

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-391

STATE OF LOUISIANA

versus

KINTEZ O. JOHNSON AKA "KUTTA"

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 22-4791, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

February 25, 2026

MARC E. JOHNSON
JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Marc E. Johnson

CONVICTION AND SENTENCE ON COUNT FOUR
REVERSED;
CONVICTIONS ON COUNTS ONE, TWO, AND THREE
AFFIRMED;
SENTENCES ON COUNTS TWO AND THREE VACATED AND
REMANDED FOR RESENTENCING;
SENTENCE ON COUNT ONE AFFIRMED

MEJ
SMC

CONCURS IN PART AND DISSENTS IN PART, WITH
REASONS

JGG

TRUE COPY



JALISA WALKER
DEPUTY CLERK

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STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.

Thomas J. Butler

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JOHNSON, J.

Defendant/Appellant, Kintez O. Johnson a/k/a “Kutta”, appeals his convictions for second degree murder, aggravated assault with a firearm, possession of a firearm by a convicted felon and obstruction of justice rendered in the 24th Judicial District Court, Division “M”. For the following reasons, we reverse the obstruction of justice conviction and sentence. We also vacate the sentences for the aggravated assault with a firearm and possession of a firearm by a convicted felon convictions and remand the matter for resentencing. In all other respects, the rulings of the trial court are affirmed.

FACTS AND PROCEDURAL HISTORY

On January 19, 2023, a Jefferson Parish Grand Jury indicted Defendant with second degree murder of Reginel Golman, in violation of La. R.S. 14:30.1 (count one); aggravated assault with a firearm of Chanell Wilson, in violation of La. R.S. 14:37.4 (count two); possession of a firearm by a convicted felon, in violation of La. R.S. 14:95.1 (count three);¹ and obstruction of justice, in violation of La. R.S. 14:130.1 (count four). On January 20, 2023, defendant was arraigned and pleaded not guilty to all counts. The case proceeded to trial before a 12-person jury on September 30, 2024.

At trial, Chanell Wilson described the victim, Reginel, as her boyfriend and stated that his mother and niece lived on Silver Lily Lane. Ms. Wilson and Reginel shared a silver Honda CRV. On September 23, 2022, Reginel drove them to Mike’s Discount and then to his mother’s residence. Ms. Wilson remained in the vehicle while Reginel went inside and later returned with his mother and niece. While they were outside, Ms. Wilson noticed a vehicle at the corner and saw a

¹ The State alleged in count three that on September 23, 2022, Defendant violated La. R.S. 14:95.1 in that he possessed a semi-automatic handgun after having been convicted on August 13, 2020, of six counts of illegal use of weapons of dangerous instrumentalities in violation of La. R.S. 14:94, case number 20-0971, in Division “F” of the 24th Judicial District Court in Jefferson Parish.

male exit, walk up the street, return, and “holler at everybody.” Ms. Wilson stated that he spoke with Reginel and his niece, Monique Golman. She described him as wearing a black “Pooh Shiesty”² ski mask with an open face that could be worn pulled up like a beanie, along with blue jeans. She knew him by the nickname “Kutta.” Reginel came to the vehicle and told her that someone had “money over his head,” which she understood to mean that someone intended to hurt him. When she asked who, he did not say. Reginel then went back inside his mother’s residence, while Kutta stood in the middle of the street with his mask still up.

When Reginel returned to the vehicle, he asked Ms. Wilson to move to the driver’s side and told her that Kutta was coming with them to get boudin at Mike’s Discount. Reginel sat in the front passenger seat, and Kutta entered the rear passenger seat behind Ms. Wilson. After Ms. Wilson parked at Mike’s Discount, Reginel went inside the store and came back out. He told her to take Kutta “by the circle,” referring to the apartments across the street. Ms. Wilson dropped Kutta off and drove back to Mike’s Discount. When she returned, Reginel again sat in the front passenger seat, and an individual named “Jerome” stood outside the vehicle speaking with him as they waited for boudin.

Approximately 10 or 15 minutes later, Kutta returned wearing the same clothing Ms. Wilson had seen earlier. She testified that his mask had been pulled down when he entered Mike’s Discount but was pulled all the way up when he came back out. He approached the front of the vehicle, asked Jerome for a light to smoke a cigarette, then pulled out a gun and shot Reginel. Ms. Wilson testified that she felt scared and panicked and, because of how close the shooting was, initially believed she had been hit.

² Ms. Wilson described the mask as a tight-fitting hood with an opening for the face and confirmed that it could be pulled up to cover an individual’s nose, mouth, and chin. She testified that she also observed Defendant wear the mask in that position on the night of the shooting.

Ms. Wilson testified that she exited the vehicle to get help but found the store's door locked. She got back in the vehicle and drove quickly up Ames Blvd. During the drive, Reginel asked her to take him to his mother's residence and then did not speak again. When she arrived, Ms. Wilson knocked on the door and told Reginel's mother that he had been "hit." Monique, Reginel's mother, and others came outside, and police soon arrived. Ms. Wilson was taken to the bureau and told police that Kutta was the shooter but that she did not know his full name. She explained that Kutta's grandmother and sister lived near her own grandmother's residence. She stated that Kutta was not included in the first photographic lineup she was shown but that she later identified him in a second lineup.³ Ms. Wilson also identified Defendant in open court as the person who shot and killed Reginel.

Ms. Wilson denied that Defendant was wearing any gloves and stated that he did not touch anything in the vehicle except her door handle. Ms. Wilson testified that Reginel had a gun with him when they drove from Silver Lily Lane to Mike's Discount. She further testified that she did not know whether Reginel had a gun on his person while she was driving, or whether a gun was in the vehicle at that time. She explained that Reginel had access to her vehicle and drove it frequently, but she did not know whether he stored his firearm in the vehicle. Ms. Wilson confirmed that she did not know whether Reginel had a firearm on his person while he was at Mike's Discount, despite her earlier statement that he had a gun at some point that evening.

When confronted with her earlier statement that Reginel had a gun on his person at some point that evening, Ms. Wilson testified that she did not know at what point she had seen him with it. She stated that she did not know if the gun

³ Jefferson Parish Sheriff's Office Sergeant Anthony Buttone recalled that Ms. Wilson referred to the shooter as "Kutta," described a neck tattoo, and indicated she knew his family but not his legal name. He initially investigated an individual named "Cortez" based on database results matching a physical description, but Ms. Wilson did not identify anyone in that photographic lineup.

was loaded but also testified that she saw Reginel put bullets into the gun. She said she did not know what happened to the gun after the shooting. She testified that she was scared for her life and thought she had been hit. She explained, “Whatever they had in my car, I don’t know, but I know, when I got my car back, I got rid of it that same night because they gave me my car back the same night it happened and I got rid of my car the next day.” She denied removing the firearm herself or having anyone else remove it before the police arrived. Ms. Wilson also denied knowing whether there was any “beef” between Defendant and Reginel, denied that Reginel pointed a gun at Defendant at Mike’s Discount, denied seeing Reginel hand his phone to Defendant, and denied touching the firearm herself. She said that before the shooting, she saw a “clip in [Reginel’s] hand,” which she confirmed was a different part of the firearm than the firearm itself. She denied, however, that she ever saw Reginel load a gun that night. Ms. Wilson acknowledged that she had not told law enforcement about seeing the clip during her initial statements. She denied seeing a firearm on the floorboard at any point that night and denied that Reginel pulled a gun on anyone. She also testified that Reginel knew there was a “hit out for him.” Ms. Wilson stated that at the time she saw Reginel holding the clip, Defendant was standing on the passenger side of the vehicle behind the “mirror part of the door.”

Monique Golman, Reginel’s niece, last saw him alive in front of her residence in September 2022. She saw him there with Ms. Wilson and Defendant, who was dressed in all black and whose face was visible. Monique stated that she called Reginel while he was at the store, and he told her that he was coming to pick her up. She waited outside for him to return. The next time she saw the vehicle, she observed Reginel deceased inside. Monique did not remember seeing Reginel carry a firearm that night and was not sure whether she had seen him carry one on other occasions. She denied seeing a gun on his person when he returned, denied

seeing a gun on the floorboard or on the street, and denied seeing a gun after he returned. When Ms. Wilson returned to the residence, Monique screamed, and neighbors came outside. She testified that she did not remember seeing anyone enter the vehicle before the police arrived. She saw a neighbor check Reginel's pulse while standing on the left side of the vehicle.

During her testimony, Monique explained that she received a phone call from her uncle, Durrell Golman, that night.⁴ As the call played, she stated that she was nervous and watching her surroundings because it was dark outside, and she saw a car drop someone off at the corner, who looked suspicious to her. She testified that she also saw someone "standing right there watching" and explained that this was what she meant when she said during the call that it was "spooking [her] out." Monique explained that she was describing what she was observing outside as she spoke with Durrell.

Monique testified that, during the call, she saw Defendant and Reginel speaking outside, and Reginel later told her that Defendant had asked for a cigarette and a ride. She told Reginel that she did not trust Defendant and that he looked suspicious. She also told Reginel that Defendant "could shoot you in the head or anything." She confirmed that the name "Kutta" was spoken during the call. Monique stated that she handed Defendant the phone at one point and later received it back from Reginel. She confirmed that, at this point, all three individuals were inside the vehicle, with Ms. Wilson driving, Reginel in the front passenger seat, and Defendant in the back seat.

⁴ Recordings and transcripts of a jail call were admitted into evidence. Monique recognized her voice on the recording, and she identified the caller who said, "This is Smoke," as her uncle, Durrell Golman. Durrell testified that, while housed at the River Bend Detention Center, he spoke with Monique on September 22, 2022 and again spoke with her and with Reginel on September 23, 2022. He confirmed that the call on September 23rd call, admitted and played for the jury, was the last time he spoke with Reginel and stated that he did not know someone named "Kutta."

The transcript of the recorded call⁵ largely mirrored Monique's trial testimony, reflecting that she reported observing a man whom she considered suspicious near Reginel's vehicle and warned Reginel not to trust him. The transcript additionally reflects that she described the man as wearing all black with a beanie and stated that he asked for a cigarette and a ride. She also indicated that Reginel said that this individual was "Kutta." Further, the transcript reflects that when Reginel took the phone from Monique, he told Durrell, "Man, the dude trying to—he's saying I got money on my head, and he try to take a lick—trying to take the hit like I'm stupid." Durrell asked, "So you told him he's dead game?" and Reginel responded, "Yeah. He still just sitting in the back of the car." Durrell then asked, "So you got—you ain't—you ain't—yeah?" and Reginel replied, "Yeah. I got 30 on me, man." Durrell asked whether they were "in front the door or something," and Reginel confirmed that they were. Durrell cautioned him not to "hit this dude" at the door. Reginel further explained, "No, I asked somebody where he was living, and he's like, man, heard some sh*t in the winds that he got money on my head." He continued, "Yeah, so evidently he's trying to take the hit, bro." Reginel said he was "not getting in the car with that dude" and stated that he was "about to go back out there and protect [his] momma."

Later in the call, Defendant spoke with Durrell. Defendant identified himself as the individual that had been in Angola with Durrell, said he had been "hanging out cooling," and that he spent time with Reginel "every now and then." They briefly discussed Defendant's release and Durrell's remaining time in custody. Defendant told Durrell that a car was coming and said he would speak with him later. After Defendant ended the call, Monique confirmed to Durrell that

⁵ Based on the record, in the call, Monique is identified as Unknown Female #1; the victim's mother is Unknown Female #2; Unknown Male #1 is Reginel; and Unknown Male #2 is Defendant ("Kutta").

this was the individual she had been describing, and she continued reporting his movements on the street.

At trial, Monique explained that she spoke with a detective and was shown a photographic lineup, in which she identified the individual in position number three based on the eye tattoo on his neck and the “zeros.” She confirmed that this was the person she handed the phone to that night and who had “spooked [her] out.” Monique further explained that it was nighttime when Defendant came to her residence on Silver Lily Lane. He spoke to her outside without a mask on and asked to log into his Instagram account from her phone. She told him, “No,” and he replied, “It’s supposed to be that way.” She did not remember whether Defendant had face tattoos, explaining that “so much was happening” because her uncle was dead in front of her, he had been telling her that someone was going to kill him, and “the person was present.”

Monique testified that Reginel identified Defendant to her as “Kintez” and told her, “That dude’s name Kintez. We got into an altercation,” which had occurred “a little while ago.” She was not certain what information she relayed to detectives but stated that she probably told them that “Kutta was ‘Kintez Johnson’” because she did not know him as “Kutta” and knew the name “Kintez” only from what Reginel told her. Monique confirmed that Reginel willingly got into the vehicle with the person she understood to be threatening his life. When asked whether he took that threat seriously, she stated that if he had, “he probably would be here.”

Jefferson Parish Sheriff’s Office (“JPSO”) Detective Darvelle Carter testified that the investigation involved two scenes. On Silver Lily Lane, officers searched the Honda CRV and recovered one fired cartridge casing. At Mike’s Discount, they located additional casings outside and obtained surveillance

footage⁶ The surveillance footage from Mike's Discount showed several relevant sequences on the night of September 23, 2022. Detective Carter said that at approximately 9:45 p.m., exterior footage showed Ms. Wilson's silver Honda CRV at the store, with Ms. Wilson driving and Defendant inside the vehicle before she drove to the Silver Lily Lane residence.

At approximately 10:25 p.m., additional exterior footage showed the CRV returning to the store. The distance between Mike's Discount and Silver Lily Lane was an approximately three-minute drive. At that time, Ms. Wilson was driving, Reginel was in the front passenger seat, and Defendant was seated in the rear. Footage also reflected that Ms. Wilson had briefly driven across the street to drop Defendant at the nearby apartment complex and returned two to three minutes later. From a side camera, Detective Carter identified the CRV parked with Ms. Wilson and Reginel inside. A male walking from the direction of the apartment complex was identified by Ms. Wilson as Defendant. He was dressed in a black top, black pants, and gray undershirt. The footage showed him walking across the street toward the store with a mask pulled up so that only his eyes and nose were visible.⁷

Interior footage showed a masked individual wearing a black shirt, black pants, and blue tennis shoes, consistent with Ms. Wilson's description, although a face could not be clearly seen. Another individual in the store was identified as Jerome, and Defendant was identified as the person standing closest to the counter, appearing to purchase a single cigarette. Detective Carter described that exterior

⁶ Portions of the surveillance footage were admitted into evidence.

⁷ Detective Carter's testimony about the surveillance footage resumed on the second day of trial, when he described a similar segment of video. Detective Carter testified that another segment at approximately 10:23 p.m. showed the CRV with both doors open and an individual he believed to be named "Jerome" leaning in and out of the vehicle. He stated that the legs visible at the top of the frame were identified by Ms. Wilson as Defendant walking back toward the vehicle, and he noted that Defendant's mask appeared in a different position from earlier in the night. He further testified that the video showed the driver's door open with the vehicle's lights on, and he did not observe anyone lean on the exterior mirror. Detective Carter testified that investigators attempted to locate Jerome, but he was homeless and difficult to find. They later learned he was deceased.

footage showed Defendant and Jerome walking to the CRV, where Ms. Wilson and Reginel remained seated. They stood near the front passenger side of the vehicle and appeared to engage in conversation. Defendant stood a couple of feet from the vehicle. The footage then showed muzzle flashes coming from outside the CRV near Defendant's position, with no muzzle flashes coming from inside the vehicle. Jerome immediately ran after the first shot, and Defendant fled in the same direction. The CRV reversed and then moved forward again. Ms. Wilson exited the vehicle, appearing panicked and ran toward the store, which had locked its doors immediately after the gunfire.

Afterward, Detective Carter testified that the first 9-1-1 call came from Mike's Discount, and within minutes additional calls were made from Silver Lily Lane. Both Monique and Ms. Wilson identified Defendant in photographic lineups. Detective Carter said that Defendant was known to several witnesses as "Kutta" and that witnesses stated he wore a black outfit and a "Pooh Shiesty"-style mask, which was sometimes fully covering his face and other times rolled up so that his face was visible. He denied that Monique ever told him Defendant's name was "Kintez" and stated that she said the individual identified himself as "Kutta." He added that the only tattoo she mentioned was a neck tattoo. He further noted that Defendant identified himself as "Kutta" during the jail call played at trial.

Buccal swabs were taken from Defendant, Reginel, and Ms. Wilson, and additional swabs were collected from the rear interior door handle and the passenger-side mirror area of the CRV. Detective Carter stated that no DNA testing was initially requested because the lab generally does not perform such testing when a suspect has already been identified and there is an eyewitness to the shooting. He acknowledged that, although these areas were swabbed, he had no DNA evidence in the case because the swabs were never tested, and he did not know whether they contained any DNA. He said no fingerprints were collected

and that he did not attempt to obtain any. He later explained that when the district attorney's office requested DNA analysis, a buccal swab was obtained from Defendant. However, due to the complexity of the profiles on the handle, no further testing could be performed, and nothing came of the sample taken from the outside of the mirror.

Detective Carter stated that Ms. Wilson later told him there had been a gun inside the vehicle, but she had not initially disclosed this because she had not been asked. She told him that Reginel carried a firearm that day and had been loading a magazine on the floorboard, but no firearm was ever recovered. He acknowledged that numerous bystanders were gathered around the CRV before deputies arrived and that body camera footage showed people surrounding, though not necessarily touching, the vehicle. He further confirmed that during the jail call, Reginel mentioned threats against him, stating, "I got thirty on me, man," and that Durrell asked whether he had told the suspect he was "dead game."

On October 6, 2022, Deputy Brienne Carter of the Kenner Police Department responded to a call about a suspicious person passed out at 3rd Rock Tavern. She encountered a white male, later identified as Jamie Cole, who had a firearm in his waistband. The weapon, a Glock 19, serial number BVC417, manufactured in Austria, was recovered. Linda Tran, a former firearms examiner with the JPSO crime lab, analyzed 10 cartridge cases and three bullets recovered in this case. She determined that all ten cartridge cases had been fired from the same firearm. She also identified three Winchester 9 mm fired cartridge casings. She could not reach a conclusion regarding the three bullets. She explained that one fired cartridge casing associated with the homicide was entered into the National Integrated Ballistic Information Network ("NIBIN"), but no match was generated at that time because no firearm had been recovered. Months later, after the Glock 19 recovered in the unrelated Kenner incident was test-fired and its ballistic

information entered into NIBIN, the system generated a lead. The test-fired cartridge casing from that Glock matched the 10 cartridge casings recovered in this homicide, indicating they were all fired from the same Glock 19 pistol.

Dana Troxclair, the forensic pathologist who conducted the autopsy, documented 15 gunshot wounds. She testified that the projectiles traveled primarily from front to back, right to left, and downward, penetrating the ribs and both lungs, and causing approximately a half liter of blood to accumulate in the pleural cavity. Three projectiles were recovered from the body and body bag. Dr. Troxclair concluded that the victim's cause of death was multiple gunshot wounds and that the manner of death was homicide.

The State and defense counsel stipulated that Donna Quintanilla would testify that the fingerprints of Defendant would match the information found in a certified conviction packet for Defendant. The packet provided that Defendant was convicted on August 13, 2020, in case number 20-917 in the 24th Judicial District Court, Division "F", for illegal discharge of a firearm. Defendant received a five-year sentence.

On October 2, 2024, at the conclusion of the trial, the jury found Defendant guilty as charged on all counts. On October 24, 2024, Defendant filed a motion for post-verdict judgment of acquittal and a motion for new trial. On October 29, 2024, the trial court denied these motions. After delays were waived, the trial court sentenced Defendant to life imprisonment without benefit of parole, probation, or suspension of sentence on count one (second degree murder); 10 years imprisonment at hard labor "to be served consecutive to any and all other sentences" on count two (aggravated assault with a firearm); 15 years imprisonment in the Department of Corrections⁸ without benefit of parole,

⁸ This Court has previously held that when the trial judge states that the defendant is sentenced to the "Department of Corrections," the sentence is necessarily at hard labor. *State v. Jamison*, 17-49 (La. App. 5 Cir. 5/17/17), 222 So.3d 908, 909 n.2. *See also* La. R.S.15:824(C)(1), which states,

probation, or suspension of sentence to be “served concurrent with all other sentences” on count three (possession of a firearm by a convicted felon); and 20 years imprisonment at hard labor to be served “concurrent with counts 1 and 3, but consecutive to count 2” on count four (obstruction of justice).⁹ On November 18, 2024, Defendant filed a motion for appeal, which the trial court granted on November 20, 2024. The instant appeal followed.

ASSIGNMENTS OF ERROR

On appeal, Defendant alleges the following assignments of error: 1) there was insufficient evidence to support the verdicts, specifically arguing that the State failed to prove specific intent for the obstruction of justice conviction; 2) the trial court committed reversible error by refusing to instruct the jury on self-defense regarding the second degree murder charge; and 3) the trial court committed reversible error by excluding the testimony of the DNA analyst, Marcela Zozaya, effectively denying his constitutional right to present a defense.

LAW AND ANALYSIS

Sufficiency of the Evidence

Defendant argues that the evidence was insufficient on all counts because the State failed to negate the reasonable probability of misidentification. He notes that the identification evidence was entirely circumstantial, consisting of a grainy video of a masked shooter and inconsistent witness testimony with no forensic evidence, no confession, and no voice identification linking him to the crime. He further asserts that key discrepancies in the State’s evidence left open the reasonable hypothesis that another armed individual committed the shooting. He

“Notwithstanding any other law to the contrary, only individuals actually sentenced to death or imprisonment at hard labor shall be committed to the Department of Corrections.” *But see* La. R.S.15:824(C)(2), which provides exceptional circumstances.

⁹ The court indicated that, based on Defendant’s life sentence in the Department of Corrections, the imposition of fines, fees, and costs was not appropriate. The court further found that Defendant lacked the ability to pay and “accomplished” all fines, fees, and costs.

contends that no rational juror could have found guilt beyond a reasonable doubt and that all four convictions must be reversed.

Next, as to Defendant's conviction for obstruction of justice, he argues that the State's allegation that he took the gun from the scene does not establish any intent to interfere with a criminal investigation or proceeding. In support, he cites to *State v. Scott*, 23-22 (La. App. 4 Cir. 8/30/23), 372 So.3d 42, 54, *writs denied*, 23-1317, 23-1318 (La. 3/19/24) 381 So.3d 707, and this Court's decision in *State v. Ramirez-Delgado*, 24-119 (La. App. 5 Cir. 12/18/24), 409 So.3d 953. He asserts that the facts are nearly identical, emphasizing that the shooter left casings at the scene, acted in view of cameras, and fled without trying to conceal evidence or silence the eyewitness.

On October 24, 2024, Defendant filed a motion for post-verdict judgment of acquittal, arguing that the evidence was insufficient to support the verdicts. Defendant filed a motion for new trial, arguing, among other things, that the verdict was contrary to the law and evidence on the same date. On October 29, 2024, the defense submitted the motions, and the State objected to the motion for post-verdict judgment of acquittal. The trial court found the evidence sufficient to support the unanimous guilty verdicts on all four counts and denied the motion for post-verdict judgment of acquittal. The court adopted those reasons in part in denying the motion for new trial.¹⁰

The question of sufficiency of the evidence is properly raised in the trial court by a motion for post-verdict judgment of acquittal pursuant to La. C.Cr.P. art. 821. *State v. Kestle*, 24-192 (La. App. 5 Cir. 3/5/25), 411 So.3d 30, 38, *writ denied*, 25-431 (La. 6/3/25), 410 So.3d 785. A post-verdict judgment of acquittal

¹⁰ With regard to a motion for new trial, this Court has recognized that the denial of a motion for new trial based on the verdict being contrary to the law and evidence is not subject to review on appeal; however, both the Louisiana Supreme Court and this Court have still addressed sufficiency claims under these circumstances. *State v. Ellis*, 18-463 (La. App. 5 Cir. 7/15/19), 276 So.3d 633, 642.

shall be granted only if the court finds that the evidence, viewed in a light most favorable to the State, does not reasonably permit a finding of guilty. *Id.*

In reviewing the sufficiency of the evidence, an appellate court must determine if the evidence, whether direct or circumstantial, or a mixture of both, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Lane*, 20-181 (La. App. 5 Cir. 1/27/21), 310 So.3d 794, 804. Under the *Jackson* standard, a review of the record for sufficiency of the evidence does not require this Court to determine whether the evidence at the trial established guilt beyond a reasonable doubt but rather, whether, upon review of the whole record, any rational trier of fact would have found guilt beyond a reasonable doubt. *State v. McKinney*, 20-19 (La. App. 5 Cir. 11/4/20), 304 So.3d 1097, 1103.

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

In its determination of whether any rational trier of fact would have found the defendant guilty, a reviewing court will not re-evaluate the credibility of witnesses or re-weigh the evidence. *Lane*, 310 So.3d at 804. Indeed, the resolution of conflicting testimony rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *State v. Lavigne*, 22-282 (La. App. 5 Cir. 5/24/23), 365 So.3d 919, 940, *writ not considered*, 23-1119 (La. 10/10/23), 370 So.3d 1086. Thus, in the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *State v. Sly*, 23-60 (La. App. 5 Cir. 11/2/23), 376 So.3d 1047, 1072, *writ denied*, 23-1588 (La. 4/23/24), 383 So.3d 608.

In the instant case, Defendant was convicted of second degree murder (count one), aggravated assault with a firearm (count two), possession of a firearm by a convicted felon (count three), and obstruction of justice (count four). Defendant does not contend that the statutory elements of the second degree murder, aggravated assault with a firearm, or possession of a firearm by a convicted felon counts were not proven.¹¹ Rather, he argues that the evidence was insufficient to establish his identity as the perpetrator for all the offenses. Additionally, Defendant specifically challenges whether the State proved the elements of obstruction of justice.

Encompassed within proving the elements of an offense is the necessity of proving the identity of the defendant as the perpetrator. Where the key issue is identification, the State is required to negate any reasonable probability of misidentification in order to carry its burden of proof. *State v. Lopez*, 23-335 (La.

¹¹ Nevertheless, we find that a rational trier of fact could have found the evidence sufficient to support the convictions on counts one through three because the State presented evidence establishing all elements of those offenses.

App. 5 Cir. 8/21/24), 398 So.3d 167, 176-77, *writ denied*, 24-1187 (La. 1/14/25), 398 So.3d 650.

Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find that the State negated any reasonable probability of misidentification. Ms. Wilson testified that she was familiar with Defendant, explaining that his grandmother and sister lived near her own grandmother's residence. Both Ms. Wilson and Monique testified that Defendant was present with Reginel on the night of the shooting and identified him in photographic lineups. Ms. Wilson further identified Defendant in court as the person who approached the front passenger side of the CRV and fired the shots. She explained that Defendant had ridden in the vehicle with them shortly before the incident, returned to Mike's Discount wearing the same clothing, and was standing at the passenger window when gunfire erupted. Although surveillance footage showed that Defendant had pulled his mask up when he approached the vehicle, Ms. Wilson identified Defendant.

Surveillance footage introduced at trial corroborated the eyewitness testimony. The video showed an individual who matched Defendant's clothing and appearance walking toward the CRV from the direction of the apartment complex, where Ms. Wildon had dropped him off, standing near the front passenger door, and muzzle flashes appearing from that location. The footage also showed that no muzzle flashes came from inside the vehicle and that the individual fled immediately after the shooting. Monique testified that Defendant had been with Reginel earlier that evening, that she observed him in the area, and that she identified him in a photographic lineup based on features she recognized.

Additionally, the transcript of the jail call reflects that Reginel told Durrell that a man was "trying to take a hit" on him and that there was "money on [his] head." The transcript further reflects that Reginel stated he was not going to get

into a vehicle with that individual. The transcript further reflects that Defendant spoke with Durrell during the call and identified himself as the individual who had previously gone to prison with Durrell. Monique also confirmed during the call that Defendant was the same individual she had earlier described as having been dropped off and warned Reginel not to trust. She relayed that Reginel referred to that individual as “Kutta.”

Although the firearm was not recovered from either scene and no forensic evidence linked Defendant to the shooting, the State presented consistent eyewitness identifications supported by surveillance footage depicting Defendant’s proximity to the vehicle at the exact moment shots were fired. The detective further testified that he observed muzzle flashes coming only from Defendant and not from inside the vehicle, where the victim was located. Based on this evidence, we find that a rational trier of fact could conclude that Defendant was the shooter and that the State negated any reasonable probability of misidentification under the *Jackson* standard.

In addition to his identity argument, Defendant specifically contends that the State failed to prove the elements of obstruction of justice as to count four. La. R.S. 14:130.1 provided the following:¹²

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

(1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance.... (a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state,

¹² The statute has been amended since the commission of the offense. “A defendant is to be tried under the statute in effect at the time of the commission of the crime.” *State v. Weaver*, 01-467 (La. 1/15/02), 805 So.2d 166, 170; *State v. Do*, 16-439 (La. App. 5 Cir. 12/14/16), 208 So.3d 1048, 1052, *writ denied*, 17-354 (La. 11/13/17), 229 So.3d 924 n.4. Regardless, the amendments to the statute did not alter the substance of the statute at issue here.

local, or United States law enforcement officers[.]

In count four, the State alleged that Defendant committed obstruction of justice by tampering with evidence. Specifically, the State asserted that Defendant intentionally removed or disposed of the semi-automatic handgun used to shoot and kill the victim and that he did so with the knowledge that taking the firearm from the scene or later disposing of it would be the subject of investigation by state, local, or federal law enforcement. The State further alleged that Defendant acted with the knowledge that removing or disposing of the firearm could reasonably affect an actual or potential criminal proceeding, whether past, present, or future.

Specific intent” is the state of mind that exists when circumstances indicate the offender actively desired prescribed criminal consequences to follow his act. La. R.S. 14:10(1). Under La. R.S. 14:130.1(A)(1), obstruction of justice is a specific intent crime. *Lopez*, 398 So.3d at 181. To support a conviction, the State must prove more than the mere removal of evidence from a crime scene; the State must also prove that such removal was done with “the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding.” La. R.S. 14:130.1(A)(1); *Lopez*, 398 So.3d at 167. The knowledge requirement of obstruction of justice is met if the perpetrator merely knows that an act “reasonably may” affect a criminal proceeding. The statute does not require that the criminal proceeding actually be affected; the perpetrator must simply know and understand that the act reasonably may affect the proceeding. *State v. Loggins*, 23-519 (La. App. 5 Cir. 10/30/24), 397 So.3d 1265, 1280.

In *Scott*, 372 So.3d at 54-55, cited by Defendant, the defendant argued that there was insufficient evidence to convict him of obstruction of justice because the State did not definitively prove that he removed the firearm from the crime scene.

The State asserted that the evidence was sufficient to convict the defendant of obstruction of justice because there was ample evidence for the jury to conclude that he fled the scene with the assault rifle he used to shoot the victims. The fourth circuit explained that video surveillance showed him fleeing the scene, yet there was no footage of the defendant leaving the rifle at the scene. An officer testified that the crime lab conducted a search of the crime scene, and the defendant's rifle was never recovered. Based on those circumstances, the State argued that a rational juror could infer that the defendant took his rifle with him when he left the crime scene. *Id.*

In *Scott*, the fourth circuit further explained that assuming the State established that the defendant fled the crime scene with his assault rifle, this evidence was not sufficient to prove beyond a reasonable doubt that he possessed the specific intent to distort the police investigation. The court stated that the hypothesis that the defendant had the specific intent to distort the results of the police investigation when he left the crime scene was contradicted by the fact that he left behind shell casings (instead of collecting the shell casings ejected from his rifle), video surveillance (instead of destroying the video surveillance that documented his presence in the neighborhood shooting at the SUV), and witnesses (instead of harming the witnesses that were outside on the street at the time of the shooting incident). The court explained that from this evidence, a rational juror could have inferred that, in taking the firearm with him, the defendant gave no thought to interfering with the results of a criminal investigation or proceeding. The fourth circuit found that the evidence was insufficient to support the conviction for obstruction of justice and vacated that conviction. *Id.*

In *Ramirez-Delgado*, 409 So.3d at 961-63, cited by Defendant, this Court found that the evidence was insufficient to prove that the defendant intentionally moved or removed the gun from the scene or that he did so with specific intent of

distorting the results of a criminal investigation or proceeding. The defendant left the crime scene with the gun used to shoot the victim in a vehicle registered to his name, drove to the airport, and left the gun in the vehicle. This Court stated that video surveillance showed the defendant leaving the crime scene in the vehicle he occupied. The defendant did not collect the shell casing from the crime scene, destroy any surveillance video of himself, or harm the person who witnessed the shooting. This Court stated that there was no testimony or evidence that the defendant discussed hiding or destroying the gun from the scene with anyone after the shooting. We found that the evidence presented did not show that in taking the gun with him, the defendant gave any thought to interfering with the results of a criminal investigation or proceeding. *Id.*

This Court cited to *Scott*, as well as other cases, in which it found that courts have “required more than merely leaving the scene of the crime with the murder weapon to support an obstruction of justice conviction.” For example, *see State v. Alexander*, 23-540 (La. App. 4 Cir. 4/23/24), 401 So.3d 105, *writ denied*, 24-665 (La. 12/11/24), 396 So.3d 968, *cert. denied*, --- U.S. ---, 145 S.Ct. 2780, 222 L.Ed.2d 1077 (2025) (The defendant was convicted of second degree murder and obstruction of justice where the gun used in the shooting was never recovered. In affirming the obstruction of justice conviction, the fourth circuit acknowledged its prior decision in *Scott* but pointed out the State had presented additional evidence that the defendant had also deleted records of a phone call to a cab company requesting transportation to the area where the murder occurred.). *See also State v. Bethley*, 22-849 (La. App. 4 Cir. 6/21/23), 368 So.3d 1148, 1155, *writ denied*, 23-965 (La. 1/17/24), 377 So.3d 242 (During his testimony, the defendant was questioned about the whereabouts of the firearm, and he responded evasively to the question, never providing a direct answer. The court found this evidence

reasonable to infer that the defendant left the scene of an incident with the firearm and that he knew it would be the subject of a criminal investigation.).

In this matter, we find that the evidence was insufficient to prove beyond a reasonable doubt that Defendant acted with the specific intent to distort the results of a criminal investigation. The State presented no evidence establishing a link between Defendant and the murder weapon. The firearm was recovered at a later time from an unrelated individual. Further, there was no evidence presented that Defendant sold, traded, transferred, or intentionally discarded the weapon. As in *Scott* and *Ramirez-Delgado*, there was no evidence that Defendant collected shell casings, disabled surveillance cameras, or attempted to silence witnesses. The record reflects that Defendant left Ms. Wilson, who knew him, and another individual present at the scene unharmed. Under this view, we conclude that the State failed to exclude the reasonable hypothesis that Defendant simply fled the scene in possession of his own firearm, without the specific intent to interfere with a criminal investigation, and find the evidence insufficient to support the obstruction conviction. Accordingly, we reverse the conviction and sentence on this count.

Self-Defense Jury Instruction

Defendant argues that the trial court committed reversible error by refusing to instruct the jury on self-defense as to the second degree murder charge. He contends the court wrongly ruled that identity and self-defense are “mutually exclusive,” thereby forcing him to abandon a viable defense theory. According to Defendant, the record contained evidence supporting self-defense, including the victim’s recorded threats to make the suspect “dead game” and to “hit” him with a firearm, as well as witness testimony that the victim was loading a gun at the time of the shooting. Nevertheless, the trial court denied the self-defense instruction for the homicide count, while granting the instruction for the related assault charge

arising from the same incident. Defendant asserts this arbitrary distinction created a fatal inconsistency in the jury instructions and likely confused the jury as to the applicable burden of proof. Alternatively, to the extent trial counsel failed to properly object, Defendant argues he was denied effective assistance of counsel because there was no strategic reason to abandon a viable defense theory based solely on the court's erroneous view of the law.

The record reflects that a charge conference occurred in chambers. The judge stated that the only change from the prior draft concerned the possession of a firearm by a convicted felon instruction and that all other instructions remained the same. Neither party voiced any objection, and defense counsel responded, "Satisfied, Your Honor." After the defense rested, the State began its closing arguments. Defense counsel then raised a concern about language on page 13 of the jury instructions regarding the presumption. The court explained that the language related to the homicide burden was included to distinguish it from the aggravated assault burden.

Once the jury was recessed, the judge revisited the issue and noted that a self-defense instruction had been included. She explained that she referenced "aggravated assault with a firearm" because the burden varies by charge. The judge asked whether defense counsel sought to remove that phrase and clarified that self-defense does not apply to the La. R.S. 14:95.1 or obstruction charges. Counsel agreed and stated his concern related only to the homicide language. The court observed that no evidence of self-defense had been presented. Defense counsel responded that the jury could determine the issue and that he intended to argue it. The State countered that a self-defense instruction requires evidence from the defense, noted that none had been offered through testimony or cross-examination, and asked the court to decide whether to give the instruction before allowing argument.

The judge stated that adding the instruction would require addressing a different standard and asked why the issue had not been raised earlier. Defense counsel apologized, explaining he misunderstood the earlier discussion. The court reminded counsel that the instructions had been provided in advance for this purpose and that both sides had agreed to them. Defense counsel maintained he was seeking clarification. Counsel stated he sought a model self-defense instruction. The judge directed him to supply the proposed language and reminded him it was his burden to do so. The State requested time to verify its position and noted that prior cases in the division required some evidence of self-defense before giving the instruction because it imposes additional burdens on both sides.

The judge cited *State v. Duckett*, 12-578 (La. App. 5 Cir. 5/16/13), 119 So.3d 168, 177, *writ denied*, 13-1383 (La. 1/17/14), 130 So.3d 340, and explained that the alleged victim's possession of a gun did not alone establish self-defense, as no evidence showed Defendant faced imminent danger of death or great bodily harm. Defense counsel argued imminent danger could be inferred because the decedent had a loaded gun. The State disagreed, noting that no witness testimony or cross-examination indicated the victim pointed or reached for a weapon. The State reiterated that no evidence supported imminent danger and that, if a self-defense instruction was given, it would request removal of the identity instruction.

The judge then explained, “[I]f I grant his options for self-defense... then we’re absolutely taking out the identity because he is the person who is now claiming self-defense.” The State agreed, stating, “[T]he affirmative defense of self-defense presupposes that the Defendant is the offender.” Defense counsel responded, “Understood.” The court emphasized the theories were “mutually exclusive paths.” Counsel requested a moment to confer with his client. Afterward, defense counsel stated, “I would like to keep the Jury instructions as they are. I appreciate the Court’s indulgence in entertaining my request.” The

court confirmed that it would maintain the identity instruction and would not add a self-defense instruction, noting it relied on *State v. Duckett, supra*. Before sentencing, in addressing the motion for post-verdict judgment of acquittal, the judge stated she had spoken with the jurors after trial. She noted that, although she did not instruct on self-defense, the jury told her they considered it and struggled with whether reasonable doubt existed and whether the case involved self-defense. The judge denied the motion.

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. Cambrice*, 24-153 (La. App. 5 Cir. 12/18/24), 410 So.3d 302, 313. La. C.Cr.P. art. 807 mandates that a requested special charge shall be given by the court 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. *Id.*

As a general matter, a district 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” and that 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.*

La. C.Cr.P. art. 801(C) provides: “A party may not assign as error the giving or failure to give a jury charge or any portion thereof unless an objection thereto is

made before the jury retires or within such time as the court may reasonably cure the alleged error.” This Court has held that a defendant is required to make a timely objection under La. C.Cr.P. art. 801 in order to preserve a jury charge issue for review. *See State v. Gardner*, 05-62 (La. App. 5 Cir. 6/28/05), 907 So.2d 793, 801.

As shown above, although the trial court indicated that a self-defense instruction would require removal of the identity instruction, defense counsel did not object. Instead, after indicating that he would confer with his client, defense counsel agreed to proceed with the jury instructions as given, before the court issued any definitive ruling on the matter. Under these circumstances, we find that the issue was not preserved for appellate review.

Nevertheless, Defendant argues that, if the issue was not preserved for appellate review, trial counsel’s failure to object to the jury instructions constituted ineffective assistance of counsel. As such, the issue is presented under that alternative theory. Under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution, a defendant is entitled to effective assistance of counsel. *State v. McMillan*, 23-317 (La. App. 5 Cir. 12/27/23), 379 So.3d 788, 798-99, *writ denied*, 24-131 (La. 9/4/24), 391 So.3d 1057. To prove ineffective assistance of counsel, defendant must show: (1) that counsel’s performance was deficient; that is, that the performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Robinson*, 23-277 (La. App. 5 Cir. 6/28/23), 368 So.3d 737, 742, *writ denied*, 23-1042 (La. 12/5/23), 373 So.3d 979. An error is considered prejudicial if it was so serious as to deprive the defendant of a fair trial, or “a trial whose result is reliable.” *Robinson*, 368 So.3d

at 742. To prove prejudice, the defendant must demonstrate that, but for counsel's unprofessional conduct, the outcome of the trial would have been different. *Id.*

To prevail, the accused must overcome a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Gatson*, 334 So.3d at 1040. Any inquiry into the effectiveness of counsel must be specific to the facts of the case and must take into consideration the counsel's perspective at the time. *Id.* The Sixth Amendment does not guarantee errorless counsel or counsel judged ineffective by hindsight. *State v. Ledet*, 20-258 (La. App. 5 Cir. 1/27/21), 310 So.3d 810, 821.

Generally, an ineffective assistance of counsel claim is most appropriately addressed through an application for post-conviction relief filed in the district court, where a full evidentiary hearing can be conducted, if necessary, rather than by direct appeal. *State v. Kimble*, 22-373 (La. App. 5 Cir. 5/8/24), 389 So.3d 902, 927, *writ denied*, 24-882 (La. 12/27/24), 397 So.3d 1219. However, when the record contains sufficient evidence to rule on the merits of the claim and the issue is properly raised in an assignment of error on appeal, it may be addressed in the interest of judicial economy. *Gatson*, 334 So.3d at 1040. If, on the other hand, the record does not contain sufficient evidence to fully explore a claim of ineffective assistance of counsel, the claim should be relegated to post-conviction proceedings under La. C.Cr.P. arts. 924-930.8. *Id.* In the instant matter, we find that the record on appeal is sufficient to address Defendant's complaint.

Here, Defendant complains that trial counsel rendered ineffective assistance by failing to request jury instructions on justifiable homicide. We determine that Defendant has not met his burden under *Strickland*.

Contrary to Defendant's contention, the evidence presented at trial did not support a claim of self-defense to second degree murder. When self-defense is claimed by the defendant in a homicide case, the State has the burden to prove

beyond a reasonable doubt that the defendant did not act in self-defense. *State v. Patterson*, 10-415 (La. App. 5 Cir. 1/11/11), 63 So.3d 140, 148, *writ denied*, 11-338 (La. 6/17/11), 63 So.3d 1037. The fact that an offender's conduct is justifiable, although otherwise criminal, constitutes a defense to prosecution for any crime based on that conduct. La. R.S. 14:18; *Sly*, 376 So.3d at 1073. A homicide is justifiable "[w]hen committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger." La. R.S. 14:20(A)(1). A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force and may stand his or her ground and meet force with force. La. R.S. 14:20(C).

It is well established that the aggressor or the person who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict. *See* La. R.S. 14:21; *State v. Leach*, 22-194 (La. App. 5 Cir. 12/28/22), 356 So.3d 531, 544. In addition, while there is no unqualified duty to retreat, the possibility of escape from an altercation is a recognized factor in determining whether the defendant had a reasonable belief that deadly force was necessary to avoid the danger. *State v. Martin*, 20-141 (La. App. 5 Cir. 4/28/21), 347 So.3d 1061, 1068, *writ denied*, 21-803 (La. 10/1/21), 324 So.3d 1054.

Factors to consider in determining whether a defendant had a reasonable belief that the killing was necessary include the excitement and confusion of the situation, the possibility of using force or violence short of killing, and the defendant's knowledge of the assailant's bad character. *Lavigne*, 365 So.3d at 941.

The jury is the ultimate fact-finder in determining whether the State negated self-defense beyond a reasonable doubt. *Sly*, 376 So.3d at 1074.

Applying these principles, the evidence presented at trial did not support a claim of self-defense. The record reflects that it was Reginel, not Defendant, who expressed concern that he was in danger. During the phone call played at trial, Reginel stated that there was “money on [his] head” and used the phrase “hit this dude.” However, the record does not reflect that Defendant heard Reginel’s conversation with Durrell or was aware of any such statements before the shooting. No evidence was presented that Reginel acted on those statements or threatened Defendant. Instead, the testimony showed that Defendant approached the family’s residence on Silver Lily Lane, interacted with the family, asked for a ride, and voluntarily entered the vehicle. After Defendant was dropped off at nearby apartments across the street while the victim remained at the gas station, Defendant separated himself from the victim and had the opportunity to leave the area. The record does not reflect that Defendant sought help or contacted law enforcement during this time. Rather than doing so, Defendant returned on foot to the store, approached the vehicle, and was positioned outside the front passenger side immediately before the shooting. Under these circumstances, the record reflects that Defendant had the opportunity to retreat and instead chose to return. Additionally, the autopsy reflected that the victim sustained 15 gunshot wounds. The wounds traveled from front to back, which is consistent with the victim being shot while seated in the front passenger seat of the vehicle.

Testimony regarding whether Reginel possessed a firearm was unclear and inconsistent. Ms. Wilson stated that she once saw him holding a magazine but did not know whether he still had a gun, and she denied seeing him point, raise, or reach for a weapon. Monique testified that she did not see a firearm on Reginel that night. No firearm was recovered from the scene or the vehicle. However,

multiple bystanders were near the CRV after the shooting. Detective Carter testified that the surveillance footage indicated that the shots came from outside the vehicle near Defendant and that there was no exchange of gunfire. The evidence did not suggest that Defendant reasonably believed he was in imminent danger or that deadly force was necessary to protect himself.

Accordingly, we find that the evidence did not support the giving of a jury instruction on justifiable homicide or self-defense in response to the second degree murder charge. We also find that trial counsel was not ineffective for failing to request such an instruction, as the evidence did not warrant it. *See State v. McKinney*, 19-380 (La. App. 5 Cir. 12/26/19), 289 So.3d 153, 161-65 (where the defendant argued ineffective assistance when his trial counsel failed to consider self-defense as a defense and agreed to the removal of the defense of justification from the jury instructions. This Court found that because the evidence did not support a claim of self-defense, trial counsel was not ineffective for failing to object to the removal of the justification instruction. This Court explained that a justification instruction is required only when the evidence arguably supports the defense, which it did not. This Court further observed that counsel's agreement to omit the instruction was strategic, as the defense theory was that the defendant was not the shooter. Because strategic decisions do not constitute deficient performance simply because they prove unsuccessful, this Court held that the defendant failed to show either deficient performance or prejudice under *Strickland*). Likewise, we find here that Defendant has not met his burden under *Strickland*.¹³

¹³ *See State v. Jones*, 12-510 (La. App. 4 Cir. 6/12/13), 119 So.3d 859, 868, where the defendant asserted a claim for ineffective assistance of counsel due to counsel's failure to request a special jury charge on self-defense. The fourth circuit held that there was no evidence to support the defendant's argument of justification or self-defense. The court further held that even accepting the testimony favorable to the defendant, there was no evidence to suggest that he was in any imminent harm or danger when the officer found him in possession of the weapon. The court explained that more than thirty minutes had elapsed from the time the police arrived at the residence in response to the 9-1-1 call to the time the defendant returned to the scene. The fourth circuit concluded that the evidence did not support

Exclusion of Testimony

Lastly, Defendant argues that the trial court violated his constitutional right to present a defense by excluding the testimony of the State's DNA analyst, whose testimony would have impeached the lead detective's claim that no DNA testing was requested and presented evidence excluding Defendant as a contributor. The State relied on the detective's explanation that DNA testing was not pursued due to department policy, creating a false narrative for the jury. In fact, the State's own DNA report, produced in discovery, showed that testing was conducted and that Defendant was excluded as a contributor to DNA recovered from the victim's vehicle. The trial court excluded the analyst's testimony based on notice requirements and allowed only a proffer outside the jury's presence. Defendant argues the notice rules were misapplied because the need for the testimony arose only after the detective's misleading testimony, and the State already possessed both the report and knowledge of the analyst's findings. Because the State's case was circumstantial as to identification, Defendant contends the exclusion of scientific evidence excluding him was highly prejudicial and not harmless, requiring reversal of the conviction.

On March 6, 2023, the State filed a "State's Motion for Discovery, Demand for Notice of Alibi and/or Mental Condition Defenses, and State's Notice of Intent to Introduce Evidence of Other Offenses." The State moved the court to direct the defense to furnish the State, including an expert working with the State, with reciprocal discovery as provided by the Louisiana Code of Criminal Procedure in accordance with La. C.Cr.P. arts. 716-729. It was granted by the court that same day.

the giving of a jury instruction on the issue of justification or self-defense in response to the charge of being a convicted felon in possession of a firearm. The court found that trial counsel was not ineffective for failing to request such a jury charge.

During his testimony, Detective Carter stated that buccal swabs were obtained from Defendant, Reginel, and Ms. Wilson and that additional swabs were collected from the interior door handle and the exterior mirror of the CRV. He explained that the vehicle was swabbed as part of routine scene processing and because Ms. Wilson had indicated where Defendant had been seated. When asked whether any results were obtained from those swabs, Detective Carter testified that DNA testing was not requested because the lab generally does not perform such testing when a suspect has already been identified and there is an eyewitness to the shooting.

On cross-examination, when asked if he had any DNA evidence in the case, Detective Carter responded, "I do not, no." He also stated that he did not believe fingerprints were collected. He explained that he never submitted the swabs for testing and did not know whether any DNA was present. He again confirmed that the swabs taken from the vehicle were not tested. Detective Carter acknowledged that the swabs could have been tested if the district attorney's office had requested it, which is why they were collected and preserved. On re-direct, Detective Carter confirmed that DNA testing was ultimately conducted only after the district attorney's office requested comparison and analysis, at which point he obtained a buccal swab from Defendant. He confirmed that the profile from the door handle was too complex for further testing. The State questioned, "You asked for two samples to be taken, we've watched the evidence showing nobody touched the outside of the mirror, nothing came of that sample?" Detective Carter answered, "Correct." He further stated that "nothing could come back from that" regarding the sample taken from the interior of the vehicle.

After the State finished its examination of Detective Carter, the court advised that he was released from the State's subpoena but not the defense subpoena. The prosecutor noted that if the defense intended to call Detective

Carter, he wished to approach because he anticipated an objection, and a bench conference followed. The prosecutor objected to recalling Detective Carter for questions about the DNA report, arguing that he was not its author and was not the proper witness to testify about DNA results. Defense counsel responded that, as the lead investigator who had already testified about the findings, Detective Carter could have his recollection refreshed and his prior testimony clarified. The court noted that it appeared the defense was attempting to impeach Detective Carter with a DNA report that was not in evidence. The judge explained that introducing DNA results through him would be misleading because only the DNA analyst could explain the testing and the significance of any findings. The court emphasized that the report contained another expert's conclusions, that using it would constitute double hearsay, and that the proper predicate could not be laid without calling the DNA analyst. The judge advised that without presenting the DNA expert, the defense could not question Detective Carter about the report, and that the same objection would apply if the defense attempted to proceed in this manner.

Defense counsel then asked the court to issue an instant subpoena for Marcela Zozaya, the author of the DNA report, and the court instructed counsel to send it immediately. The State noted that it had not received the expert notice required under La. C.Cr.P. article 720 and objected on that basis, though it did not oppose issuance of the subpoena itself. Defense counsel agreed to provide written notice. The court noted that trial had already begun, and the State argued that the defense request was untimely because the DNA materials had long been provided to the defense. The prosecutor explained that although an instant subpoena could issue, Article 720 requires the defense to give notice of any intent to call an expert, including providing the expert's qualifications, and no such notice had been received. The State further asserted that it had not spoken with the analyst or had

any opportunity to prepare for or investigate potential expert testimony and therefore objected on the basis of lack of notice.

The trial court granted the instant subpoena for Ms. Zozaya, noting that any evidentiary issues could be addressed later. After the State rested, the defense called Ms. Zozaya and requested a bench conference. The court reviewed the State's prior discovery motion and explained that, under Articles 724 and 725, the defense was required to provide reciprocal discovery and timely expert notice, including the expert's qualifications, materials relied upon, opinions, and related reports no later than ten days before trial. The court noted that this information had not been disclosed. Defense counsel argued that Ms. Zozaya was being called solely for impeachment and that no expert notice had been provided because the defense had not anticipated the testimony that emerged at trial. The State responded that the defense could not use Ms. Zozaya to impeach any witness because no testimony had been offered that conflicted with an expert opinion and further argued that her testimony was inadmissible due to the defense's failure to comply with expert notice requirements. The State maintained that it was entitled to advance notice just as the defense was and asked the court to deny the request. Defense counsel reiterated that he had not intended to call Ms. Zozaya and claimed he sought to impeach Detective Carter's statements regarding DNA collection. The court noted that Detective Carter had not testified as counsel suggested.

The trial court then noted the State's argument that the defense had failed to provide timely notice of its intent to call an expert, despite the court having issued an instant subpoena. Defense counsel responded that no notice had been given because he had not planned to call Ms. Zozaya before trial, and that he then sought to call her solely for impeachment purposes. Counsel asserted that, as the author of the DNA report analyzing the buccal swabs taken from Defendant, her findings differed from the testimony presented, and that due process required allowing

impeachment through the report's author. The court asked defense counsel how he intended to overcome the notice requirements. Counsel reiterated that the defense had not planned to present a case-in-chief and that the need to call Ms. Zozaya arose only in response to testimony elicited at trial. The State responded that the defense could not characterize Ms. Zozaya's expert opinion as impeachment evidence. The prosecutor argued that she was not a fact witness and that no testimony had been presented that an expert could properly impeach. The State emphasized that expert opinions require advance notice, that the defense had possessed the DNA material for well over a year, and that attempting to introduce an undisclosed expert at this stage would circumvent statutory notice requirements. The prosecutor maintained that the State was entitled to rely on those rules and that permitting the testimony would be unfair.

Defense counsel asked to proceed with questioning the witness. The court denied the request, explaining that La. C.Cr.P. art. 725 requires the defendant to disclose expert witnesses and related reports and that the defense had not complied. The court further noted that DNA issues had been discussed as early as January 9 of that year, giving the parties ample time, nearly ten months, to pursue testing or provide notice if expert testimony would be needed. Because the defense sought to call an expert without the required advance notice, the court sustained the State's objection. The court noted the defense's objection for the record. The defense then proffered the DNA report as Proffer 1. Counsel stated that the proffer consisted of the report authored by forensic analyst Marcela Zozaya, Ph.D., which reflected her conclusions regarding DNA collected in the case. According to counsel, the report indicated that the DNA mixture contained three contributors, including Reginel, and that Defendant was excluded as a contributor. The State

noted that the sample came from the exterior mirror of the vehicle and maintained its objections. The court accepted the DNA report as Defense Proffer 1.¹⁴

In his October 24, 2024 motion for new trial, Defendant argued that the court erred in preventing him from calling the DNA analyst to impeach Detective Carter after the State rested, asserting he did not anticipate needing the witness until the detective denied the existence of DNA results. Counsel objected and proffered the DNA report. At the October 29, 2024 hearing, the defense submitted on the motion, the State argued it lacked merit, and the trial court denied it.

Both the Sixth Amendment of the United States Constitution and Article I, § 16 of the Louisiana Constitution guarantee a criminal defendant the right to present a defense. *State v. Lirette*, 11-1167 (La. App. 5 Cir. 6/28/12), 102 So.3d 801, 813, writ denied, 12-1694 (La. 2/22/13), 108 So.3d 763. However, constitutional guarantees do not assure the defendant the right to the admissibility of any type of evidence, only that which is deemed trustworthy and has probative value can be admitted. *State v. Governor*, 331 So.2d 443, 449 (La. 1976). Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or waste of time. La. C.E. art. 403. The trial court is accorded great discretion in evidentiary rulings and, absent a clear abuse of that discretion, rulings on admissibility of evidence will not be disturbed on appeal. *State v. Gonzales*, 21-685 (La. App. 5 Cir. 2/14/22), 2022 WL 533350.

¹⁴ Defense Proffer 1 reflects, in the “Opinions and Interpretations” section, that the DNA profile obtained from the swab of the exterior mirror (Item 12) was interpreted as a mixture of DNA from three contributors. The report states that the DNA profile from this item is at least 100 billion times more likely if the DNA originated from Reginel Golman and two unknown contributors than if it originated from three unknown contributors. It provides this indicates very strong support for the proposition that Reginel Golman is a contributor to the DNA obtained from this item. The report further states that defendant “is excluded as a contributor to the DNA in this mixture.” Additionally, the report provides that the partial DNA profile obtained from the swab of the interior door handle (Item 14) was interpreted as a mixture of DNA from two contributors but due to the complexity of this profile, no further interpretation could be performed.

Here, Defendant initially sought to recall Detective Carter as a defense witness and impeach his testimony by confronting him with the DNA report generated in the case. Defendant's focus was on the distinction between Detective Carter's testimony that "nothing came of" the mirror sample and the DNA report's finding that Defendant was excluded as a contributor to the sample.

Generally, extrinsic evidence contradicting a witness's testimony is admissible when offered solely to attack the credibility of a witness. La. C.E. art. 607(D)(2); *State v. Stockstill*, 23-1178 (La. App. 1 Cir. 10/11/24), 2024 WL 2750538, *writ denied*, 24-1387 (La. 4/1/25), 403 So.3d 1118. Such evidence is admissible after the proponent has first fairly directed the witness's 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. *Id.* However, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. La. C.E. art. 602. A trial court is given wide discretion when deciding whether to admit impeachment evidence. This is particularly true when the impeachment evidence is repetitive or cumulative. The trial court's decision is subject to review for abuse of discretion. *State v. Rose*, 50,861 (La. App. 2 Cir. 9/28/16), 206 So.3d 1102, 1111 n.6, *writ denied*, 16-1943 (La. 9/15/17), 225 So.3d 487.

After the court explained that Detective Carter could not be recalled and questioned about a DNA report he did not author, the defense sought to call the DNA analyst, Ms. Zozaya. The State objected under the reciprocal discovery provisions, noting that it had filed a motion for reciprocal discovery on March 6, 2023, and that no notice of intent to call an expert witness had been provided before trial commenced on October 2, 2024. Defense counsel maintained that the need to call the analyst arose only after Detective Carter's testimony. The trial court, however, viewed the proposed testimony as expert opinion governed by La.

C.Cr.P. art. 725 rather than impeachment evidence and concluded that the notice requirement had not been satisfied.¹⁵ The court therefore excluded the testimony.

Even assuming *arguendo* that the trial court erred in excluding the expert witness and the related report, and, in doing so, limited the defense's ability to present impeachment evidence, the alleged error is subject to harmless error analysis. *See State v. Adams*, 11-1052 (La. App. 5 Cir. 5/16/13), 119 So.3d 46, 57, *writ denied*, 13-1413 (La. 12/6/13), 129 So.3d 531. Harmless error occurs where the guilty verdict actually rendered was surely unattributable to the error. *Id.* Although witness testimony placed Defendant inside the vehicle earlier in the evening, Detective Carter specifically testified that there was no evidence showing anyone touched the exterior mirror of the CRV. Thus, even to the extent the proffered DNA report reflected that Defendant was excluded as a contributor to the mirror swab, the jury also heard testimony indicating that no contact with that area occurred in the first place. The jury further viewed surveillance footage and heard testimony from Ms. Wilson and Detective Carter confirming that Defendant was inside the vehicle earlier that evening.

Further, the State presented substantial independent identification evidence linking Defendant to the shooting. Multiple witnesses placed Defendant at the

¹⁵ La. C.Cr.P. art. 725 provides:

When the court grants the relief sought by the defendant pursuant to Article 719 of this Code, it shall, upon the written motion of the state, condition its order by requiring the defendant to disclose to the state, and to permit or authorize the state, or an expert working with the state, to inspect and copy, photograph, or otherwise reproduce, and disclose to the district attorney any results of reports, or copies thereof, of physical and mental examinations and of scientific tests or experiments, made in connection with the particular case, that are in the possession, custody, control, or knowledge of the defendant, 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 or reports 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 defendant must produce for the state 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.

victim's residence shortly before the homicide. Additionally, there was evidence of a contemporaneous phone call in which Defendant spoke directly with the victim's brother. Defendant then voluntarily entered the vehicle with the victim and Ms. Wilson, was dropped off at a nearby apartment complex, and shortly thereafter returned to Mike's Discount. Ms. Wilson identified Defendant as the shooter, both in photographic lineups and in open court, and surveillance footage corroborated her account by showing the individual she identified returning from the apartment complex and firing at the victim. Additional testimony established that the muzzle flashes originated from outside the vehicle, near Defendant. In light of this evidence, we consider that the jury's verdict was surely unattributable to any error related to the exclusion of the DNA report or the analyst's testimony, and that any such error did not contribute to the verdict.

Further, the State presented substantial independent identification evidence linking Defendant to the shooting. Multiple witnesses placed Defendant at the victim's residence shortly before the homicide. Additionally, there was evidence of a contemporaneous phone call in which Defendant spoke directly with the victim's brother. Defendant then voluntarily entered the vehicle with the victim and Ms. Wilson, was dropped off at the nearby apartment complex, and shortly thereafter returned to Mike's Discount. Ms. Wilson identified Defendant as the shooter, both in photographic lineups and in open court, and surveillance footage corroborated her account by showing the individual she identified returning from the apartment complex and firing at the victim. Additional testimony established that the muzzle flashes originated from outside the vehicle, near Defendant. In light of this evidence, we determine that the jury's verdict was surely unattributable to any error related to the exclusion of the DNA report or the analyst's testimony, and that any such error did not contribute to the verdict.

Errors Patent Review

The record was reviewed 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. 5th Cir. 1990).

After sentencing Defendant to life imprisonment on count one, the judge imposed a sentence on count two and ordered it “to be served consecutive to any and all other sentences.” The judge next imposed a sentence on count three and stated that it was “to be served concurrent with all other sentences.” The judge next imposed a sentence on count four and ordered it to be served “concurrent with counts-1 and 3, but consecutive to count-2.” The sentencing minute entry¹⁶ and the uniform commitment order¹⁷ reflect similar, but not identical, concurrent and consecutive language. Where there is a discrepancy between the transcript and the sentencing minute entry, the transcript must prevail. *State v. Lynch*, 441 So.2d 732, 734 (La. 1983).

The sentences imposed by the trial court contain inconsistent concurrent and consecutive language as to counts two through four. Furthermore, we consider the sentence imposed on count three is indeterminate because the trial court ordered it to run “concurrent with all other sentences” without specifying whether the

¹⁶ Specifically, the sentencing minute entry initially states, “Life in prison at hard labor on count 1. 10 years at hard labor on count 2 consecutively to all other sentences. 15 years hard labor on count 3 concurrently with all other sentences. 20 years hard labor on count 4 concurrently with counts 1 and 3 but consecutively with count 2.” Further along in that minute entry, it provides, “As to count 2, the Court sentenced Defendant to imprisonment at hard labor for a term of 10 years to run consecutively with any/all other sentence(s) that the Defendant may currently be serving.” It also states, “As to count 3, the Court sentenced the Defendant to imprisonment at hard labor for a term of 15 years concurrently with any/all other sentences,” and “As to count 4, the Court sentenced the Defendant to imprisonment at hard labor for a term of 15 years concurrently with counts 1 and 3 but consecutively with count 2.” We consider that the sentencing minute entry itself is internally inconsistent, as it states with respect to count two that the sentence was ordered to run “consecutively to all other sentences,” yet later reflects that it was ordered to run “consecutively with any and all other sentence(s) the defendant may currently be serving.” Regardless, the transcript does not reflect that the court ever specified that the sentence was to run consecutive to any sentence Defendant may have been serving at the time.

¹⁷ The uniform commitment order provides that the sentences are “Concurrent with: Count 3 is concurrent with all other sentences and count 4 is concurrent with counts 1” and “Consecutive to: Count 2 is consecutive to all other sentences and count 4 is consecutive to count 2.”

concurrent nature applied to the specific sentences imposed in this case or to any other sentence Defendant may have been serving at the time of sentencing. La. C.Cr.P. art. 879 provides that “[i]f a defendant who has been convicted of an offense is sentenced to imprisonment, the court shall impose a determinate sentence.” “This Court has recognized this distinction in sentencing, finding the ‘open-ended’ statement that a sentence be served with ‘any other sentence’ is distinguishable from a sentence ordered to be served concurrently with ‘any sentence [the defendant] may be serving,’ requiring correction.” *Lavigne*, 365 So.3d at 962. *See State v. Nellon*, 18-385 (La. App. 5 Cir. 12/19/18), 262 So.3d 441, 445. Accordingly, because of the indeterminate nature of the sentencing, we vacate Defendant’s sentences on counts two and three and remand this matter to the trial court for resentencing.

DECREE

For the foregoing reasons, we affirm Defendant’s convictions for second degree murder (count one), aggravated assault with a firearm (count two), and possession of a firearm by a convicted felon (count three). We reverse the obstruction of justice conviction (count four). Additionally, we vacate Defendant’s sentences for aggravated assault with a firearm and possession of a firearm by a convicted felon and remand the matter to the trial court for resentencing.

CONVICTION AND SENTENCE ON COUNT FOUR REVERSED;
CONVICTIONS ON COUNTS ONE, TWO, AND THREE AFFIRMED;
SENTENCES ON COUNTS TWO AND THREE VACATED AND
REMANDED FOR RESENTENCING;
SENTENCE ON COUNT ONE AFFIRMED

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-391

STATE OF LOUISIANA

versus

KINTEZ O. JOHNSON AKA “KUTTA”

**GRAVOIS, J., CONCURS IN PART AND DISSENTS IN PART,
WITH REASONS**

I fully concur with the majority’s opinion to affirm defendant’s conviction and sentence for second degree murder, and defendant’s convictions for aggravated assault with a firearm and possession of a firearm by a convicted felon. I also fully concur with the majority’s decision to vacate the sentences for the aggravated assault with a firearm and possession of a firearm by a convicted felon convictions and to remand the matter for resentencing on those convictions. However, I disagree with and respectfully dissent from the majority’s decision to reverse defendant’s conviction and sentence for obstruction of justice. In my opinion, the State presented sufficient evidence to support defendant’s conviction on this charge. Accordingly, I would affirm defendant’s conviction and sentence for obstruction of justice.

On appeal, in addition to his lack of identity arguments, defendant specifically contends that the State failed to prove the elements of obstruction of justice as to count four. La. R.S. 14:130.1 provided the following:¹⁸

A. The crime of obstruction of justice is any of the following when committed with the knowledge that

¹⁸ The statute has been amended since the commission of the offense. “A defendant is to be tried under the statute in effect at the time of the commission of the crime.” *State v. Weaver*, 01-467 (La. 1/15/02), 805 So.2d 166, 170; *State v. Do*, 16-439 (La. App. 5 Cir. 12/14/16), 208 So.3d 1048, 1052, *writ denied*, 17-354 (La. 11/13/17), 229 So.3d 924 n.4. Regardless, the amendments to the statute did not alter the substance of the statute at issue here.

such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding as described in this Section:

- (1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance.... (a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers[.]

Count four of the indictment against defendant alleges that he committed obstruction of justice by tampering with evidence. Specifically, the indictment alleges that defendant intentionally removed and/or disposed of the semi-automatic handgun he used to shoot and kill the victim, from the scene of the murder, and he did so with the knowledge that the removal of the firearm from the scene and/or subsequently disposing of it, would be the subject of an investigation by state, local, or United States law enforcement officers. The indictment further alleges that defendant acted with the knowledge that such act and/or acts may reasonably affect an actual or potential present, past, or future criminal proceeding.

In brief on appeal, the State argues that the evidence at trial established that defendant possessed and used a firearm at the time of the shooting on September 23, 2022, and that he fled the scene with that gun. The weapon was not recovered at the scene of the murder. Law enforcement officers arrested defendant at a motel within days of the offense, but did not recover the weapon at that time. On October 6, 2022, officers with the Kenner Police Department seized a gun from an individual, later identified as Jamie Cole, in an unrelated incident. The gun obtained from Cole was subsequently determined to be the same weapon used in the subject shooting at Mike's Discount.

In my opinion, the jury's decision to convict defendant for obstruction of justice was entirely rational. Defendant used a firearm to murder the victim and thereafter fled the scene, hid out for a few

days, and was arrested while hiding out in a motel in Orleans Parish. The firearm used to murder the victim was not recovered at the scene of the murder. The firearm had to go somewhere from there, and the only logical inference in my opinion based upon the circumstantial evidence presented is that defendant committed obstruction of justice by removing the murder weapon from the scene of the murder intending to obstruct the murder investigation.

Defendant compares this case to this Court's recent decision in *State v. Ramirez-Delgado*, 24-119 (La. App. 5 Cir. 12/18/24), 409 So.3d 953. In *Ramirez-Delgado*, this Court remarked, in part, that taking a murder weapon from the scene may in and of itself be insufficient to prove the requisite "specific intent of distorting the results of any criminal investigation or proceeding," and under the particular facts in that case, found the State's evidence insufficient to sustain the defendant's conviction for obstruction of justice. *Id.* at 963.

In my opinion, *Ramirez-Delgado* is simply not instructive here. In *Ramirez-Delgado*, defendant left the scene of the murder with the firearm at issue, but then proceeded to leave the firearm in his own vehicle at the airport where it could be and ultimately was easily found by the police, which arguably cuts against an inference that he had the requisite "specific intent of distorting the results of any criminal investigation or proceeding." *Id.* Here, however, defendant not only fled the scene with the murder weapon, but when defendant was apprehended a few days later in a motel in Orleans Parish (after fleeing the scene and hiding out for a few days), the murder weapon was nowhere to be found. Again, the only logical inference in my opinion is that defendant removed and/or disposed of the murder weapon, hoping to obstruct the murder investigation. Thus, in my opinion, *Ramirez-Delgado* is factually distinguishable from this case.

In my opinion, the instant matter is far more in line with this Court's recent decision in *State v. Lopez*, 23-335 (La. App. 5 Cir. 8/21/24), 398 So.3d 167, *writ denied*, 24-1187 (La. 1/14/25), 398 So.3d

650. In *Lopez*, 398 So.3d at 182, this Court found the evidence was sufficient to support the obstruction of justice conviction. This Court stated that while viewing the video evidence, the jury heard testimony from a witness, who pointed out that the defendant responded to what was happening with gunshots and also fired the fatal shot. It further stated that another witness testified the defendant kept the gun when he exited the vehicle in question. It asserted the jury also heard testimony that the defendant fled to Florida, where he was ultimately apprehended, and the gun was never found. Based on the evidence presented, this Court found that the State met its burden of proving the defendant intended to interfere with the investigation. This Court further found that in applying the appropriate standard for evaluating sufficiency of the evidence, it could not say the jury erred in finding the defendant guilty of obstruction of justice beyond a reasonable doubt. *Id.*

Similarly, in *State v. Lee*, 24-419 (La. App. 5 Cir. 5/28/25), 415 So.3d 487, this Court upheld the defendant's conviction for obstruction of justice. *Id.* at 493-94. In *Lee*, the defendant was found guilty of second degree murder of the victim in a hotel room, where there were no witnesses to the murder itself and no direct evidence to tie him to a murder weapon. The murder weapon was not located, but spent casings were found in the hotel room that matched the same brand and caliber as a bag of ammunition found in the defendant's possession. Evidence on the defendant's cell phone also produced a photograph of the victim's firearm (taken on the night of the murder), which the defendant was attempting to trade for another firearm, one week after the murder. This Court stated:

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. In this instance, we can infer that the defendant murdered the victim and removed the murder weapon from the scene of the crime. We can also infer that, when removing the gun from the crime scene and making it impossible to locate, the defendant intended to thwart the police investigation that followed.

Id. (Internal citation omitted.)

I acknowledge that the State presented no evidence linking defendant to the individual from whom the firearm was later recovered, and no evidence that defendant sold, traded, transferred, or intentionally discarded the weapon. Such facts are not controlling in my opinion as to whether the State bore its burden of proof on this charge.

I also acknowledge that as in *Ramirez-Delgado, supra*, and in the Fourth Circuit's decision in *State v. Scott*, 23-22 (La. App. 4 Cir. 8/30/23), 372 So.3d 42, *writs denied*, 23-1317, 23-1318 (La. 3/19/24) 381 So.3d 707, cited by defendant, there was no evidence that defendant herein collected shell casings, disabled surveillance cameras, or attempted to silence witnesses (the record reflects that defendant left Ms. Wilson, who knew him, and another individual present at the scene unharmed). However, I respectfully disagree with the majority's assertion that the State failed to prove beyond a reasonable doubt that defendant had the specific intent to obstruct justice in this case, in part because of these reasons. It is rather difficult for me to imagine that a person who has just committed a murder in the presence of a witness who personally knew him would have the presence of mind to recover shell casings from the crime scene, or even have knowledge of or consider attempting to destroy surveillance video of him before and after commission of the crime. Likewise, just because there was no evidence that defendant did not harm or threaten to harm Ms. Wilson does not negate in my opinion that defendant had the specific intent to obstruct justice by removing the murder weapon from the scene of the murder.

Further, it is noteworthy that the obstruction of justice statute (La. R.S. 14:130.1) does not require a multifaceted scheme to thwart an investigation; any one act described by the statute, with the requisite intent, is sufficient to prove obstruction of justice. *See State v. Hoang*, 17-0100 (La. 3/26/19), 282 So.3d 189, 192 (“... the jury was incorrectly instructed that they could find defendant guilty of obstruction if they found he disconnected the video surveillance system *and* removed the license plate (i.e. he committed two acts) when all the law requires is that he commit a single act.”) (Emphasis in the original.) The fact that defendant in the instant case appears NOT to have done other acts to

hinder the investigation does not negate any other act of obstruction of justice that he may have committed (*i.e.*, removing the murder weapon from the scene of the murder).

In summary, under the circumstances presented in the instant case, I would conclude that the circumstantial evidence presented proved beyond a reasonable doubt that defendant did act with the specific intent of distorting the result of the criminal investigation. It appears the jury indeed believed defendant was in possession of a firearm, as it found defendant guilty of the second degree murder of the victim who died of a gunshot wound. As in *Lee*, I would infer from the evidence presented that defendant removed the murder weapon from the scene of the crime intending to thwart the police investigation that followed. Accordingly, I would conclude that the evidence was sufficient to support defendant's conviction for obstruction of justice. In my opinion, defendant's assignment on this issue is without merit.

Respectfully, for the foregoing reasons, I would affirm defendant's conviction and sentence for obstruction of justice.

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **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-391

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)

CHAD M. IKERD (APPELLANT)

ANDREA F. LONG (APPELLEE)

THOMAS J. BUTLER (APPELLEE)

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