Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-612

STATE OF LOUISIANA

versus

CURTIS JOSEPH THOMAS III

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 22-774, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

November 04, 2026

JOHN J. MOLAISON, JR.

JUDGE

Panel composed of Judges Marc E. Johnson,
John J. Molaison, Jr., and Timothy S. Marcel

AFFIRMED

JJM
MEJ
TSM

TRUE COPY



MORGAN NAQUIN
DEPUTY CLERK

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Honorable Paul D. Connick, Jr.
Thomas J. Butler
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MOLAISON, J.

Curtis Joseph Thomas, III, the defendant/appellant, appeals his convictions of second degree murder, attempted second degree murder, and felon in possession of a firearm. For the following reasons, we affirm the convictions.

PROCEDURAL HISTORY

On May 19, 2022, a Jefferson Parish Grand Jury indicted the defendant for the second degree murder of Charles McGehee in violation of La. R.S. 14:30.1 (count one), the attempted second degree murder of Tyran Simpson in violation of La. R.S. 14:27 and La. R.S. 14:30.1 (count two), and the possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1 (count three). The defendant pled not guilty.

On July 1, 2025, the State filed a notice of intent to introduce other crimes evidence under La. C.E. art. 404(B). The court granted the State's motion, and defense counsel objected.

On July 15, 2025, following a two-day trial, the jury returned a verdict of guilty as charged on all counts. The trial judge denied the defendant's post-trial motions. The trial judge sentenced the defendant to life imprisonment for second degree murder, fifty years imprisonment for attempted second degree murder, and twenty years imprisonment for felon in possession of a firearm. The trial judge imposed the sentences concurrently to be served at hard labor, and without the benefit of parole, probation, or suspension of sentence. The trial judge denied the motion to reconsider sentence and noted the defendant's objection.

The defendant filed this timely appeal.

FACTS

On February 13, 2022, the defendant called 9-1-1, requesting an ambulance for someone who had been shot at 645 Emile Avenue in Westwego, Louisiana.

At trial, Jefferson Parish Sheriff's Office (JPSO) Deputy Roy Vasquez testified that he responded to the call. He explained that as he walked toward the residence, he saw the defendant, "walking with a purpose" across the street, away from the scene. Deputy Vasquez called out to the defendant, who replied, "Someone got shot, he needs help, I called the ambulance out for him." Deputy Vasquez spoke to the defendant, then handcuffed and searched the defendant. He observed a firearm protruding from the defendant's right front pocket and recovered it. Westwego Police Department Officer Daryl Julien found a shell casing stuck in the chamber and three live rounds in the magazine. Deputy Vasquez took the defendant to the investigations bureau. Police also took eyewitness Linda Turner to the bureau.

JPSO Sergeant Wayne Rumore, who responded to the call, testified that this house was a "trap house" where individuals would buy, sell, and use narcotics. He stated that the house was lit by a single light bulb powered by an indoor generator, and there was barely enough room to walk through the clutter. Police found a backpack that contained Tyran Simpson's identification, a small bag of white powder later identified as heroin, and a bag of painkillers. Police found three .380 bullet casings on the kitchen floor.

Sergeant Rumore testified that later that evening, Mr. Simpson went to West Jefferson Hospital and reported that he had been shot at 645 Emile Avenue. Curtis Thomas, Jr., the defendant's father, took Mr. Simpson to the hospital. Mr. Simpson gave a statement to the police.

Dr. Dana Troxclair, an expert in forensic pathology, performed an autopsy on Mr. McGehee. She testified that she recovered two copper jacketed projectiles from Mr. McGehee – one that struck the left lung and pulmonary artery and lodged in the left chest wall, and one that struck the intestines and aorta and lodged in the left lower back. Dr. Troxclair opined that the shooter was to the right of Mr.

McGehee. She opined that Mr. McGehee died from multiple gunshot wounds, and that the manner of death was homicide.

Jene Rauch, an expert in firearm and toolmark examination, examined the firearm and casings in this case. She opined that the four "fired cartridge casings found at the scene were all fired from the Smith & Wesson .380 auto caliber semiautomatic pistol that was recovered from the defendant." She further opined that the two copper jacketed projectiles collected from Mr. McGehee's body were also fired from the firearm found on the defendant.

At trial, Mr. Simpson identified the defendant as the man who shot him at 645 Emile Avenue on February 13, 2022. He referred to the house as "Ms. Turner's house" and testified that he used to go there to use drugs. Ms. Turner was also a drug user. On February 13, he went to Ms. Turner's house to watch the Super Bowl and brought daiquiris. Ms. Turner, the defendant, and the defendant's father were also present at the house. Mr. Simpson testified that he saw the defendant with a gun near him. Mr. Simpson left the house and returned between 6:00 p.m. and 6:30 p.m. When he returned, the same individuals were at the house. About five minutes later, Mr. McGehee arrived at the house. Mr. Simpson testified that he did not know Mr. McGehee's name but had seen him at the house many times before.

Mr. Simpson testified that he was standing between the kitchen and living room, the defendant was standing by the front door, Mr. McGehee was standing in the living room near a coffee table, the defendant's father was sitting down by another coffee table in the living room, and Ms. Turner was sitting on the sofa. The lights and T.V. went out briefly, making it dark, and Mr. Simpson saw "flames from a gun" and a "shadow from the person at the door" when the room was dark. Mr. Simpson testified that the defendant shot Mr. McGehee, who "flapped" on the ground. The defendant then immediately shot at Mr. Simpson approximately four

times. Mr. Simpson stated that he ran into the kitchen and then fought his way out through the front door. He ran to his nearby home. He blacked out due to blood loss, and the defendant's father took him to the hospital. He identified the defendant as the shooter to police. Mr. Simpson admitted that he had a firearm on him that night. Mr. Simpson admitted prior convictions of attempt to commit insurance fraud in 2014, possession with intent to distribute marijuana and purse snatching in 2015, and possession of a firearm by a convicted felon and illegal use of a weapon in 2023.

Detective Steven Quaintance, the lead detective in this case, testified that the daiquiri cups on the kitchen counter belonged to Mr. Simpson and corroborated his statements in his interview. Detective Quaintance testified that the defendant had a prior conviction for attempted second degree murder, for which he was sentenced to ten years imprisonment on August 19, 2011. The defendant's sentence for this conviction was completed with regard to probation and parole on January 5, 2021. Police also interviewed the defendant's father and Ms. Turner.

Adriana Washington, an expert in the field of forensic DNA analysis, testified that she received buccal swabs taken from Mr. McGehee and the socks the defendant was wearing at the time of his arrest. The socks tested positive for blood. She testified that the DNA profile obtained from the blood indicated that it was 100 billion times more likely that the blood was that of Charles McGehee and one unknown contributor than of two unknown random contributors.

Dona Quintanilla, an expert in the field of latent print analysis and comparison, testified that she took fingerprints from the defendant on July 10, 2025. She compared the fingerprints to those from a certified conviction packet of the defendant's prior arrest and conviction for attempted second degree murder. She testified that there were sufficient features to match the prints on the conviction packet to those of the defendant.

ASSIGNMENT OF ERROR NUMBER ONE

The defendant argues that the State did not present sufficient evidence to prove that he was the shooter, arguing that Mr. Simpson's testimony was inconsistent within itself and with his statement to detectives. The defendant argues Mr. Simpson is not credible and points to Mr. Simpson's prior convictions. The defendant contends that because no reasonable juror could have found that the State met its burden of proof based on Mr. Simpson's testimony, the evidence was insufficient to support the convictions.

The State responds that Mr. Simpson's testimony was credible and sufficient on its own to prove that the defendant was the person who committed the offenses. The State also contends that independent evidence placed the defendant in the house during the shooting, citing the DNA testing of the blood on his socks and his possession of the murder weapon minutes after the shooting. The State argues that the defendant's nervousness and evasiveness when approached by officers provide strong additional evidence of his guilt. The State avers that matters of witness credibility are within the purview of the factfinder.

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 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).

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. All evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt. *Id.*

The directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *State v. Aguilar*, 23-34 (La. App. 5 Cir. 11/15/23), 376 So.3d 1105, 1108. This deference to the fact-finder does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *State v. McKinney*, 20-19 (La. App. 5 Cir. 11/4/20), 304 So.3d 1097, 1102. Under the *Jackson* standard, a review of the record for sufficiency of the evidence does not require the reviewing court to determine whether the evidence at trial established guilt beyond a reasonable doubt, but whether, upon review of the whole record, any rational trier of fact would have found guilt beyond a reasonable doubt. When addressing the sufficiency of the evidence, consideration must be given to the entirety of the evidence, including inadmissible evidence which was erroneously admitted, to determine whether the evidence is sufficient to support the conviction. *State v. Diaz*, 25-7 (La. App. 5 Cir. 12/29/25), 428 So.3d 1077, 1086, *writ denied*, 26-0117 (La. 10/6/26).

In making this determination, a reviewing court will not re-evaluate the credibility of witnesses or re-weigh the evidence. *Woods*, 376 So.3d at 1157. 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. 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.

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 the identification, the State is required to negate any reasonable probability of misidentification to carry its burden of proof. *State v. Key*, 23-167 (La. App. 5 Cir. 12/27/23), 379 So.3d 96, 113. A positive identification by only one witness is sufficient to support a conviction. *State v. Howard*, 24-145 (La. App. 5 Cir. 12/18/24), 409 So.3d 915, 932, *writ denied*, 25-96 (La. 4/8/25), 405 So.3d 566.

The defendant was convicted of second degree murder in violation of La. R.S. 14:30.1 (count one), attempted second degree murder in violation of La. R.S. 14:27 and La. R.S. 14:30.1 (count two), and possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1 (count three).

As it relates to counts one and two, at the time the offenses were committed, La. R.S. 14:30.1 provided in pertinent part:

> A. Second degree murder is the killing of a human being:
> (1) When the offender has a specific intent to kill or to inflict great bodily harm[.]

La. R.S. 14:27 provides in pertinent part:

> A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

On count three, to support a conviction under La. R.S. 14:95.1, the State must prove beyond a reasonable doubt that the defendant (1) had possession of a

firearm; (2) a prior conviction for a crime of violence or other enumerated felony; (3) absence of the ten-year statutory period of limitation; and (4) the general intent to commit the crime.

The defendant does not argue that the State failed to prove any particular element of the three offenses and instead questions the credibility of Mr. Simpson's testimony to prove his identity as the shooter.

Mr. Simpson testified that when he arrived at 645 Emile Avenue the defendant possessed a gun. He left and when he returned, Mr. McGehee arrived shortly afterwards. Mr. Simpson testified that the defendant was standing near the door, Mr. McGehee was standing in the living room area with his back towards the defendant, and Ms. Turner and the defendant's father were also in the living room. Mr. Simpson testified that he did not see anyone else enter the house. After the lights and T.V. went out, Mr. Simpson saw "flames from a gun" come from the defendant who was standing by the door. Mr. McGehee fell to the floor. Mr. Simpson testified that the defendant then shot at him approximately four times, shooting him in the arm, as he ran into the kitchen. The defendant's father took Mr. Simpson to the hospital. Mr. Simpson told the hospital staff that he was injured in a shooting at 645 Emile. Mr. Simpson identified the defendant as the shooter.

While the defendant points to inconsistencies in Mr. Simpson's statements and calls into question his credibility due to his criminal history, the jury heard the alleged inconsistencies and testimony regarding his prior convictions. The jury determined that Mr. Simpson's testimony was credible. This Court should not re-evaluate this finding. See *Woods*, 376 So.3d at 1157; *Lavigne*, 365 So.3d at 940. Despite any alleged inconsistencies in Mr. Simpson's testimony, the State presented sufficient evidence that the defendant was the shooter.

Deputy Vasquez testified that when he arrived at the scene, the defendant was walking away from the scene. He questioned the defendant who said that he called an ambulance for the victim. Deputy Vasquez recovered a firearm from the defendant, which was later determined to be the murder weapon. The defendant was wearing socks containing the victim's blood, as confirmed by DNA testing.

Our review of the evidence presented by the State under the *Jackson* standard confirms that a rational trier of fact could have found that the evidence was sufficient to support the identity of the defendant as the shooter. Thus, the State presented sufficient evidence for the jury to find beyond a reasonable doubt that the defendant committed second degree murder, attempted second degree murder, and possession of a firearm by a convicted felon. This assignment of error does not have merit.

ASSIGNMENT OF ERROR NUMBER TWO

The defendant argues that the trial court erred in denying the jury's request to review the 9-1-1 tape during deliberations, which violated his right to a fair trial. He contends that the jury should have been able to review the 9-1-1 call during deliberations, reasoning that statements made in a 9-1-1 call are not testimonial when they are made for the primary purpose of enabling the police to meet an ongoing emergency. He claims that while Louisiana courts have found that allowing a jury to review evidence or testimony such as audiotapes or transcripts during deliberations is reversible error, 9-1-1 call tapes should be given different considerations since they are not testimonial. He asserts that the jury had deliberated for over three hours and requested numerous items of evidence to review, indicating they were struggling to reach a verdict. He concludes that not allowing the jurors to review the 9-1-1 call unduly prejudiced him and compromised his right to a fair trial, mandating that his convictions and sentences be vacated.

The State responds that the Louisiana Supreme Court has determined that a trial court has sound discretion in permitting the jury's review of properly admitted evidentiary exhibits during deliberations, including audiotapes and videotapes, subject to explicit restrictions imposed by La. C.Cr.P. art. 793(A). The State notes that Louisiana courts have both permitted and precluded the playing of 9-1-1 calls during deliberations. The State argues that the defendant has not shown an abuse of the trial court's discretion, and he has not shown how he was prejudiced by the trial court's ruling.

The State avers the call itself contained minimal information and that nothing in the call provided information about the details of the shooting or identity of the perpetrator. The State asserts that even if the trial court abused its discretion relative to the challenged ruling, any error would be harmless.

During jury deliberations, defense counsel informed the judge that the jury requested to listen to the 9-1-1 call again. Counsel stated that it was the defendant's position that the only reason why 9-1-1 calls were admissible is because they were not testimonial in nature. The trial judge responded that the calls were testimonial in nature and the jury was not allowed to have the recording in the jury room. The trial judge further stated that shortly after beginning to deliberate, the jury requested certain photographs and medical records be sent into the jury room. Those photographs were sent to them. However, the medical records, which are prohibited by law, were not given to the jury.

La. C.Cr.P. art. 793(A) provides:

> A. Except as provided in Paragraph B of this Article, a juror must rely upon his memory in reaching a verdict. He shall not be permitted to refer to notes or to have access to any written evidence. Testimony shall not be repeated to the jury. Upon the request of a juror and in the discretion of the court, the jury may take with it or have sent to it any object or document received in evidence when a physical examination thereof is required to enable the jury to arrive at a verdict.

La. C.Cr.P. art. 793 generally prohibits "access to any written evidence" for its verbal content and prohibits the repeating of testimony to jurors during deliberations. *State v. Doucet*, 17-200 (La. App. 5 Cir. 12/27/17), 237 So.3d 598, 608, *writs denied*, 18-77 (La. 10/8/18), 253 So.3d 789, and 18-196 (La. 11/5/18), 255 So.3d 1052, *cert. denied*, 587 U.S. 1045, 139 S.Ct. 2676, 204 L.Ed.2d 1079 (2019). The Louisiana Supreme Court has recognized that jurors may inspect physical evidence in order to arrive at a verdict, but they cannot inspect written evidence to assess its verbal contents. *Id.*

This Court has found that the general rule as expressed by La. C.Cr.P. art. 793 is that the jury is not to inspect written evidence except for the sole purpose of a physical examination of the document itself to determine an issue, which does not require the examination of the verbal contents of the document. *Doucet*, 237 So.3d at 608. The danger that La. C.Cr.P. art. 793 seeks to avoid is that the testimony or written evidence in question will be given undue weight. *Id.*

In *State v. Miller*, 10-718 (La. App. 5 Cir. 12/28/11), 83 So.3d 178, 198, *writ denied*, 12-282 (La. 5/18/12), 89 So.3d 1191, *cert. denied*, 568 U.S. 1157, 133 S.Ct. 1238, 185 L.Ed.2d 177 (2013), the defendant argued that the trial court erred by informing the jury that they would be permitted to listen to the 9-1-1 recordings during deliberations but then reversing itself when the jury requested the recordings. *Id.* On appeal, this Court stated that the 9-1-1 recordings would not be considered testimony and would have been subject to the court's discretion under La. C.Cr.P. art. 793. This Court explained that although the trial judge indicated that he believed the recordings were testimony and thus not allowed under La. C.Cr.P. art. 793, the record did not show that the defendant was prejudiced. This Court cited La. C.Cr.P. art. 921, which provides, "[a] judgment or ruling shall not be reversed by an appellate court because of any error, defect, irregularity, or variance which does not affect substantial rights of the accused." *Miller*, 83 So.3d

at 199. This Court found no prejudice to the defendant, explaining that the jury had already listened to the 9-1-1 recordings during the trial. *Id.*

Accordingly, we find that the 9-1-1 call in this case would not be considered testimony, and therefore, subject to the court's discretion under La. C.Cr.P. art. 793. See *Miller*, 83 So.3d 178.

The defendant does not specifically state the reason the defense wanted the jury to re-listen to the 9-1-1 call. Rather, he argues that the jury was deliberating for hours and alleges that they were struggling to reach a verdict. The defendant concludes that the failure to allow the jury to review the 9-1-1 call unduly prejudiced him and compromised his right to a fair trial but does not explain how.

The jury listened to the 9-1-1 call during the trial. The identity of the caller is not contained in the 9-1-1 call. As pointed out by the State, the identity of the caller was not a significant issue in this case. The caller only reported that an ambulance was needed at 645 Emile Avenue because a man had been shot. The call does not negate any other evidence presented by the State regarding the defendant's identity as the shooter.

Our review shows that the trial judge did not abuse his discretion by denying the jury's request to hear the 9-1-1 call again. Further, the defendant has not shown specific prejudice from the trial judge's denial of the jury's request to hear the call again. Accordingly, there is no merit to this assignment of error.

ASSIGNMENT OF ERROR NUMBER THREE

The defendant argues that the trial court erred in allowing the State to admit the specific facts of his prior conviction as *Prieur* evidence. He argues that the admission of this evidence was not harmless and that the details of the prior conviction (as opposed to the fact of the conviction itself) were a clear attempt by the State to bolster the case to obtain the convictions. The defendant points out that he pled guilty in the prior case, and in this case he called 9-1-1. He avers that

the State's argument that the prior shooting had the same *modus operandi* as the present one fails because the shootings were not similar. He concludes that the evidence of the prior conviction is more prejudicial than probative because of the State's "weak case."

The State responds that the defendant's claim has no merit. It argues that the defendant's prior use of a firearm showed his familiarity with them, and the other crimes evidence was highly relevant to show that he intentionally pulled the trigger and did not accidentally discharge the gun. The State avers that as in the prior incident, the defendant left the scene and lied to police. The State further argues that even if the admission of the other crimes evidence was erroneous, the defendant would not be entitled to relief because it was harmless.

On July 1, 2025, the State filed State's Notice of Intent to Introduce Evidence Under La. C.E. Article 404(B), in which it sought to admit evidence of the defendant's prior conviction for attempted second degree murder. In the motion, the State argued that evidence of the conviction was admissible because it tended to prove intent, *modus operandi*, identity, lack of mistake and knowledge, and it rebutted any claim of self-defense. The State attached reports related to the prior conviction to the motion.

At the hearing on the motion, the State argued that in this case, the evidence would show that the shooting by the defendant was an "unprovoked killing with no real motive." The State explained that the jury would hear evidence that the defendant was convicted of attempted second degree murder in 2011 and that this was also the predicate to La. R.S. 14:95.1. The State argued that it sought to introduce the underlying facts of the prior crime through the detective, who would testify that defendant shot an unarmed man in the back of the neck with no clear motive, then fled and tossed the gun. The State asserted that the facts of the instant matter and the prior crime were very similar in that the defendant shot someone

who was unarmed, unprovoked, not in self-defense, and left the scene. The State explained that this evidence of the prior crime was highly relevant because it showed that the defendant was familiar with guns and used them in violent crimes to shoot people.

Defense counsel responded that the State was attempting to argue that anytime there was a shooting, it would be "404(B) eligible." He averred that this evidence had no purpose other than to "smear" the defendant. He argued that the prior crime was so distant in time that it would not be relevant to this trial and that the facts were not similar. He stated that there was no probative value and to argue that it proved the defendant's familiarity with guns would open a "massive door."

The trial judge made the following ruling:

> … one, the Court does find that the, at least appears from the reports, the exhibits that are attached, and the allegations here, that it is similar. The Court would note, obviously, the State does have the burden of proof in the matter, and specifically has the burden to overcome self-defense if, in fact, that is a defense, so, they are entitled to put on the evidence that they see fit, I think that this certainly meets the criteria and, therefore, I'm going to grant the motion in limine.

The trial court noted that the fact that the defendant is charged with violation of 14:95.1 means that the jury was going to hear "about the fact that he has a prior attempted murder conviction." The trial court granted the State's motion to introduce evidence of this other crime under La. C.E. art. 404(B).

At trial, Detective Gex testified that he responded to a shooting involving the defendant as the perpetrator. Surveillance video that captured the incident showed the victim leaving the store and the defendant coming up behind him, retrieving a gun from his person, and shooting the victim in the back of the neck and head. The defendant fled with the gun in his hand. A gun was not seen in the victim's hand. The defendant was found hiding a few blocks from the scene. Detective Gex interviewed the defendant, who was very nervous and changed his version of events several times. In a later statement, the defendant admitted to throwing the

gun down as he ran. The defendant said the victim did not have a firearm, but the defendant felt that his life was in danger, and this is why he shot the victim.

In Louisiana, the fundamental rule governing the use of evidence of other crimes, wrongs, or acts is that such evidence is not admissible to prove that the accused committed the charged crime because he has committed other such crimes in the past. La. C.E. art. 404(B)(1); *State v. Perez-Espinosa*, 23-353 (La. App. 5 Cir. 5/22/24), 389 So.3d 284, 292, *writs denied*, 24-431 (La. 10/15/24), 394 So.3d 812, and 24-464 (La. 10/15/24), 394 So.3d 823, and 24-811 (La. 10/15/24), 394 So.3d 818. However, while the State may not admit evidence of other crimes to prove the defendant is a person of bad character, evidence of prior crimes may be admitted if the State establishes an independent relevance aside from proving the defendant's criminal character. *State v. Gilmore*, 24-552 (La. App. 5 Cir. 8/27/25), 421 So.3d 1039, 1060. Evidence of other crimes is admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding to such an extent that the State could not accurately present its case without reference to the prior bad acts. La. C.E. art. 404(B)(1); *State v. James*, 24-508 (La. App. 5 Cir. 7/30/25), 417 So.3d 103, 112.

Even when the other crimes evidence is offered for a purpose allowed under La. C.E. art. 404(B)(1), the evidence is not admissible unless it tends to prove a material fact at issue or to rebut a defendant's defense. *State v. Fuxan*, 24-302 (La. App. 5 Cir. 5/14/25), 415 So.3d 387, 413. For other crimes evidence to be admitted under La. C.E. art. 404(B)(1), one of the factors enumerated in the article must be at issue, have some independent relevance, or be an element of the crime charged. *Id.* The State is only required to make some showing of sufficient evidence to support a finding that the defendant committed the other independently

relevant acts. *Id.* Additionally, the probative value of the extraneous evidence must outweigh its prejudicial effect. La. C.E. art. 403; *State v. Washington*, 24-550 (La. App. 5 Cir. 8/27/25), 421 So.3d 1020, 1036, *writ denied*, 25-1190 (La. 2/10/26), 425 So.3d 1201.

The defendant bears the burden to show that he was prejudiced by the admission of the other crimes evidence. *James*, 417 So.3d at 112. Absent an abuse of discretion, a trial court's ruling on the admissibility of evidence pursuant to La. C.E. art. 404(B)(1) will not be disturbed. *Id.*

In *State v. Nguyen*, 04-321 (La. App. 5 Cir. 9/28/04), 888 So.2d 900, 904, *writ denied*, 05-220 (La. 4/29/05), 901 So.2d 1064, the defendant was charged with attempted second degree murder, and the State sought to introduce evidence of the defendant's commission of aggravated assault when he was a juvenile. In its 404(B) motion, the State asserted that it would show the defendant attempted another murder at a gas station on October 20, 1995, and that the evidence was admissible to establish the defendant's knowledge, intent, motive, and system. *Id.* The defendant filed a motion to suppress the "other crimes" evidence, which was denied by the trial judge. *Id.* at 905. At trial, the State adduced testimony from three witnesses, two witnesses who were at the scene of the crime and a detective who investigated it, regarding the crimes that the defendant committed. On appeal, the defendant argued that the other crimes evidence was not necessary to the State's case and that its objective was to paint him as a bad person.

On appeal, this Court stated that the record supported the defendant's argument that intent was not at issue in the case. It explained that under the facts of the case, it was clear that the perpetrator deliberately shot the victim, and there was no testimony that the shooting was accidental or inadvertent. This Court stated that the defendant's defense was "one of identity" and that he did not claim a lack of specific intent. *Nguyen*, 04-321, 888 So.2d at 906. This Court stated that

the evidence was not admissible to establish *modus operandi* (system) because the two offenses did not possess particularly distinctive features. The earlier shooting occurred four years before the instant offense and was too remote in time to be distinctively similar to show system. *Id.* at 907. This Court said that the other crimes evidence did not tend to show motive because the State was not required to establish motive to meet its burden of proof for attempted second degree murder. Although it found that the evidence was not admissible, this Court held that the defendant was not prejudiced by the admission of evidence and that its admission was harmless based on the testimony of the victim and a corroborating eyewitness. *Id.* at 908.

As in *Nguyen*, the introduction of details of the defendant's prior attempted second degree murder conviction was more prejudicial than probative. Although the defendant's actions in his prior conviction and in the instant case contain the defendant shooting a man from behind, the first offense was too remote in time from this case to be distinctively similar to show *modus operandi*. The prior conviction was from 2011, and the current offenses occurred in 2022. Additionally, as in *Nguyen*, intent was not at issue here; rather, the defendant argues there is a lack of proof of his identity as the perpetrator of the offenses.

While the State in this case was required to introduce the defendant's prior conviction as the predicate offense for the charge of felon in possession of a firearm because it was a material fact at issue, the factual details of the prior crime were not necessary based on its unduly prejudicial nature. Thus, the trial court erred in allowing evidence of the details of the prior offense.

The erroneous admission of other crimes evidence is subject to harmless error analysis. *State v. Thomas*, 19-582 (La. App. 5 Cir. 7/29/20), 300 So.3d 517, 529, *writ denied*, 20-1503 (La. 3/2/21), 311 So.3d 1053. In determining harmless error, it is "not whether, in a trial that occurred without the error, a guilty verdict

would surely have been rendered, but whether the guilty verdict actually rendered in the trial was surely unattributable to the error." *State v. Brown*, 24-16 (La. App. 5 Cir. 10/30/24), 398 So.3d 796, 804.

In this case, the State presented eyewitness testimony from Mr. Simpson, the victim of the attempted second degree murder, that the defendant shot at him multiple times and shot Mr. McGehee. The defendant was arrested after he was seen walking away from the scene of the crime, and the firearm used in the shooting was in his pocket, as confirmed by ballistic testing. Further, DNA testing showed that blood found on the defendant's socks matched Mr. McGehee's DNA. Thus, considering the other evidence presented at trial, we find that the guilty verdicts rendered by the jury were surely unattributable to the admission of the details of the other crime evidence and that any error in the admission was harmless.

ERROR PATENT DISCUSSION

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

Mandatory Fine

The trial judge failed to impose the mandatory fine required by La. R.S. 14:95.1(B) on count three. At the time the offense was committed, La. R.S. 14:95.1(B) required a fine of not less than one thousand dollars nor more than five thousand dollars. While an appellate court has the authority to correct an illegal sentence, this authority is permissive rather than mandatory. La. C.Cr.P. art. 882.

The defendant in this case appears indigent as he is represented by the Louisiana Appeals and Writ Service. He received a life sentence for his conviction of second degree murder. For these reasons, we refrain from remanding the matter

for imposition of the fine. See *State v. Newton*, 25-9 (La. App. 5 Cir. 12/23/25), 428 So.3d 1050.

Post-Conviction Relief Advisal

The sentencing minute entry reflects that the defendant was informed he had "two (2) years after judgment of conviction and sentence has become final to seek post-conviction relief." However, the sentencing transcript does not reflect that the defendant was advised of the prescriptive period to seek post-conviction relief pursuant to La. C.Cr.P. art. 930.8. The transcript prevails. See *State v. Lynch*, 441 So.2d 732, 734 (La. 1983).

Thus, the defendant is advised by this opinion that no application for post-conviction relief, including applications that seek an out-of-time appeal, shall be considered if filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. C.Cr.P. arts. 914 or 922. *State v. Nguyen*, 25-312 (La. App. 5 Cir. 11/12/25), 427 So.3d 267, 289, *writ denied*, 25-1475 (La. 5/12/26), 430 So.3d 1087.

CONCLUSION

For the preceding reasons, we affirm the defendant's convictions of second degree murder, attempted second degree murder, and felon in possession of a firearm and the imposed sentences.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

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JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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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 **NOVEMBER 4, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-KA-612

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE STEPHEN D. ENRIGHT, JR. (DISTRICT JUDGE)
HOLLI A. HERRLE-CASTILLO (APPELLANT)
REMY V. STARNS (APPELLANT)
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MAILED
NO ATTORNEYS WERE MAILED