaging. In that motion, defendant sought to exclude a text message purportedly sent by co-defendant Edwards to defendant at approximately 10:21 p.m. on August 5, 2021, as well as other text-message evidence derived solely from Cellebrite forensic imaging. Defendant argued that Cellebrite forensic imaging constitutes scientific or technical evidence subject to La. C.E. art. 702, asserting that specialized knowledge is required both to extract data from a cellular telephone and to interpret that data as text message communications. Defendant contended that, absent a reliable methodology and proper expert foundation, Cellebrite-derived text evidence was unreliable. He further asserted that the purported 10:21 p.m. text message was contradicted by defendant's cellular service provider records, which did not reflect that defendant received a text message at that time. Defendant also raised challenges based on authentication, discovery compliance, and the rule of completeness. The motion was set for hearing on January 6, 2025.

On January 6, 2025, defense counsel advised the court that he had filed motions seeking to exclude certain evidence and testimony, including Cellebrite-derived records. The State responded that any request to exclude evidence derived from Cellebrite extractions was premature and should be addressed through contemporaneous objections at trial. The trial court agreed and deferred any evidentiary rulings until the evidence was offered at trial.

On January 7, 2025, during opening statements, the State advised the jury that Cellebrite-derived text messages and location data from defendant's cellular telephone would show that defendant was at or near Pard Playground in the minutes preceding the homicide and that he was at the scene at the time of the offense. Following opening statements, defense counsel objected at sidebar, asserting that this was the first reference to geolocation data and that he was unaware the State intended to introduce such evidence. The State responded that the information was contained within the Cellebrite extraction of defendant's phone that had been disclosed in discovery. After confirming that defense counsel did not deny receiving the Cellebrite extraction, the trial court denied the motion. Defense counsel registered his objection.

On January 8, 2025, defendant filed a Supplemental Memorandum in Support of his Motion in Limine to Exclude Data Derived from Cellebrite Forensic Imaging. Defendant asserted that the State intended to introduce geolocation data derived from a December 16, 2024 extraction that differed from the information contained in a February 22, 2024 Cellebrite report purportedly generated from the same device. Defendant contended that these discrepancies demonstrated unreliability, adopted the arguments raised in his January 3, 2025 motion, and requested a hearing pursuant to La. C.E. art. 702. The trial court ordered that the matter be heard that same day.

At the January 8, 2025 hearing, defense counsel explained that he sought to address issues related to Cellebrite-derived data before such evidence was presented to the jury. The State responded that initial extractions may yield partial data and that additional data may be obtained once access to an encrypted device is achieved. The State further indicated that any newly obtained data was promptly disclosed to defense counsel. The trial court denied the motion to exclude, ruling

that defense counsel could explore any issues through cross-examination. The trial court did not conduct a *Daubert* hearing.

At trial, Detective Ducote testified that defendant's cellular telephone underwent two extractions: a partial "before first unlock" extraction on February 22, 2024, and a full extraction on December 16, 2024, after the passcode was obtained. He explained that geolocation data of the type presented at trial would not appear in a partial extraction because such data is stored within the encrypted user partition of the device.

Detective Ducote described the extraction process as relying on forensic software that creates a hash for the extracted data. He indicated that the data may be manually verified if a conflict arises or specific information is requested. When questioned regarding error rates, he stated that no written program is infallible, that error rates may change as phones are updated, and that none of the programs used provides a specific error rate. He further confirmed that he did not hold a degree in computer science and had not published in professional journals or served as a lecturer at conferences. The State thereafter offered Detective Ducote as an expert in mobile device analysis, and the trial court recognized him as such over defense objection.

Detective Ducote testified that after the extraction process, reports were generated documenting the extractions, and he authored and signed off on the digital analysis reports in this case. He explained that the reports reflected that the extracted data was placed into an analytics platform for review and that copies were provided to investigators and defense counsel. He further testified that he was able to operate the Cellebrite program using the extracted data to show how information appeared within the software. Defense counsel objected on foundation and relevance grounds, and the trial court overruled the objections.

While discussing the extraction of another device, Detective Ducote provided general testimony regarding how location services function on a mobile device. He explained that a user must enable location services and grant permission for those services to operate. He further explained that when reviewing location information in Cellebrite, a device's reported location may be reflected as a "GPS fix," referring to the satellite icon shown within the software.

Detective Ducote then testified regarding the cell phone associated with defendant. He stated that he reviewed location services and location data for that device and displayed that information using the Cellebrite program. He testified that the location data reflected that the device was at Pard Playground during the relevant time period. He explained that location data may be logged as a "rolling" series of points and that some logged locations were "aggregate locations," meaning the device had not moved a sufficient distance, but the location was still recorded. Detective Ducote indicated that the presence of a satellite icon signified a GPS-based location and stated that the Cellebrite report reflected location entries beginning at approximately 10:02 p.m. on August 5, 2021, with additional entries occurring closer to the time of the first 9-1-1 call. He further testified that communications sent between iPhones using data services may not appear in cellular carrier records. On cross-examination, Detective Ducote reiterated that geolocation data would not appear in a "before first unlock" extraction because such data is housed within the encrypted user partition of the device. He confirmed that the first extraction was performed on February 22, 2024, and that the later extraction was performed on December 16, 2024.

Detective Ducote further explained that the geolocation data displayed was derived from the later extraction. He stated that Cellebrite timelines reflect stored location points over a limited period and that older data may be deleted or cleaned by the device. Detective Ducote explained that BFU refers to "Before First

Unlock,” describing the state of a phone after it has been powered off and before the passcode is entered, during which the encrypted user partition remains inaccessible. He testified that when they obtained the passcode in December 2024, a full extraction was performed, which the State relied upon at trial.

Following the verdict, defendant filed a “Motion for Post-Verdict Judgment of Acquittal Motion for Arrest of Judgment and Motion for New Trial” on February 5, 2025. As relevant here, the motion challenged the admission of Cellebrite-derived evidence and the expert testimony of Detective Ducote interpreting geolocation data extracted from defendant’s cell phone. Prior to sentencing, the trial court denied the motion.

La. C.E. art. 702 governs the admissibility of expert testimony and provides:

A. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (1) The expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (2) The testimony is based on sufficient facts or data;
- (3) The testimony is the product of reliable principles and methods; and
- (4) The expert has reliably applied the principles and methods to the facts of the case.

In *State v. Foret*, 628 So.2d 1116 (La. 1993), the Louisiana Supreme Court adopted the test set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), regarding proper standards for the admissibility of expert testimony, which require the trial court to act in a gatekeeping function to ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable. *State v. Boudoin*, 11-967 (La. App. 5 Cir. 12/27/12), 106 So.3d 1213, 1225, writ denied, 13-255 (La. 8/30/13), 120 So.3d 260. The *Daubert* inquiry consists of four considerations: (1) whether the theory or

technique can be and has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error; and (4) whether the methodology is generally accepted by the relevant scientific community. *Id.*

In *State v. Francois*, 13-616 (La. App. 5 Cir. 1/31/14), 134 So.3d 42, 59, writ denied, 14-431 (La. 9/26/14), 149 So.3d 261, this Court discussed the Louisiana Supreme Court's recognition of the *Daubert* inquiry's limitation:

In 2003, ten years after adopting *Daubert*, the Louisiana Supreme Court recognized a limitation of the *Daubert* inquiry. *Cheairs v. State ex rel. Dep't of Transp. & Dev.*, 03-0680 (La. 12/3/03), 861 So.2d 536, 541-42. In *Cheairs*, the defendant challenged the qualification of the plaintiff's witness as an expert on the ground that his education did not qualify him to give opinion testimony on a particular matter. *Id.* at 541.

The *Cheairs* Court observed that *Daubert* only addresses the reliability of the methodology used by the expert, not the adequacy of the expert's qualifications. *Id.* at 542. Therefore, the court adopted a broader three-prong inquiry developed by the U.S. Eleventh Circuit "to more fully assist [trial] courts in determining all the relevant issues related to the admissibility of expert testimony[.]" *Id.* This three-prong inquiry was first set forth in *City of Tuscaloosa v. Harcros Chemicals, Inc.*, 158 F.3d 548 (11th Cir. 1998), in which the Court stated that the admission of expert testimony is proper only if all three of the following are true:

(1) [T]he expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue.

The trial court may consider one or more of the four *Daubert* factors, but that list of factors neither necessarily nor exclusively applies to all experts or in every case. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 142, 119 S.Ct. 1167, 1171, 143 L.Ed.2d 238 (1999). Rather, the law grants a district court "the same broad latitude when it decides how to determine reliability as it enjoys in

respect to its ultimate reliability determination.” *Id.* Competence of an expert witness is a question of fact to be determined within the sound discretion of the trial judge whose rulings on the qualifications of expert witnesses will not be disturbed absent an abuse of discretion. *State v. Mosley*, 08-1318 (La. App. 5 Cir. 5/12/09), 13 So.3d 705, 714, *writ denied*, 09-1316 (La. 3/5/10), 28 So.3d 1002.

Here, defendant challenges the admissibility of Detective Ducote’s testimony interpreting location data derived from the December 16, 2024 Cellebrite extraction on three related grounds: that the methodology was unreliable under *Daubert*, that Detective Ducote was not qualified under La. C.E. art. 702 to interpret geolocation data, and that the trial court failed to fulfill its gatekeeping function by denying a *Daubert* hearing.

We find the trial court did not abuse its discretion in admitting Detective Ducote’s testimony concerning location data derived from the December 16, 2024 Cellebrite extraction. The record reflects that Detective Ducote was tendered and accepted as an expert in mobile device analysis based on his training, certifications, and experience conducting cellular extractions using Cellebrite software. His testimony focused on explaining how the Cellebrite program displayed information associated with defendant’s phone, including timestamps and location entries, and he described what those records reflected during the relevant time period. Detective Ducote explained how location services function on an iPhone, how location data may be logged when such services are enabled, and how that information appeared within the Cellebrite program. He did not purport to conduct historical cell-site analysis, perform cellular tower triangulation, or engage in engineering-based modeling of cellular networks. Instead, he testified regarding the contents of the extraction and the manner in which Cellebrite displayed that information.

As to defendant's reliability challenge, we find the nature of the testimony did not require the trial court to conduct a full *Daubert* inquiry into a novel or untested scientific methodology. The testimony concerned the extraction and display of data associated with the device using a commonly utilized forensic tool, rather than the application of a separate geolocation technique requiring independent scientific analysis. Detective Ducote explained the extraction process, the distinction between the initial partial extraction and the later full extraction, and why certain data would not appear until the encrypted portion of the phone was accessed. The record further reflects that defense counsel extensively questioned the detective regarding the timing of the extractions, the absence of location data in the earlier extraction, and the limitations of the information reflected in the Cellebrite reports.

With respect to defendant's contention that Detective Ducote lacked qualifications to interpret location data, we find the trial court acted within its discretion in determining that his expertise in mobile device analysis encompassed explaining the contents of the extraction and how location information appeared within the Cellebrite program. Detective Ducote testified to specialized training in Cellebrite extraction and analysis, substantial experience performing cellular extractions, and prior qualification as an expert in mobile device analysis. While defendant argues that the detective lacked separate credentials in geolocation or GPS science, Detective Ducote's testimony did not extend beyond explaining how the extracted data appeared and what it reflected, based on his training and experience using the software.

Defendant relies on *State v. Saltzman, supra*, in challenging both the reliability of the testimony and Detective Ducote's qualifications. In *Saltzman*, an FBI agent testified as an expert regarding historical cell-site analysis, which involved the use of call-detail records and cellular network operations to create

mapped projections of the geographic area covered by particular cell towers. The agent testified that expertise in historical cell-site analysis required knowledge of how cellular networks operate, experience reviewing volumes of call-detail records, and practical experience geolocating a phone based on those records. *Id.* at 1102-03.

Here, however, the testimony did not involve historical cell-site analysis, cellular tower coverage, or service provider call-detail records. Rather, the testimony concerned location information reflected within the extraction of the device itself, as displayed by Cellebrite, and the manner in which that information appeared based on the phone's enabled location services. *Saltzman* involved different evidence and required a different kind of expertise, and thus a different type of expert testimony. *Saltzman* does not control the admissibility of the testimony at issue here.

Finally, as to the denial of a *Daubert* hearing, the record indicates that the trial court heard argument regarding defendant's concerns, permitted extensive cross-examination of the witness, and determined that the issues raised could be addressed through the presentation of evidence at trial. In *State v. Labranche*, 24-518 (La. App. 5 Cir. 11/6/24), 2024 WL 4692365, relying on *United States v. Williams*, 83 F.4th 994 (5th Cir. 2023), this Court considered whether expert testimony was necessary for the introduction of Cellebrite evidence. In *Williams*, the U.S. Fifth Circuit explained that law enforcement used a Cellebrite device to copy information from the defendant's mobile phones and that "an investigator merely plugged each phone into [the Cellebrite device] and ran the program," which extracted user data including messages, videos, e-mails, and applications. *Id.* at 995. This Court concluded that "[w]ithout a showing of specialized knowledge, the mere use and understanding of a Cellebrite extract at trial is insufficient to require an expert." *Id.* at 998. As in *Labranche*, we find the trial court did not

abuse its discretion in admitting the Cellebrite-based location testimony or in denying the request for a *Daubert* hearing.

ASSIGNMENT OF ERROR NUMBER TWO

Defendant argues in his second assignment of error that the trial court erred in granting the State's post-swearing challenge for cause to Juror Michel Wren based on a remote, indirect familial connection to a co-defendant. He contends that Mr. Wren's statements did not demonstrate bias or an inability to be impartial, that the State's basis for removal was speculative, and that no new information arose after the jury was sworn to permit removal under La. C.Cr.P. art. 789. According to defendant, the improper removal of a qualified juror violated his right to a fair trial.

The *voir dire* transcript reflects that Mr. Wren affirmed that he could be fair and impartial, follow the law as instructed, and decide the case based solely on the evidence presented. The transcript does not show that Mr. Wren was asked during *voir dire* whether he knew defendant or whether he had any familial relationship with him. The parties accepted him as a juror and he was sworn.

On January 7, 2025, the second day of trial and after opening statements, co-defendant's counsel advised the court during a bench conference that he had just learned of a possible familial connection involving Mr. Wren, and that Mr. Wren had not previously disclosed any such relationship. The State explained that the relationship was by marriage and involved a possible marital connection between Tatum and someone in Mr. Wren's family. The court discussed calling Mr. Wren to address the issue.

The trial court advised Mr. Wren that it had learned he might be related to someone in Tatum's family, and asked him to explain the relationship. Mr. Wren stated that his sister had a child with a man named "Tatum" and that he was unsure whether that individual was related to co-defendant Tatum. He denied that this

circumstance would affect his ability to weigh the evidence or render a fair and impartial verdict. Mr. Wren further stated that he had seen the individual in the courtroom the previous day, but he did not speak to him. He denied recognizing any of the individuals present that day as family members, denied any prior knowledge of the case, and again affirmed that he could decide the case fairly and impartially based solely on the evidence.

In response to questioning by co-defendant's counsel, Mr. Wren explained that the individual was his nephew, whom he saw only at holidays or family functions, and denied any animosity or close relationship. Defense counsel stated that he had no questions. After Mr. Wren left the bench, co-defendant's counsel stated that he had no motion, but observed that had this information been disclosed earlier, it would have been addressed during *voir dire*.

On the third day of trial, after three witnesses had testified, the court revisited the issue. The prosecutor explained that Mr. Wren had been identified as a potential relative of Tatum and that the issue was brought to the State's attention late on the second day of trial. The prosecutor acknowledged that Mr. Wren stated he could remain fair and impartial but argued that, given the seriousness of the charge and the possibility of a mandatory life sentence, asking him to render a verdict against a possible family member raised concerns regarding impartiality. The State requested that Mr. Wren be removed for cause, noting that an alternate juror was available. Co-defendant's counsel deferred to the court. Defense counsel stated that defendant did not take a position, but he noted for the record that Mr. Wren only realized the possible connection after recognizing someone in the gallery and did not act deceptively. The trial court granted the State's request, explaining that removal was in the best interest of the court, the parties, and Mr. Wren, and ordered that an alternate juror replace him.

For the first time on appeal, defendant argues that the trial court erred in removing Mr. Wren from the jury and replacing him with an alternate. The trial court has the discretion to utilize the service of an alternate juror, rather than to grant a mistrial, upon a proper finding that this is the best course of action. *State v. Franklin*, 21-531 (La. App. 5 Cir. 5/11/22), 341 So.3d 1237, 1246, writ denied, 22-857 (La. 10/18/22), 348 So.3d 733. In *State v. Marshall*, 410 So.2d 1116 (La. 1982), the Louisiana Supreme Court held that the trial court correctly discharged a juror who, after being sworn, was determined to be “not impartial,” as “unable to perform or disqualified from performing” her duty under La. C.Cr.P. art. 789.

As shown above, defense counsel did not lodge a contemporaneous objection to the removal of Mr. Wren and expressly stated that defendant would not take a position on the issue. The contemporaneous objection rule, La. C.Cr.P. art. 841(A), provides: “An irregularity or error cannot be availed of after verdict unless it was objected to at the time of the occurrence,” and further requires that a defendant state the grounds for the objection. A defendant is limited on appeal to those grounds articulated at trial. *State v. Snyder*, 12-896 (La. App. 5 Cir. 10/9/13), 128 So.3d 370, 377, writ denied, 13-2647 (La. 4/25/14), 138 So.3d 643.

Defendant failed to preserve this claim for appellate review. *See also State v. Blue*, 24-737 (La. App. 4 Cir. 8/21/25), 2025 WL 2416819 (finding juror-removal claim unpreserved where defense counsel failed to lodge a contemporaneous objection to the juror’s removal). This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER THREE

Defendant argues in his third assignment of error that the trial court violated his Sixth Amendment right to confrontation and his right to present a defense by limiting impeachment of two key State witnesses, Ms. Taylor and Edwards. He contends that the court improperly excluded portions of Ms. Taylor’s 2021 recorded statement, offered solely as a prior inconsistent statement, and further

restricted cross-examination by instructing counsel not to comment on the evidence. Defendant also asserts that he was prevented from impeaching Edwards with prior inconsistent statements contained in proffer notes incorporated into Edwards' plea agreement, which bore on Edwards' bias and motive. According to defendant, because Ms. Taylor and Edwards provided the only direct identifications in a largely circumstantial case, these restrictions were not harmless and require a new trial.

The Sixth Amendment to the United States Constitution guarantees an accused in a criminal prosecution the right to be confronted with the witnesses testifying against him. The Confrontation Clause of the Louisiana Constitution likewise expressly guarantees the accused the right "to confront and cross-examine the witnesses against him." La. Const. art. I, § 16; *State v. McGee*, 07-130 (La. App. 5 Cir. 6/26/07), 963 So.2d 449, 452. The main purpose of confrontation is to secure for the opponent the opportunity of cross-examination. *Id.* Cross-examination is the primary means of testing the truthfulness of testimony. *Id.*

Hearsay is an oral or written assertion, other than one made by the declarant while testifying at the present trial, offered in evidence to prove the truth of the matter asserted. La. C.E. art. 801. Hearsay evidence is not admissible except as otherwise specified in the Code of Evidence or other legislation. La. C.E. art. 802. Hearsay is excluded because the value of the statement rests on the credibility of the out-of-court asserter, who is not subject to cross-examination and other safeguards of reliability. *State v. Martin*, 458 So.2d 454, 460 (La. 1984).

La. C.E. art. 607(A) provides that the credibility of a witness may be attacked by any party, including the party calling him. A witness's prior inconsistent statement may be used to impeach his credibility. *McGee*, 963 So.2d at 452. La. C.E. art. 607 further provides, in pertinent part:

D. Attacking credibility extrinsically. Except as otherwise provided by legislation:

(1) Extrinsic evidence to show a witness' bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness.

(2) Other extrinsic evidence, including prior inconsistent statements and evidence contradicting the witness' testimony, is admissible when offered solely to attack the credibility of a witness unless the court determines that the probative value of the evidence on the issue of credibility is substantially outweighed by the risks of undue consumption of time, confusion of the issues, or unfair prejudice.

If the witness has had a fair opportunity "to admit the fact and has failed distinctly to do so," extrinsic evidence of a prior inconsistent statement is admissible, not to prove the truth of the matter asserted, that is, not for its hearsay content, but to establish the fact of contradiction as a means of impeaching a witness's general credibility. *McGee*, 963 So.2d at 452 (citing *State v. Owunta*, 99-1569 (La. 5/26/00), 761 So.2d 528, 529). But if the witness admits the statement, he has impeached himself by his own testimony, and the prior inconsistent statement is inadmissible. *Id.*

The Louisiana Supreme Court has outlined the balancing test to be applied when prior inconsistent statements are used to impeach credibility:

The right to use the prior statement depends upon the probative value of the statement as to the credibility of the witness' in-court testimony, as measured against the prejudicial impact that potentially may result from the jury's improper use of the evidence. In performing the weighing process, the court should consider the relevancy of the prior statement to the credibility of the in-court testimony and the motivation for the impeachment. The court should further consider the prejudicial effect of the statement if used improperly as substantive evidence, and the effectiveness of a limiting instruction in avoiding improper use of the statement. (Internal quotations omitted).

State v. Pham, 12-635 (La. App. 5 Cir. 5/16/13), 119 So.3d 202, 221, writ denied, 13-1398 (La. 12/6/13), 129 So.3d 531 (citing *State v. Cousin*, 96-2973 (La. 4/14/98), 710 So.2d 1065, 1071).

Additionally, La. C.E. art. 613 provides:

Except as the interests of justice otherwise require, extrinsic evidence of bias, interest, or corruption, prior inconsistent statements, conviction of crime, or defects of capacity is admissible after the proponent has first fairly directed the witness' attention to the statement, act, or matter alleged, and the witness has been given the opportunity to admit the fact and has failed distinctly to do so.

As to defendant's argument regarding Ms. Taylor, she testified that three gunmen were present during the incident, including one standing near her and two positioned near Mr. Veal. She testified that the gunmen near Mr. Veal were approximately his height and armed with medium-sized rifles, while the gunman near her wore gloves, long sleeves, long pants, and a ski mask. On cross-examination, Ms. Taylor testified that earlier that day she had met defendant, whom she later recognized as the individual standing next to her during the incident. She explained that she recognized him based on his eyes, and she confirmed that the individual standing next to her was not the person who initiated the shooting. Ms. Taylor further testified that she was interviewed by detectives later that evening, but she did not initially tell law enforcement that she recognized the individual who pointed the weapon at her. Defense counsel questioned Ms. Taylor about whether she told detectives that the gunman was a "tall, goofy kid, not over 21," which she denied.

Defense counsel thereafter attempted to show Ms. Taylor portions of the recorded interview, prompting repeated objections and discussion regarding foundation, hearsay, and whether the video was being offered to refresh recollection or for impeachment purposes. During the ensuing bench conference, the trial court noted that Ms. Taylor had already denied making the alleged statement and suggested that defense counsel could instead question the investigating detective regarding what Ms. Taylor told him during the interview. Defense counsel agreed with the court's suggestion, stating: "Okay. I'll do it that way. I see your point, Judge." The court responded that it was unclear what

counsel was attempting to accomplish, and defense counsel then stated: “Well, I may be—I’ll withdraw this and I’m going to wrap up.” After the bench conference concluded, defense counsel tendered the witness without further objection, proffer, or request for a ruling.

Accordingly, defendant is precluded from seeking appellate review of this alleged error on appeal under La. C.Cr.P. art. 841. Further, a defendant is limited on appeal to those grounds articulated at trial. *Snyder*, 128 So.3d at 377. Where the defense counsel acquiesces when the court sustains the State’s objection to the examination of a witness, that objection is waived. *State v. Huizar*, 414 So.2d 741, 749 (La. 1982); *State v. Smith*, 39,698 (La. App. 2 Cir. 6/29/05), 907 So.2d 192, 200.

Because defense counsel did not object to the trial court’s handling of the impeachment evidence, did not state any grounds for an objection, and ultimately agreed not to pursue the matter, expressly withdrawing the request and tendering the witness, defense counsel acquiesced in the trial court’s ruling and did not preserve this issue for appellate review. As such, the issue is waived under La. C.Cr.P. art. 841. *See Favors*, 43 So.3d at 261 (“Where the defense counsel acquiesces when the court sustains a State’s objection to the examination of a witness, that objection is waived.”).

Moreover, errors involving confrontation and cross-examination are subject to a harmless error analysis. *State v. Anthony*, 17-372 (La. App. 5 Cir. 12/30/20), 309 So.3d 912, 928, n.7, *writ denied*, 21-176 (La. 10/12/21), 325 So.3d 1067. 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.* Here, any alleged error regarding the cross-examination of Ms. Taylor was harmless, as the jury heard other evidence demonstrating inconsistencies in her

statements to law enforcement, emphasizing that she did not identify defendant at the time of the offense. Ms. Taylor testified that she did not tell law enforcement on the night of the incident that she recognized the individual who pointed the weapon at her. Additionally, Sergeant Keller testified that Ms. Taylor did not identify defendant as the perpetrator during her interview, and he denied having any conversations with her regarding an identification or description of the perpetrator. Accordingly, the guilty verdicts cannot be attributed to any alleged error regarding the cross-examination of Ms. Taylor.

As for defendant's arguments related to the cross-examination of Edwards, defendant contends that the trial court improperly limited impeachment through prior statements attributed to Edwards during proffer meetings with the State. As reflected in his plea agreement, Edwards participated in two proffer meetings with the State on March 14, 2024, and June 5, 2024. In the factual basis of the plea agreement, Edwards acknowledged that he reviewed notes prepared by the assistant district attorney from both meetings and confirmed that they accurately reflected his statements. During cross-examination on January 9, 2025, Edwards testified that a detective asked him whether Harris was involved in the offense, and he denied Harris' involvement. He further testified that the detective did not ask him that question more than once. Edwards acknowledged that his plea agreement reflected that he initially was arrested after leaving Harris' house. He also testified that defendant possessed the .40-caliber handgun at the time of the murder. Edwards denied recalling that he told the district attorney's office that a mutual friend had a gun, and denied recalling that he told the State that Harris possessed the firearm or gave it to defendant.

The State objected, arguing that defense counsel was attempting to impeach Edwards with notes prepared by the district attorney's office, rather than by Edwards himself. During the bench conference, the trial court stated that defense

counsel could not impeach the witness with statements made by someone else. Defense counsel responded that he had not laid a foundation and stated that he would move on. Thereafter, Edwards testified that as part of his plea agreement, he reviewed notes drafted by the district attorney's office and agreed that they accurately reflected what he told the State. When shown the notes at trial, however, Edwards testified that reviewing them did not refresh his recollection. He denied telling the State that Harris provided the firearm to defendant and maintained that he only denied identifying Harris as the source of the weapon. Edwards gave conflicting testimony regarding whether he had previously reviewed the notes, but he continued to deny that he told the State that Harris gave the gun to defendant.

Defense counsel then stated that because Edwards denied making the statement, he would seek to introduce the notes for impeachment. The State objected on grounds of lack of foundation. The trial court instructed defense counsel to lay a proper foundation and confirmed that the document had not been prepared by Edwards. Defense counsel asserted that Edwards had adopted the notes by attesting to their accuracy in the plea agreement. After further discussion regarding hearsay and foundation, defense counsel stated his intent to proffer the document. The trial court sustained the State's objection, instructed that the document could be proffered outside the presence of the jury, and directed the parties to move on.

The trial transcript from that date indicates under "Index—Exhibits" the following entry: "Proffer Augustus #1 (notes from DA's Office)." However, the January 9, 2025 minute entry does not reflect that that the defense proffered any evidence, and the minute entry from January 10, 2025—the final day of trial—likewise contains no indication that evidence was proffered. Additionally, the exhibit index filed with this Court does not reflect that any item titled "Proffer Augustus #1" was proffered by defendant.

Here, the record reflects that the parties engaged in discussion regarding the use and admissibility of notes from Edwards' March 14 proffer meeting, following the State's objection. Although defense counsel indicated an intent to proffer the document, the record does not reflect that a proffer was completed or that the notes were ultimately admitted into evidence.

In any event, even if the trial court erred in the handling of Edwards' cross-examination, this error was harmless. As seen above, errors involving confrontation and cross-examination are subject to a harmless error analysis.

Anthony, 309 So.3d at 928 n.7. An error is harmless when the guilty verdict was surely unattributable to the error. Whether an error is harmless in a particular case depends upon many factors, including: (1) the importance of the witness's testimony; (2) whether the testimony was cumulative in nature; (3) whether corroborating or contradictory evidence regarding the major points of the testimony existed; (4) the extent of cross-examination permitted; and (5) the overall strength of the State's case. *State v. Payne*, 17-553 (La. App. 5 Cir. 10/17/18), 258 So.3d 1015, 1023, *writ denied*, 18-1932 (La. 4/15/19), 267 So.3d 1122.

In this case, the limitation on Edwards' cross-examination did not preclude the jury from considering evidence of Harris's involvement or from assessing Edwards' credibility. Edwards was extensively questioned regarding inconsistencies between his statements to law enforcement, statements made during proffer meetings with the State, and his trial testimony, and the jury heard Edwards deny that Harris was involved and deny telling the district attorney's office that Harris provided a firearm. Furthermore, evidence bearing on Harris' involvement was presented through other witnesses. Sergeant Keller later testified that, after determining Harris purchased the .40-caliber firearm that was recovered from the Siesta Motel room, he subsequently interviewed Harris, who stated that

he gave the weapon to Edwards. Thus, the jury was presented with evidence contradicting Edwards' denial and bearing directly on his credibility. Also, the record reflects that defense counsel was otherwise afforded wide latitude in cross-examining Edwards regarding his prior statements and credibility. Under these circumstances, the guilty verdicts were surely unattributable to any alleged error related to the handling of Edwards' cross-examination.

ASSIGNMENT OF ERROR NUMBER FOUR

Defendant next argues that the trial court erred in denying his requested special jury instruction on accomplice testimony. He contends that Edwards, a former co-defendant who testified pursuant to a plea agreement, was an accomplice and that Louisiana law permits a cautionary instruction unless accomplice testimony is materially corroborated. Defendant asserts that his requested charge was correct and pertinent under La. C.Cr.P. art. 807 and not included in the general charge, and that the trial court abused its discretion in finding Edwards' testimony corroborated. According to defendant, Edwards' account conflicted with Ms. Taylor's testimony, was internally inconsistent, and was not meaningfully resolved by circumstantial digital evidence; therefore, the refusal to give the cautionary instruction constitutes reversible error.

On December 30, 2024, defense counsel Mr. Brown filed Objections and Requests for Special Jury Instructions, requesting multiple jury instructions, including a special instruction on causation and a cautionary instruction regarding accomplice testimony.²⁵ With respect to the accomplice instruction, the motion

²⁵ The pertinent proposed instruction stated:

[I]n Louisiana, an accomplice is qualified to testify against a co-perpetrator even if the State offers him inducements to testify. *Neal*, 00-0674 at p. 11, 796 So. 2d at 658. The inducements would merely affect the witness's credibility. *Id.* at p. 12, 796 So. 2d at 658. Additionally, a conviction may be sustained on the uncorroborated testimony of a purported accomplice, although the jury should be instructed to treat the testimony with great caution. *State v. Tate*, 01-1658, pp. 4-5 (La. 5/20/03), 851 So. 2d 921, 928. When the accomplice's testimony is materially corroborated by other evidence, such language is not required. *Id.*;

asserted that Edwards, a former co-defendant who had entered a plea agreement, provided uncorroborated testimony and that the jury should therefore be instructed to treat such testimony with great caution.

The matter was set for a hearing on January 6, 2025, at which time a brief discussion acknowledging receipt of the proposed instructions was held, after which the court went off the record. On January 8, 2025, during a subsequent discussion of jury instructions, Mr. Brown clarified that the primary issue raised in his motion concerned causation in the felony-murder charge. Later that day, outside the presence of the jury, the trial court denied the requested causation instruction, distinguishing the cases cited in support of that request and noting that the proposed instruction relied on a nonexistent statutory subsection. Defense counsel objected.

On January 9, 2025, defense counsel Bellow filed a separate Defense Motion for Special Instruction. There, counsel requested the following proposed instruction in pertinent part:

ACCOMPLICE - CO-DEFENDANT - PLEA AGREEMENT

In this case the government called as one of its witnesses an alleged accomplice, named as a co-defendant in the indictment, with whom the government has entered into a plea agreement. This agreement provides for a reduced charge of Manslaughter and a 25-year sentence. Such plea bargaining, as it is called, has been approved as lawful and proper, and is expressly provided for in the rules of this court.

An alleged accomplice, including one who has entered into a plea agreement with the government, is not prohibited from testifying. On the contrary, the testimony of such a witness may alone be of sufficient weight to sustain a verdict of guilty. You should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict a defendant upon the unsupported

State v. Castleberry, 98-1388, p. 13 (La.4/13/99), 758 So. 2d 749, 761. An accomplice's testimony is materially corroborated "if there is evidence that confirms material points in an accomplice's tale, and confirms the defendant's identity and some relationship to the situation." *Castleberry*, 98-1388 at p. 13, 758 So. 2d at 761 (quoting *State v. Schaffner*, 398 So. 2d 1032, 1035 (La. 1981)).

testimony of an alleged accomplice unless you believe that testimony beyond a reasonable doubt.

The fact that an accomplice has entered a plea of guilty to the offense charged is not evidence of the guilt of any other person.

On January 9, 2025, outside the presence of the jury, the trial court denied Mr. Bellow's requested special instruction on accomplice or co-defendant testimony, explaining that such an instruction applies only where accomplice testimony is uncorroborated and finding that Edwards' testimony was corroborated by other evidence presented at trial. Mr. Bellow objected to the ruling to preserve the issue for appeal.

La. C.Cr.P. art. 802 mandates that the trial court instruct the jury on the law applicable to each case. The trial court is required to charge the jury on the law applicable to any theory of defense, when properly requested, which the jurors could reasonably infer from the evidence. *State v. Ball*, 12-710 (La. App. 5 Cir. 4/24/13), 131 So.3d 896, 901, *writ denied sub nom. State ex rel. Ball v. State*, 13-1329 (La. 11/8/13), 125 So.3d 450, and *writ denied*, 13-1139 (La. 11/15/13), 125 So.3d 1103. La. C.Cr.P. art. 807 mandates that a court shall give a requested special charge if it does not require qualification, limitation, or explanation, and if it is wholly pertinent and correct. It need not be given if it is included in the general charge or in another special charge to be given. *State v. Reed*, 24-329 (La. App. 5 Cir. 4/2/25), 413 So.3d 1166, 1184, *writ denied*, 25-561 (La. 9/10/25), 415 So.3d 1277.

As a general matter, a trial court has the duty to instruct the jurors as to "every phase of the case supported by the evidence whether or not accepted by him as true," which duty extends to "any theory ... which a jury could reasonably infer from the evidence." This evidence presented at trial, however, must support a requested written charge for the jury. *State v. Joseph*, 23-446 (La. App. 5 Cir.

4/24/24), 386 So.3d 688, 693. A district court's failure to give a requested jury instruction constitutes reversible error only when there is a miscarriage of justice, prejudice to the substantial rights of the accused, or a substantial violation of a constitutional or statutory right. *Id.*

As reflected in the record, both of defendant's trial counsel sought special jury instructions relating to accomplice testimony. The record does not reflect that the trial court specifically ruled on the accomplice instruction included in Mr. Brown's Objections and Requests for Special Jury Instructions. Rather, the record reflects that Mr. Brown specifically addressed and pursued the causation instruction, on which the trial court ruled. The record does reflect that Mr. Bellow later sought a substantially similar accomplice or co-defendant instruction in a separate motion, that the trial court did not include the requested instruction, and that Mr. Bellow objected.

The Louisiana Supreme Court summarized the law governing requested accomplice-testimony instructions in *State v. Hughes*, 05-992 (La. 11/29/06), 943 So.2d 1047, 1051, explaining:

[A] conviction may be sustained on the uncorroborated testimony of a purported accomplice, although the jury should be instructed to treat the testimony with great caution. When the accomplice's testimony is materially corroborated by other evidence, such language is not required. An accomplice's testimony is materially corroborated "if there is evidence that confirms material points in an accomplice's tale, and confirms the defendant's identity and some relationship to the situation."

(Internal citations omitted). In *Hughes*, the defendant also complained of the trial court's failure to provide a cautionary instruction on accomplice testimony. The Court observed that the accomplice testimony was corroborated by the testimony of other witnesses and that the trial court had instructed the jury to "scrutinize carefully the testimony and circumstances under which the witness has testified," including "any reason he may have for testifying in favor of or against the State or

the defendant, and the extent to which the testimony is supported or contradicted by other evidence.” Moreover, defense counsel summarized the credibility instruction during closing argument. Given the independent corroborating testimony and the general credibility instruction provided, the Court concluded that the jury was given sufficient guidance to evaluate the accomplice testimony. *Id.* at 1052-54.

Here, the trial court declined to give a special cautionary instruction on accomplice testimony, apparently viewing the requested accomplice cautionary instruction as applicable only in circumstances where the accomplice’s testimony was not corroborated by other evidence. Here, independent evidence in the record corroborated material portions of Edwards’ testimony and established defendant’s identity and relationship to the offense, including the digital communications and call-detail data between Edwards and defendant on the night of the homicide; phone-location evidence placing defendant’s phone at or near Pard Playground; Cash App records reflecting a payment to defendant earlier that day; and eyewitness testimony identifying defendant at the scene. Although Ms. Taylor’s testimony differed from Edwards’ account in certain respects, she identified defendant as one of the perpetrators.

The jury also received a general credibility instruction consistent with *Hughes*. During the jury charges, the trial court instructed jurors that they were the sole judges of the credibility of witnesses and that they should “scrutinize carefully the testimony and the circumstances under which the witness has testified,” including “any reason [a witness] may have for testifying in favor of or against the state or the defendant and the extent to which the testimony is supported or contradicted by other evidence.” Also, Edwards was extensively cross-examined regarding his plea agreement and prior inconsistent statements, and defense counsel emphasized those credibility issues during closing argument.

Under these circumstances, defendant was not entitled to the requested special accomplice cautionary instruction, and the trial court's refusal to give the requested instruction was not an abuse of the court's discretion, as it did not result in a miscarriage of justice, was not prejudicial to the substantial rights of defendant, nor a substantial violation of defendant's constitutional or statutory rights. This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER FIVE

Defendant argues in his final assignment of error that the trial court erred in allowing Sergeant Keller to speculate about the meaning of text messages central to the State's circumstantial case. He contends that Sergeant Keller lacked personal knowledge and was not qualified as an expert in slang or linguistic interpretation, yet he offered opinions interpreting the messages and attributing them to defendant without foundation. According to defendant, this testimony constituted improper lay opinion and unqualified expert testimony under La. C.E. art. 701 and was not harmless in a largely circumstantial case.

During Sergeant Keller's trial testimony, he confirmed that he reviewed text message communications between defendant and a co-defendant after examining the Cellebrite extractions. Sergeant Keller testified that based on his twenty-three years of law enforcement experience, including his role as a supervisor in the robbery section, he was familiar with the term "a lick."

When the State questioned Sergeant Keller regarding the meaning of the term, co-defendant's counsel objected on the grounds of speculation and lack of foundation, asserting that the detective was not qualified as an expert and was speculating as to the substance of the communications.²⁶ The prosecutor reiterated

²⁶ Defendant appears to have preserved this issue for appellate review. *See* La. C.Cr.P. art. 842 ("If an objection had been made when more than one defendant is on trial, it shall be presumed, unless the contrary appears, that the objection has been made by all the defendants.").

Sergeant Keller's twenty-three years of law enforcement experience and his familiarity with the term, and argued that he could explain its meaning in the context of his work. Co-defendant's counsel countered that the sergeant's experience did not establish a foundation to interpret the specific conversation between the two individuals, which occurred on August 2, prior to the homicide. The trial court overruled the objection, and defense counsel requested that the objection be noted for the record. The judge later explained that with respect to the objections to his interpretation of the text messages, he was overruling them pursuant to La. C.E. art. 701.

Afterwards, Sergeant Keller testified that based on his law enforcement experience, the term "lick" is commonly used to refer to a robbery to obtain money from someone. He further explained that on August 2, three days before the homicide, a message sent from Tatum's phone to defendant's phone stated: "Need a lick tonight" and defendant's phone replied, "I'm going to try and hook something up for us."

Sergeant Keller further testified that based on his law enforcement experience, he was familiar with the term "yeahs," which he explained commonly refers to firearms. Co-defendant's counsel objected on the same grounds as before; the trial court overruled the objection and noted it for the record. Sergeant Keller confirmed that on August 2 at approximately 9:08 p.m., messages were exchanged between defendant and a co-defendant, including a message from defendant stating: "Dude got the yeahs?", which the detective explained referred to guns. He further testified that the response stated: "Yea, Tyron said he gona holla at him he don't even have to come if he don't want to just get the AR and one hand thing." Upon cross-examination by co-defendant's counsel, Sergeant Keller testified that there are multiple meanings associated with the term "lick," but that in the context of the text message, it was his opinion that the term referred to a robbery. He

further testified that he did not ask Tatum what the term meant because Tatum was combative during the interview and did not provide any information.

The testimony of a lay witness in the form of opinions or inferences, where the lay witness is not testifying as an expert, is limited to those opinions or inferences that are rationally based on the perception of the witness and are helpful to a clear understanding of the testimony or the determination of a fact in issue. La. C.E. art. 701; *State v. Salvant*, 24-205 (La. App. 5 Cir. 3/19/25), 411 So.3d 74, 97-98, *writ denied*, 25-485 (La. 9/16/25), 416 So.3d 473. Generally, a lay witness can only testify to the facts within his knowledge and not to impressions or opinions; however, a witness is permitted to draw reasonable inferences from his personal observations. *State v. Decay*, 01-192 (La. App. 5 Cir. 9/13/01), 798 So.2d 1057, 1074, *writ denied*, 01-2724 (La. 8/30/02), 823 So.2d 939. This Court has held that a law officer may testify as to matters within his personal knowledge acquired through experience without being qualified as an expert. *State v. Spottsville*, 24-26 (La. App. 5 Cir. 10/30/24), 398 So.3d 1249, 1261-62 (citing *State v. Griffin*, 14-251 (La. App. 5 Cir. 3/11/15), 169 So.3d 473).

The trial court is vested with much discretion in determining whether to admit lay or expert testimony into evidence. *Spottsville*, 398 So.3d at 1262. Two issues to be considered by a reviewing court in determining whether the trial court abused its discretion in allowing lay opinion testimony are: (1) was the testimony speculative opinion evidence or simply a recitation of or inferences from facts based upon the witness's observations; and (2) if the testimony was admitted in error, was the testimony so prejudicial to the defense as to require a reversal. *Id.*

Testimony in the form of an opinion or inference otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the trier of fact. La. C.E. art. 704; *Salvant*, 411 So.3d at 98. In other words, the fact that an opinion or inference embraces an ultimate issue in a case does not preclude

its admissibility. *Salvant*, 411 So.3d at 98. The admissibility of opinion testimony, whether lay or expert, must be relevant and is subject to the balancing test set forth in La. C.E. art. 403. *Id.*

In *Griffin*, 169 So.3d at 487, the defendant challenged a detective's testimony regarding the meaning of slang language used in a phone conversation, arguing that the detective was not an expert and so his opinion should have been excluded. This Court found that the trial court did not err in allowing Detective Vasquez to testify as a lay witness under La. C.E. art. 701 as to inferences regarding the contents of the recorded phone conversations, based on his own observations and experiences. *Id.* This Court explained that the detective testified as to his opinion regarding the meaning of certain slang words based on his personal observations and experience gained through years of law enforcement work and numerous criminal investigations within the community. The detective further explained that his understanding of the slang terms derived from regularly speaking with individuals involved in criminal activity and from listening to extensive recorded communications during the investigation. This Court concluded that the detective's testimony constituted permissible lay opinion testimony under La. C.E. art. 701, as it resulted from a "process of reasoning familiar in everyday life," as opposed to "a process of reasoning which can be mastered only by specialists in the field." This Court further found that Detective Vasquez's testimony provided the jury with relevant factual information about the investigation, including the meanings of terms used in conversations and the identification of the individuals referenced during the phone calls. Accordingly, this Court held that the detective's opinions regarding the meaning of the slang terms were properly admitted. *Id.* at 488-89.

Similarly, in *State v. Griffin*, 16-424 (La. App. 3 Cir. 4/19/17), 217 So.3d 484, *writ denied*, 17-1027 (La. 3/2/18), 269 So.3d 708, the defendant challenged

the admission of a detective's testimony interpreting the nature and significance of text messages recovered at the crime scene, arguing that the detective was not qualified as an expert and that his opinion testimony was improper. *Id.* at 508. The defendant argued that the case was distinguishable from this Court's decision in *Griffin*, 14-251, 169 So.3d 472, because the State failed to establish an adequate foundation for the detective's opinion, and the testimony was not helpful to the jury. The court rejected that argument, stating that the case was strikingly similar to *Griffin*. The court explained that like the officer in *Griffin*, Detective Moss applied a process of reasoning familiar in everyday life to interpret the text messages and did not rely on any special training, scientific knowledge, or other specialized professional expertise in forming his opinion. Accordingly, the trial court did not err in admitting the testimony. *Id.* at 509-10.

Here, although Sergeant Keller did not provide the same level of detailed explanation as the officers in *Griffin*, the record reflects that his testimony was based on his personal knowledge and experience in law enforcement. Sergeant Keller testified that he was the supervisor of the robbery section, had twenty-three years of law enforcement experience, and was familiar with the terminology used in the text messages. Based on that experience, he explained the meaning of the terms used in the messages. Sergeant Keller's testimony reflected a process of reasoning familiar in everyday life, rather than specialized or technical expertise.

Even if Sergeant Keller's testimony was erroneously admitted, however, it was not so prejudicial as to constitute reversible error. The jury viewed the text messages themselves and assessed their meaning independently. Other evidence presented at trial also supported the State's theory, including testimony that the robbery had been planned and additional text messages referencing firearms, including an "AR." Accordingly, we find the verdict was surely unattributable to any alleged error. This assignment of error lacks merit.

ERROR PATENT DISCUSSION

We reviewed the record for errors patent according to 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). We found no errors patent in this case that require corrective action.

CONCLUSION

For the foregoing reasons, defendant's convictions and sentences are affirmed.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
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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 **FEBRUARY 25, 2026** 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

25-KA-296

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)

HONORABLE PAUL D. CONNICK, JR.
(APPELLEE)

SHERRY A. WATTERS (APPELLANT)

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THOMAS J. BUTLER (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED