The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2021-KH-00051

VS.

JACOBIE A. GREEN AKA "COBIE"

IN RE: Jacobie A. Green - Applicant Defendant; Applying For Writ Of Certiorari, Parish of Jefferson, 24th Judicial District Court Number(s) 15-3758, Court of Appeal, Fifth Circuit, Number(s) 19-KA-123;

March 09, 2021

Writ application denied - Untimely filed pursuant to La.S.Ct.R. X § 5.

JLW

JDH

SJC

JTG

WJC

JBM

PDG

Supreme Court of Louisiana
March 09, 2021

Katie Marjanovic

Chief Deputy Clerk of Court
For the Court

STATE OF LOUISIANA	NO. 19-KA-123
VERSUS	FIFTH CIRCUIT
JACOBIE A. GREEN AKA "COBIE"	COURT OF APPEAL
	STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 15-3758, DIVISION "J"
HONORABLE STEPHEN C. GREFER, JUDGE PRESIDING

December 26, 2019

ROBERT A. CHAISSON
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Robert A. Chaisson

AFFIRMED

RAC
FHW
MEJ

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CHAISSON, J.

Defendant, Jacobie A. Green a/k/a "Cobie," appeals his convictions and sentences for two counts of second degree murder and one count of attempted second degree murder. On appeal, defendant contends that the trial court erred in admitting his statement at trial, in denying his motion to quash the indictment, in admitting speculative photographs, and in including the State's requested jury charge. Finding no merit to these arguments, we affirm defendant's convictions and sentences.

PROCEDURAL HISTORY

Defendant was charged, by grand jury indictment, with the second degree murders of Johnell Ovide a/k/a "Ruga" (count one) and Trammel Marshall (count two), in violation of La. R.S. 14:30.1, and the attempted second degree murder of Blake Lamb, in violation of La. R.S. 14:27 and La. R.S. 14:30.1 (count three).[1] Defendant pled not guilty at his arraignment. Following the resolution of some pre-trial motions, the matter proceeded to trial before a twelve-person jury on July 31, 2018. At the conclusion of the trial on August 3, 2018, the jury unanimously found defendant guilty as charged.

On September 12, 2018, following the denial of defendant's motion for new trial, the trial court sentenced defendant to life imprisonment on counts one and two and fifty years imprisonment on count three, all without benefit of parole, probation, or suspension of sentence, to run consecutively. Defendant now appeals.

[1] The original indictment, which was filed on September 24, 2015, also charged Dartanya O. Spottsville a/k/a "Lo" and Johnell Walker a/k/a "Shadow" with two counts of second degree murder and one count of attempted second degree murder. In addition, co-defendant Spottsville was charged with possession of a firearm by a convicted felon, in violation of La. R.S. 14:95.1 (count four). A superseding bill of indictment was filed on October 8, 2015, which adopted the original indictment with respect to co-defendants Green, Spottsville, and Walker, and then additionally charged Archie Hulbert, III, with perjury, in violation of La. R.S. 14:123 (count five).

FACTS

This case involves a double homicide and an attempted homicide that occurred on June 21, 2015, on the westbank of Jefferson Parish. On that date, defendant, Dartanya Spottsville, and Johnell Walker went to Reginald Henry's apartment where they shot and killed Trammell Marshall and Johnell Ovide and attempted to kill Blake Lamb.

At trial, Reginald Henry testified about the circumstances surrounding part of the shooting incident. According to Mr. Henry, on June 21, 2015, he, his cousins – Johnell Ovide and Trammell Marshall – and his friend, Blake Lamb, were at his apartment located at 1617 Apache Drive in Harvey. At approximately 10:00 p.m., as Mr. Henry was in his bedroom getting ready to go to a party, he heard a knock at the door. Mr. Henry came out of his bedroom, and Mr. Marshall opened the door. Standing there were Jacobie Green (defendant), Dartanya Spottsville (a/k/a "Lo"), and Johnell Walker (a/k/a "Shadow"), whom Mr. Henry knew.[2]

The three wanted to know the location of the party and were allowed to enter Mr. Henry's apartment, at which point Mr. Lamb placed a gun on top of a stool. Mr. Spottsville reached for the gun. At that same time, Mr. Lamb also reached for it saying, "nah, … they got one in the head."[3] Mr. Henry, who was walking toward his bedroom, stopped and told Mr. Spottsville not to touch the gun. According to Mr. Henry, Mr. Spottsville picked up the gun, pointed it toward Mr. Ovide, and shot once, and then pointed it toward Mr. Lamb and shot him. In an attempt to save his life, Mr. Henry ran to his bedroom, "hit the bed" and "went straight through the window."

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[2] Mr. Henry testified that he knew Shadow "from the area," that he played ball with defendant in high school, and that he knew "Dartanya stayed next to Jacobie."

[3] Testimony at trial explained that this phrase meant there was a bullet in the chamber.

As he escaped, Mr. Henry heard more gunshots and "ow's from the shots, like it was hitting somebody." During his testimony, when asked about the number of gunshots he heard, Mr. Henry described that it "sounded like warfare." Once Mr. Henry got outside, he ran through the open gate of the apartment complex, asked someone to call the police, and then sat down on the side of the stairwell until the police arrived.

Blake Lamb also testified at trial regarding the circumstances surrounding the shooting. According to Mr. Lamb, on June 21, 2015, at approximately 10:00 p.m., he, Mr. Marshall, Mr. Ovide, and Mr. Henry were at Mr. Henry's apartment where they were making plans to go to a daiquiri shop. While they were smoking marijuana and playing on their phones, there was a knock at the door. Someone opened the door, and defendant, Mr. Spottsville, and Mr. Walker were allowed inside.

Mr. Lamb described that Mr. Ovide had a gun sitting on his lap and gave it to Mr. Spottsville when he asked for it. After playing with the gun for a little while, Mr. Spottsville gave it back to Mr. Ovide. Mr. Spottsville then asked Mr. Lamb for his gun. Although Mr. Lamb let Mr. Spottsville take it, Mr. Lamb told Mr. Spottsville to give him back his gun as he had "one in the head." Mr. Spottsville then pointed the gun at Mr. Ovide and fired it. Next, Mr. Spottsville pointed the gun at Mr. Lamb and shot him in the shoulder. Mr. Lamb asserted that when Mr. Spottsville started shooting, defendant and Mr. Walker also started shooting, and Mr. Walker shot at him.[4]

Mr. Lamb recalled that when the shooting started, Mr. Marshall "dove" into the kitchen and Mr. Henry ran to his bedroom. Mr. Spottsville went out the front

[4] Mr. Lamb testified that when Mr. Spottsville started shooting, defendant did not seem surprised, but rather appeared to be in control of the gun and to shoot deliberately. Mr. Lamb further testified that before the shooting started, he saw defendant and Mr. Walker with guns on their sides.

door followed by Mr. Ovide. Defendant and Mr. Walker went into the kitchen, stood over Mr. Marshall, and started shooting Mr. Marshall. While Mr. Lamb was sitting on the floor, he heard a lot of screaming and gunshots and asked defendant what he was doing. According to Mr. Lamb, defendant came up to him, put the gun to his face, told him to "shut the f*ck up," and shot him in his mouth. Defendant and Mr. Walker subsequently ran out of the apartment. Mr. Marshall, who was crying, got up from the kitchen and walked out the front door. Mr. Lamb walked in Mr. Henry's bedroom but did not see anyone in there, at which point he walked back to the front room and slid down the front door, thinking he was about to die.

Deputy Christian Dabdoub of the Jefferson Parish Sheriff's Office was the first officer to respond to the scene of the shooting. Upon his arrival, Deputy Dabdoub saw three victims, who were later identified as Mr. Marshall, Mr. Ovide, and Mr. Lamb. Deputy Dabdoub described that Mr. Marshall was lying on the grass, writhing in pain, and covered in blood,[5] that Mr. Ovide was lying still on the ground and did not appear to be breathing,[6] and that Mr. Lamb was sitting upright and leaning against the doorframe of the apartment bleeding heavily from his face and neck. Deputy Dabdoub noticed that the window to one of the rooms was broken and that the blinds and curtains were hanging outside. Further, he noted that the front door was open revealing the "chaos" inside, which included furniture moved "all over the place," bullet casings on the floor, and blood everywhere.

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[5] Mr. Marshall was subsequently brought to the hospital where he died. At trial, Dana Troxclair, a forensic pathologist with the Jefferson Parish Coroner's Office, testified that she performed an autopsy on Mr. Marshall. She noted that Mr. Marshall sustained five gunshot wounds and that the fatal wound occurred when a bullet entered his left upper chest and landed in the fifth rib on the left side. Ms. Troxclair concluded that Mr. Marshall's cause of death was multiple gunshot wounds and that his manner of death was homicide.

[6] Ms. Troxclair also performed an autopsy on Mr. Ovide. She noted that Mr. Ovide sustained three gunshot wounds and that the fatal wound occurred when a bullet entered the left chest, perforated the left lung, went through the heart, and landed in the seventh rib on the right side. Ms. Troxclair concluded that Mr. Ovide's cause of death was multiple gunshot wounds and that his manner of death was homicide.

Deputy Dabdoub spoke to Mr. Lamb, who had been shot in the face, and asked him who had done this, and Mr. Lamb replied, "Cobie from Betty Street." Deputy Dabdoub then asked Mr. Marshall who had done this to him, and he said, "Cobie from the Marrero Projects."[7]

During his testimony, Deputy Dabdoub also relayed his interaction with Mr. Henry at the scene of the shooting. He noted that Mr. Henry was hiding behind a vehicle across the street, that he was crying, terrified, distraught, and shaking, and that he had blood on his arms. Deputy Dabdoub testified that Mr. Henry described the three men that came to the apartment that night, that Mr. Henry identified one suspect as defendant and a second suspect by the nickname "Shadow," and also identified the 1900 block of Betty Street as the possible location of the suspects.[8]

Mr. Henry was eventually brought to the detective bureau, at which time he was interviewed by Detective Jean Lincoln of the Jefferson Parish Sheriff's Office. Based on the preliminary information given by Mr. Henry, Detective Lincoln prepared photographic lineups of defendant and Mr. Walker. Mr. Henry positively identified these two individuals as being present at the time of the shootings. Mr. Henry also showed Detective Lincoln the addresses for those three individuals who were inside his apartment at the time of the murders. With Mr. Henry's assistance, Detective Lincoln identified 1909 Betty Street as defendant's residence and learned that the residence next door, 1911 Betty Street, was associated with the third perpetrator, later learned to be Mr. Spottsville. Detective Lincoln also learned that 1477 Lincoln Avenue was the address associated with Mr. Walker.

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[7] Deputy Dabdoub testified that Betty Street has the reputation of being an area with a well-documented history of having violent crime, firearm, and drug offenses. Further, he said that a reference to the Marrero Projects is generally known as an area that includes Betty Street.

[8] When Mr. Henry was asked whether he was able to provide the officers that evening with the first and last names of the three people who had come to his apartment, he replied that he did not know everyone's real names at the time.

They went back to the bureau, at which point Mr. Henry positively identified Mr. Spottsville as the third perpetrator.

Based on the information learned through her investigation, Detective Lincoln prepared a search warrant for Mr. Spottsville's address, but no items were collected from there. While there, the officers saw Denise Buras, defendant's mother, outside of 1909 Betty Street. Ms. Buras said that she was a resident of that address and gave her consent to search it.

During the search, the officers identified a bedroom belonging to defendant.[9] In that bedroom, Detective Lincoln and other officers observed two shooting targets with holes in them hanging on the wall. The officers also located and retrieved a Glock .40 caliber magazine, a box of Blazer .40 caliber ammunition, an empty box for a Glock model 22 handgun, and an empty box for a Glock model 23 handgun. The officers also found, in one of the Glock boxes, a receipt dated June 15, 2015, for a Glock model 23 handgun with a customer name of "J. Green" on it. They also found inside the other Glock box a receipt dated February 5, 2015, with "J. Green" on it for a Glock model 22 .40 caliber handgun. Detective Lincoln asserted that .40 caliber casings were recovered from the crime scene[10] and that no Glock handguns, boxes, or .40 caliber ammunition were located in Mr. Spottsville's bedroom.

At approximately 10:00 a.m. on June 23, 2015, defendant appeared at the front desk of the detective bureau and initially spoke to Detective Gabriel Faucetta to attempt to provide an explanation about the whereabouts of the firearms from

[9] To corroborate defendant's connection to the room, the officers took photographs of certificates with defendant's name on them hanging in the bedroom.

[10] Detective Donald Zanotelli of the Jefferson Parish Sheriff's Office testified that on June 21, 2015, he went to the crime scene at 1617 Apache where he recovered spent casings and projectile material, including a .380 caliber cartridge, a .40 caliber casing, and a .380 caliber unfired cartridge case.

the empty Glock boxes that were collected from his bedroom. When Detective Lincoln joined them approximately ten minutes later, defendant indicated that he did not have possession of either of those weapons and had lost possession of at least one of the guns several days before the shootings in the instant case, which was several days after he bought it. Defendant claimed that he was sitting outside his residence with a weapon in his lap when a stranger walked up and asked to see it. He further claimed that he let the stranger see it, after which the stranger allegedly pointed the weapon at him and then ran away with it.

Detective Lincoln noted suspicious similarities between that story and Mr. Henry's statement as to how the shootings first began. Detective Lincoln testified that defendant initially told them he was not at the apartment that evening and that he was with Archie Hulbert, who could corroborate his alibi. She further testified that when she asked defendant about his whereabouts during the shootings, he lost eye contact, distanced himself from looking at her, became nervous, and started sweating. As Detective Lincoln believed defendant was withholding information, she moved him to an interview room to videotape his statement. She read defendant his rights, and defendant waived them.[11]

In his statement,[12] defendant denied being at the scene of the shootings for many hours. At some point, he admitted being present at the scene at the time of the shootings but insisted he did not have a gun. Later on, he admitted that he had a gun and that he shot it three or four times during the incident. He claimed that

[11] Detective Lincoln testified that although she began the interview, she had to leave due to a personal emergency. As such, she explained that the interview was continued by Detective Gabriel Faucetta, as well as other detectives.

[12] Defendant's videotaped statement was played for the jury at trial. Prior to its publication to the jury, the parties stipulated that the entirety of the statement was twelve hours and twenty-seven minutes long. However, the parties agreed to fast forward those portions where defendant is alone in the room and not speaking.

his head was turned while he was shooting, and therefore, he did not know who or what he was shooting at.

At trial, there was also testimony from some expert witnesses. Detective Solomon Burke, who worked for the Jefferson Parish Sheriff's Office digital crimes unit, testified as an expert in the field of mobile device forensics. Detective Burke relayed to the jury that he examined six mobile devices in connection with the instant case and was able to extract data from defendant's cell phone. He identified three images that were extracted from that device (which are the subject of defendant's argument in Assignment of Error Number Three and will be discussed therein). Detective Burke also testified that in February of 2015, there were web searches for Glock products and a Google search for a thirty round magazine for a Glock 22 on defendant's phone.

Linda Tran, who was employed by the Jefferson Parish Sheriff's Office as a firearm examiner, testified as an expert in the field of firearm ballistic identification and analysis. Ms. Tran asserted that specimens/casings 3, 4, 5, 6, 8, 10, 11, and 23 recovered from the crime scene were consistent with having been fired by the same Glock firearm. Further, she stated that specimens/casings 9, 22, and 48 recovered from the crime scene were fired in a different weapon, noting that those specimens had teardrop firing pin impressions which were unique to the Smith and Wesson pistol, mainly the M&P model. Ms. Tran indicated that specimens 12, 24, 38, and 49 recovered from the crime scene were projectiles with polygonal rifling, which was one of the features of a Glock pistol. She also testified that specimen 38, which caused Mr. Ovide's fatal wound, was consistent with having been fired "in" a Glock firearm and that specimen 49, a projectile removed from Mr. Lamb's jaw, was consistent with having been fired "in" a Glock firearm. Ms. Tran testified that specimen 46 was a projectile recovered from Mr.

Marshall's chest and that specimen had ballistic similarities with specimen 48 that were consistent with a Smith and Wesson firearm.

DENIAL OF MOTION TO SUPPRESS STATEMENT
(Assignment of Error Number One)

In his first assigned error, defendant challenges the trial court's denial of his motion to suppress statement. He maintains that his statement was not given pursuant to a valid waiver of rights and was not freely and voluntarily made.

Prior to trial, defendant filed a motion to suppress statement on the basis that it was illegally and unlawfully obtained. In his memorandum in support thereof, defendant maintained that his statement was not freely and voluntarily given based on the length of the interrogation, the coercive tactics employed by the detectives, and the failure to re-advise him of his *Miranda*[13] rights once the interview turned into a custodial interrogation.

At the suppression hearing, Detective Faucetta testified that on June 23, 2015, defendant voluntarily came to the detective bureau and informed the receptionist that he wanted to speak to someone in the homicide section. Detective Faucetta walked to the front desk reception area and proceeded with defendant to his office. Defendant advised Detective Faucetta that during a search of his residence, a box for a pistol had been collected and that the gun that belonged in the box had been stolen from him. However, defendant claimed he had not reported the gun as stolen and gave a vague story about the circumstances under which the gun had been taken. According to Detective Faucetta, during this initial voluntary interaction, defendant was considered a witness, not a suspect. Further, Detective Faucetta testified when he first made contact with defendant, he did not arrest defendant or indicate that he was not free to leave.

[13] *See Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

After a few minutes, Detective Jean Lincoln joined defendant and Detective Faucetta. She briefly spoke to defendant, and then thinking that he might be more than a witness to the shootings, Detective Lincoln moved defendant to an interview room and advised him of his *Miranda* rights utilizing a Jefferson Parish "Rights of Arrestee or Suspects" form, which indicated that defendant was under investigation. Detective Lincoln testified that she went over all of the rights with defendant, that he initialed next to each right, and that he signed the form indicating that he wished to waive his rights. She further testified that she did not offer defendant anything of value or coerce or threaten him into waiving his rights and giving a statement. Detective Faucetta, who participated in the interview, likewise testified that he did not threaten or coerce defendant into making a statement and did not offer him anything of value in exchange for a statement.

After considering the testimony presented, the video of the statement, and the arguments of counsel, the trial court denied defendant's motion to suppress statement, giving extensive reasons. In sum, the trial court stated that regardless of the determination of the custodial nature of the interrogation, defendant was properly advised of his rights at the beginning of the interview and thereafter signed the waiver of rights form.[14] Further, the trial court stated that the police actions during the course of the interview did not rise to the level of being physically threatening or intimidating to the point that it would make defendant's statement involuntary. The court specifically noted that although the video reflected "some close proximity" and "loud voices," it did not reflect "any physical threatened violence." In addition, the trial court observed that defendant was

[14] The trial court explained that since defendant was advised of his rights at the beginning of the interview process, the determination of the custodial nature of the interrogation was not essential to his ruling. However, in the event that issue would be relevant on appeal, the trial judge expressed his belief that once defendant was brought into the interview room and sat at the table, he was not free to leave, and the interview constituted a custodial interrogation.

allowed to leave the room on more than one occasion, was provided with food and water during the course of the investigation, and was not prohibited from eating, drinking, or using the restroom.

Pursuant to this ruling, defendant's statement was introduced at trial. Defendant now contends that his statement was improperly admitted at trial and particularly takes issue with the trial court's determination that the entire interview constituted a custodial interrogation. Defendant asserts that he voluntarily went to the detective bureau, that he was free to leave as evidenced by the officers' testimony, and that the interview did not begin as a custodial interrogation. He maintains that at some point over the course of his twelve hours at the detective bureau, his interview turned into a custodial interrogation, at which point he should have been re-advised of his *Miranda* rights. Since he was not so re-advised, defendant asserts that his statement admitting his presence at the scene of the shooting was not given pursuant to a valid waiver of rights and should have been suppressed.

The State has the burden of proving the admissibility of a purported confession or statement by the defendant. La. C.Cr.P. art. 703(D); *State v. Arias-Chavarria*, 10-116 (La. App. 5 Cir. 9/28/10), 49 So.3d 426, 433, *writ denied*, 10-2432 (La. 2/25/11), 58 So.3d 460. Before an inculpatory statement made during a custodial interrogation may be introduced into evidence, the State must prove, beyond a reasonable doubt, that the defendant was first advised of his *Miranda* rights, that he voluntarily and intelligently waived them, and that the statement was made freely and voluntarily and not under the influence of fear, intimidation, menaces, threats, inducements, or promises. *State v. Loeb*, 09-341 (La. App. 5 Cir. 2/23/10), 34 So.3d 917, 924-25, *writ denied*, 10-681 (La. 10/15/10), 45 So.3d 1110.

A determination of voluntariness is made on a case-by-case basis, depending on the totality of the facts and circumstances of each situation. The admissibility of a confession or statement is a determination for the trial judge, and the judge's conclusions on the credibility and weight of the testimony relating to the voluntary nature of the confession or statement are entitled to great weight and will not be overturned unless unsupported by the evidence. Testimony of the interviewing police officer alone may be sufficient proof that a defendant's statements were freely and voluntarily given. *State v. Arias-Chavarria*, 49 So.3d at 433.

Having reviewed the circumstances surrounding the taking of defendant's statement, the video of the statement, and the applicable jurisprudence, we find no error in the trial court's denial of defendant's motion to suppress and its subsequent admission of his statement at trial. Cases from both the Louisiana Supreme Court and this Court support our conclusion and have addressed issues similar to the ones raised by defendant herein relating to the length of the interview, police tactics during the interview, and the necessity for the re-advisal of rights.

In *State v. Blank*, 04-204 (La. 4/11/07), 955 So.2d 90, *cert. denied*, 552 U.S. 994, 128 S.Ct. 494, 169 L.Ed.2d 346 (2007), the defendant voluntarily agreed to go to the courthouse and be interviewed by police officers. The entire interrogation lasted twelve hours. After the first three hours, during which time the defendant denied involvement in the murders, he submitted to a polygraph examination. A couple of hours later, a detective entered the room and, in a long and solemn speech referencing the defendant's deceased mother, calmly appealed to the defendant to confess. In response, the defendant became emotional and slowly began to confess to all of the homicides. On appeal, the defendant claimed that his videotaped confession should be suppressed because it was illegally coerced, noting the "harsh circumstances of the lengthy interrogation." The Louisiana

Supreme Court found that officers administered *Miranda* warnings before the interview commenced and that the defendant indicated he understood those rights and wished to waive them. It further found that the length of the interrogation did not vitiate the voluntariness of the statement, noting that during the interrogation, the defendant made several trips to the restroom and drank sodas throughout the interrogation. Further, although the defendant expressed weariness, said he was cold, and complained of back pain, he never requested to terminate the interrogation or invoke his *Miranda* rights. The Court stated that the defendant's physical and mental distress did not render the statement involuntary. It also found that the interrogators' repeated admonishments to the defendant to tell the truth did not render the statement involuntary.

In *State v. Bradley*, 03-384 (La. App. 5 Cir. 9/16/03), 858 So.2d 80, *writs denied*, 03-2745 (La. 2/13/04), 867 So.2d 688 and 08-1951 (La. 1/30/09), 999 So.2d 750, the defendant contended that his statements should have been suppressed because they were not legally obtained, noting the length of the interview and the failure of detectives to advise him of his rights prior to each of his statements. This Court found that the defendant was advised of his rights before the first of the five statements was taken and that jurisprudence did not mandate multiple warnings. It also found that although the interview lasted seven hours, the length of the interview was not attributable to coercion, but rather, it was precipitated by the defendant's deception in his initial statements. This Court concluded that the trial court did not err in denying the motion to suppress, noting that the defendant knowingly and voluntarily waived his rights and never invoked his right to cease talking to investigators.

In the present case, the evidence suggests that defendant voluntarily appeared at the detective bureau to report that his gun, associated with the empty

gun box found at his apartment during a search, had been stolen. When defendant initially talked to Detective Faucetta and Detective Lincoln, he was not considered a suspect in the shootings, was not under arrest, and was free to leave. However, when defendant started providing information that the officers believed might be false, he was brought into the interview room to begin a videotaped statement. While defendant's initial interaction with the detectives was clearly voluntary, we agree with the trial court's assessment that once defendant was brought into the interrogation room and sat at the table, he was no longer free to leave, and the nature of the interrogation became custodial. Prior to the beginning of this interview, defendant was fully advised of his rights, which defendant indicated that he understood and wished to waive. Based on these circumstances, there was no need for the officers to re-advise defendant of his rights during the course of the interview, and therefore, any failure in this regard did not render defendant's statement involuntary.

Likewise, we find that the length of the interview did not render defendant's statement involuntary. Although the statement was approximately twelve and one-half hours long, the length of the interview was not attributable to coercion, but rather, it was precipitated by defendant's deception in denying his involvement in the homicides for many hours. *See Bradley, supra.* With respect to the conditions surrounding the statement, the videotaped statement reflects that defendant was allowed to use the restroom and was given something to eat and drink. The video also shows that defendant rested and slept alone for periods of time in the chair he was sitting in during the twelve and one-half hour period.

Lastly, we do not find that the interrogation tactics employed by the police rendered defendant's statement involuntary. Although the officers raised their voices at defendant insisting that he tell the truth, the video does not indicate that

defendant was in physical or mental distress, nor does it reflect physical threats or violence against defendant. Also, the video shows that defendant never invoked any of his *Miranda* rights.

In light of the foregoing, we find that defendant was first advised of his *Miranda* rights, that he voluntarily and intelligently waived them, and that the statement was made freely and voluntarily and not under the influence of fear, intimidation, menaces, threats, inducements, or promises. *See Loeb, supra.* Accordingly, we find that the arguments raised by defendant in this assigned error are without merit and that the trial court did not err by denying defendant's motion to suppress statement.

DENIAL OF MOTION TO QUASH THE INDICTMENT
(Assignment of Error Number Two)

In his next assigned error, defendant argues that the trial court erred by denying his motion to quash the superseding short form indictment. He contends that the "bare bones indictment" is constitutionally deficient and fails to identify whether the grand jury found that he acted with specific intent to kill or to inflict great bodily harm.

Defendant was charged by grand jury indictment with two counts of second degree murder and one count of attempted second degree murder. Specifically the indictment provided that on or about June 21, 2015, defendant and his co-defendants violated La. R.S. 14:30.1, in that they committed the second degree murder of Johnell Ovide a/k/a "Ruga" and the second degree murder of Trammell Marshall (counts one and two, respectively). The State also alleged that on June 21, 2015, they attempted to commit the second degree murder of Blake Lamb, in violation of La. R.S. 14:27 and La. R.S. 14:30.1.

Defendant filed a motion to quash the indictment as constitutionally deficient. In that motion, defendant argued that the indictment was invalid because

it failed to charge the requisite elements of second degree murder. Specifically, defendant contended that the indictment failed to allege the presence of specific intent or any aggravating factor or circumstance that was required. The State filed an opposition to defendant's motion, arguing that La. C.Cr.P. art. 465(A)(32) and (A)(7) provide that a short form indictment may be used to initiate prosecution for second degree murder and attempted second degree murder, respectively.

Following a hearing, the trial court denied defendant's motion to quash, stating as follows:

> And based upon the State's opposition which the Court has reviewed along with the defense's motion initially obviously, it does appear that there is binding authority upon the Court holding that the short form of the indictment is sufficient to put the defendant on notice of the crime with which he has been charged. And as such, those motions have been denied and that denial has been upheld by the appropriate courts. And the Court is going to abide by those prior decisions and deny the motion.

Defendant now challenges this denial, contending that the short form indictment is constitutionally deficient. He maintains that the due process clause of the Fourteenth Amendment guarantees his right to have a grand jury consider and return an indictment concerning each and every element of the crime for which he is charged, prosecuted, and convicted. Thus, the indictment in this case, which fails to identify whether the grand jury found that he acted with specific intent to kill or to inflict great bodily harm, was deficient and should have been quashed.

Article I, Section 13 of the Louisiana Constitution requires that an indictment inform a defendant of the nature and cause of the accusation against him. *State v. Chairs*, 12-363 (La. App. 5 Cir. 12/27/12), 106 So.3d 1232, 1240, *writ denied*, 13-306 (La. 6/21/13), 118 So.3d 413. This requirement is implemented by La. C.Cr.P. art. 464, which provides:

> The indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall state for each count the official or customary citation of the

> statute which the defendant is alleged to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

La. C.Cr.P. art. 465 authorizes the use of specific short form indictments in charging certain offenses, including second degree murder and attempted second degree murder. La. C.Cr.P. art. 465(A)(32) provides the short form indictment for second degree murder: "A.B. committed second degree murder of C.D." La. C.Cr.P. art. 465(A)(7) provides the short form indictment for attempted second degree murder: "A.B. attempted to murder C.D." Both the Louisiana Supreme Court and this Court have consistently upheld the constitutionality of these short forms. *State v. Draughn*, 05-1825 (La. 1/17/07), 950 So.2d 583, 624, *cert. denied*, 552 U.S. 1012, 128 S.Ct. 537, 169 L.Ed.2d 377 (2007); *State v. Kyles*, 16-295 (La. App. 5 Cir. 12/7/16), 233 So.3d 150, 159.

In the instant case, the indictment complied with the short form set forth in La. C.Cr. P. art. 465(A)(32) and (A)(7) as it provided that on or about June 21, 2015, Jacobie Green violated La. R.S. 14:30.1, in that he "did commit the second degree murder of Johnell Ovide aka 'Ruga'" (count one) and "did commit the second degree murder of Trammell Marshall" (count two), and violated La. R.S. 14:27 and La. R.S. 14:30.1, in that he "did attempt to commit the second degree murder of Blake Lamb" (count three). Moreover, when a short form indictment is used, it is intended that the defendant use a bill of particulars to procure details as to the statutory method by which he committed the offense. *State v. Page*, 08-531 (La. App. 5 Cir. 11/10/09), 28 So.3d 442, 453, *writ denied*, 09-2684 (La. 6/4/10), 38 So.3d 299.

On October 2, 2015, defendant filed omnibus motions, including a request for discovery and bill of particulars. In its answer, the State asserted that it was providing "open file" discovery to defendant, which consisted of all evidence in

the possession of the District Attorney's Office including, but not limited to, photographs, 9-1-1 tapes, telephone recordings, statements and/or jail telephone recordings, and current and future file contents (excluding internal State documents as described in La. C.Cr. P. art. 723). Defense counsel thereafter filed discovery receipts acknowledging the receipt of discovery including, but not limited to, reports related to the instant case, rap sheets and criminal history reports, calls for service printout, initial incident report, supplemental reports, autopsy reports, digital analysis report, scientific analysis report, arrest warrants, search warrants, statements, arrest registers, and crime scene photos. As such, defendant was fully aware of the nature of the charges against him, especially considering the large amount of discovery the State provided to him.

Accordingly, we find no error in the trial court's denial of defendant's motion to quash the indictment.

ADMISSION OF PHOTOGRAPHS
(Assignment of Error Number Three)

In this assigned error, defendant challenges the trial court's admission at trial of three photographs that were retrieved from his cell phone, which depict a hand holding a gun, a hand holding a gun and pointing to a shooting range target, and defendant pointing a gun at a shooting range target.

Prior to trial, defendant filed a motion in limine seeking to prohibit the prosecution from introducing these images at trial. After the State filed a response, the trial court conducted a hearing on defendant's motion and ruled that the photographs were admissible, stating in pertinent part:

> All right. So the Court has, obviously, taken a look at the memos in support and opposition to, as well as the photographs involved. I would tend to agree with the State in this particular matter in that I think the photographs are probative of the weapon involved in the shooting the alleged weapon involved in the shooting and Mr. Green's connection to that weapon.

> The State will have to prove intent as they're going to attempt to prove the specific intent to kill. I think the familiarity with the use and the ability to use the gun effectively goes into that issue as well so I think it is probative for those reasons.
>
> And then clearly the photos depicting Mr. Green and the fact that the items were taken from Mr. Green's room is probative of the fact that he is connected to the weapon and/or to that ability to use the weapon effectively.
>
> So for all those reasons, I think that the probative value outweighs any prejudicial effect. I don't believe it's cumulative given the nature of the case so the Court's going to deny the motion.

Defense counsel objected and the photographs were subsequently admitted into evidence at trial. Defendant now contends that the trial court erred in admitting these speculative photographs, pointing out that the photographs were cumulative as the State already had ample evidence linking him to two Glock firearms. Further, defendant argues that the purpose for which they were admitted, to show his ability to use the weapon effectively, was not relevant to the issue in this case, which was whether he acted in self-defense or whether he formed specific intent to kill or to inflict great bodily harm. In addition, defendant asserts that since the photographs were not relevant to an issue in the case, their prejudicial nature outweighed their probative value, and the error in the admission of these photographs cannot be deemed harmless.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." La. C.E. art. 401. All relevant evidence is admissible, except as otherwise provided by law, and irrelevant evidence is not admissible. La. C.E. art. 402. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403.

Generally, photographs are admissible if they illustrate any fact, shed light upon any fact or issue in the case, or are relevant to describe the person, place, or thing depicted, subject to the test that their probative value outweighs any prejudicial effect. *State v. Battaglia*, 03-692 (La. App. 5 Cir. 11/25/03), 861 So.2d 704, 710, *writ denied*, 04-1701 (La. 4/29/05), 901 So.2d 1058. The cumulative nature of photographic evidence does not render it inadmissible if it corroborates the testimony of witnesses on essential matters. In general, an appellate court places great weight upon a trial court's ruling on the relevancy of evidence, and such a determination will not be reversed absent a clear abuse of discretion. *Id.* at 711.

In the instant case, the three photographs in question were retrieved from defendant's cell phone. The images depict defendant pointing to a shooting range body target with holes in it at a shooting range (State's Exhibits 203/206), a hand holding a gun pointing toward a shooting range body target with holes in it (State's Exhibits 204/207), and a hand holding a gun (State's Exhibits 205/208). At trial, Detective Roniger testified that during his statement, defendant positively identified State's Exhibit 208 as the gun he used in the shooting and State's Exhibit 207 as a photograph of his gun. In addition, Mr. Lamb testified that the gun depicted in State's Exhibit 208 looked like the same gun that defendant had during the shootings.

In the present case, we find that the photographs were clearly relevant to show the weapon defendant used in the shooting, especially since it was never recovered. Further, the photographs were relevant with respect to the issue of whether defendant had specific intent to kill or to inflict great bodily harm in that they show defendant's familiarity with, and skill in, shooting the weapon. The images also were relevant in that Mr. Lamb identified the gun defendant used in

one of the photographs. In addition, the probative value of these photographs in showing the weapon involved in the shooting and defendant's connection to that weapon clearly outweighs any prejudicial effect. In light of these considerations, we find no abuse of discretion in the trial court's admission of these photographs into evidence at trial.

Moreover, even if the photographs were improperly admitted, the erroneous admission of irrelevant evidence is subject to a harmless error analysis. *State v. Carter*, 14-943 (La. App. 5 Cir. 4/29/15), 170 So.3d 328, 334, *writ denied*, 15-1024 (La. 4/8/16), 191 So.3d 580. An error is considered harmless when the verdict is surely unattributable to the error. *State v. Williams*, 09-48 (La. App. 5 Cir. 10/27/09), 28 So.3d 357, 365, *writ denied*, 09-2565 (La. 5/7/10), 34 So.3d 860. In this case, any error in admitting the photographs was harmless considering the overwhelming evidence of defendant's guilt, namely, the testimony of Mr. Lamb that defendant shot him and Mr. Marshall, the testimony of Deputy Dabdoub that Mr. Marshall told him that defendant shot him, and defendant's confession that he was at the scene and shot his gun, which he positively identified in photographs shown to him by a detective as the gun he used that night.

Accordingly, the arguments raised by defendant in this assignment of error are likewise without merit.

JURY CHARGES
(Assignment of Error Number Four)

In his final assignment of error, defendant argues that the trial court erred by including the State's requested special jury charge about specific intent.

In the present case, pursuant to the State's request, the trial court included the following in the jury charges:

> Deliberately pointing and firing a deadly weapon at close range are circumstances which will support a finding of specific intent to kill. *State v. Broaden*, 99-2124 (La. 2/21/01), 780 So.2d 349, 362.

In the jury charge conference, the trial court stated its reason for including the requested charge:

> The state had requested the inclusion of deliberately pointing and firing a deadly weapon at close range are circumstances which will support a finding of specific criminal intent based upon the very specific testimony by Mr. Lamb regarding Mr. Green's actions of pointing the gun against his face and pulling the trigger. I think that that definition of specific intent would be appropriate in this particular case, so I wanted to make defense counsel aware that I had included it and, as such, if you chose to object to it, just to give you the opportunity to do so.

Defendant thereafter objected on the basis that the charge was extraneous and already covered in the other charges. Despite defendant's objection, this charge was read to the jury. On appeal, defendant argues that this requested charge was irrelevant, extraneous, and prejudicial. He particularly notes that the charge was already covered in other jury charges regarding criminal intent. Further, he maintains that this instruction, which mirrored Mr. Lamb's account of the shooting, could be viewed as giving credibility to his testimony instead of allowing the jury to evaluate the circumstances on their own and could have been seen by the jury as the trial court's endorsement of the State's allegations.

La. C.Cr.P. art. 802 requires the trial court to charge the jury as to the law applicable to the case. Under La. C.Cr.P. art. 807, 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. *State v. Franklin*, 13-723 (La. App. 5 Cir. 5/28/14), 142 So.3d 295, 303, *writ denied*, 14-1396 (La. 2/13/15), 159 So.3d 462. The evidence presented at trial must support the requested special charge. *State v. Batiste*, 06-824 (La. App. 5 Cir. 3/13/07), 956 So.2d 626, 636, *writ denied*, 07-892 (La. 1/25/08), 973 So.2d 751. Furthermore, the Louisiana Supreme Court has consistently held that a jury charge must be considered as a whole, and

particular expressions in a charge must be construed in the context of the entire charge. Thus, it has declined to reverse the conviction on the ground of an erroneous charge unless the disputed portion, when considered in connection with the remainder of the charge, is erroneous and prejudicial. *State v. Motton*, 395 So.2d 1337 (La. 1981), *cert. denied*, 454 U.S. 850, 102 S.Ct. 289, 70 L.Ed.2d 139 (1981); *State v. George*, 346 So.2d 694 (La. 1977).

In the present case, we find no error in the trial court's inclusion of the State's requested jury charge. Under one theory of second degree murder, the State had to prove that defendant had the specific intent to kill or to inflict great bodily harm with respect to counts one and two. With respect to count three, attempted second degree murder, the State had to prove defendant had the specific intent to kill.[15] At trial, Mr. Lamb testified that defendant pointed a gun at his face and shot him. Thus, the evidence presented at trial supported the requested special charge. Further, the special charge did not require qualification, limitation, or explanation; it was wholly pertinent and correct; and it was not included in the general charge or in another special charge. Accordingly, the arguments raised by defendant in this assigned error are without merit.

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). Our review reveals no errors that warrant corrective action.

Accordingly, for the reasons set forth herein, defendant's convictions and sentences are hereby affirmed.

AFFIRMED

[15] It is noted that the jury was charged with both theories of second degree murder.