NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 2122

STATE OF LOUISIANA

VS.

DONNIE MEYN

****

JUDGMENT RENDERED: MAY 4, 2007

****

ON APPEAL FROM THE
TWENTY-FIRST JUDICIAL DISTRICT COURT
DOCKET NUMBER 105326, DIVISION D
PARISH OF TANGIPAHOA, STATE OF LOUISIANA

HONORABLE DOUGLAS M. HUGHES, JUDGE

****

SCOTT M. PERRILLOUX DISTRICT ATTORNEY DONALD J. WALL AMITE, LA	ATTORNEYS FOR APPELLEE STATE OF LOUISIANA
J. GARRISON JORDAN HAMMOND, LA	ATTORNEY FOR DEFENDANT/APPELLANT DONNIE MEYN

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

MCDONALD, J.

The defendant, Donnie Meyn, was initially charged by grand jury indictment with one count of second degree murder, a violation of La. R.S. 14:30.1, and pled not guilty.[1] Thereafter, the charge was amended to one count of obstruction of justice, a violation of La. R.S. 14:130.1.[2] Following a jury trial, he was found guilty as charged by unanimous verdict. He moved for a new trial and for a post-verdict judgment of acquittal, but the motions were denied. He was sentenced to fifteen years at hard labor. He now appeals, designating seven assignments of error. We affirm the conviction and sentence.

ASSIGNMENTS OF ERROR

1. The trial court committed reversible error when it granted the State's challenge for cause as to juror Justin Fowler on the second day of trial after Fowler had been sworn as a juror.

2. The prosecutor's remarks made during opening arguments regarding the defendant's drug use, purchasing drugs from the victim, and being culpable for the murder, without being charged with second degree murder, constituted the improper use of evidence of other crimes, wrongs, or bad acts.

3. The trial court committed reversible error when it denied the defendant's motions in limine requesting that the prosecution not be allowed to use and/or discuss and/or introduce any evidence of a second degree murder, especially, in light of the stipulation that was entered into between the State and the defendant pertaining to the homicide.

4. The trial court committed reversible error when it denied the defendant's motion for mistrial in connection with the testimony of the State's witness Jodie Spears.

5. The trial court committed reversible error when it allowed the prosecution to elicit testimony from Lieutenant Rodney Varnado pertaining to an alleged taped statement made by the defendant despite the fact that the tape was inaudible and not introduced into evidence by the State.

---

[1] Phillip Pigott was also charged by the same indictment with the same offense. Following his release from jail on bond, he was killed in an automobile accident.

[2] The record does not indicate that the defendant was rearraigned following the amendment of the indictment. He did not, however, object to the failure to rearraign. A failure to arraign the defendant or the fact that he did not plead, is waived if the defendant enters upon the trial without objecting thereto, and it shall be considered as if he had pleaded not guilty. La. C.Cr.P. art. 555.

6. The trial court committed reversible error when it allowed the prosecution to discuss the law of principals and the law of aiding and abetting in closing argument despite the fact that the court sustained the defendant's objection to the prosecution's requested special jury instruction of the law of principals.

7. The State failed to prove the elements of obstruction of justice to second degree murder beyond a reasonable doubt under the standard of review set forth in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

FACTS

On Monday, February 17, 2003, the body of the victim, Phillip Lentz, was discovered in his residence, north of Kentwood, Louisiana. Evidence at the crime scene indicated the victim had been shot at close range while standing in the open doorway of his home. The paper money compartment of a cash box in the home was empty. The police investigated the shooting and developed Phillip Pigott and the defendant as suspects.

A February 19, 2003 search of Pigott's residence revealed $392 in U.S. currency in a cupboard in the bathroom and $113 in U.S. currency in a jar in the bedroom. A search of Pigott's vehicle revealed a November 26, 2002 pawn-shop receipt for a Colt .38 caliber revolver, serial #72909.

On February 19, 2003, the defendant gave an audiotaped statement concerning the shooting. According to the defendant, he went to the victim's home on the Sunday afternoon of the shooting and pawned a rifle for some oxycodone. The defendant then went home, dissolved the oxycodone in water, and used a syringe to shoot it into his veins. Later that day, the defendant took his girlfriend, Kimberly McDaniel,[3] to Phillip Pigott's house and drank beer. At approximately midnight, after McDaniel "laid on down," Pigott asked the

---

[3] The defendant referred to his girlfriend as Kimberly "Guillory." When the defendant's girlfriend testified at trial, however, she stated her name was Kimberly McDaniel.

defendant if he wanted to take a ride to get more oxycodone, and the defendant answered affirmatively. Pigott and the defendant drove to the victim's house, and while the defendant remained in the truck, Pigott went to the victim's door and knocked. According to the defendant, the victim opened his door for Pigott, and Pigott went into the victim's home. The defendant claimed he subsequently heard a gunshot and got out of the truck. Pigott exited the victim's home and told the defendant to "get back in and don't worry about it." The defendant claimed Pigott stated, "[the defendant] knew what happened and that [the defendant] wouldn't live to see tomorrow if [the defendant] ever talked." Thereafter, the men drove "up through [the] Mississippi State line." Pigott stepped out of the truck and tossed the weapon in the creek. The men then proceeded back to Pigott's house. According to the defendant, when he and Pigott arrived back at Pigott's house, McDaniel was asleep. The defendant claimed he did not know Pigott was armed until he heard the gunshot.

According to Tangipahoa Parish Sheriff's Office Detective Rodney Varnado, the defendant was re-interviewed after his first statement because Detective Varnado felt the defendant was "holding back" some information. Detective Varnado indicated that in a subsequent videotaped statement, wherein the camera failed to record audio, the defendant admitted he knew Pigott had a gun when he and Pigott drove to the victim's house, and he and Pigott went to the victim's residence to get drugs "any way they could" and "no matter what they had to do to get them." Detective Varnado also indicated, in the second statement, the defendant claimed he walked onto the victim's porch with Pigott and stayed there, smoking a cigarette, while Pigott went inside. According to Detective Varnado, the defendant did not mention being threatened by Pigott in the second statement.

On February 20, 2003, the defendant went with the police to Line Creek in Osyka, Mississippi. The police recovered a Colt .38 caliber revolver, serial #72909, from the creek, with five live rounds and one spent round. The State and the defense stipulated that the weapon was used to fire the projectile that was recovered from the victim's body.

Robert Allen Brannon indicated that, in exchange for testifying, he had been offered a seven-year sentence on pending charges of one count of misdemeanor possession of stolen property, one count of felony theft, two counts of domestic abuse battery, one count of burglary, and one count of forgery. According to Brannon, the defendant discussed the shooting of the victim while the defendant was incarcerated with Brannon for approximately four months. The defendant told Brannon that the defendant and Pigott went to get Oxycontins from the victim by "any force necessary means." The defendant and Pigott walked to the victim's door, the victim came to the door, and Pigott shot the victim in the face. The defendant then went into the victim's house to get drugs and money. The defendant arrived at the victim's house with only $40, but left with over $300. Following the shooting, Pigott threw the pistol out of the window and into some water. According to Brannon, the defendant commented, "by the gun being submerged in water, that they couldn't get [the defendant's] fingerprints off the gun."

Also according to Brannon, the defendant had stated that, prior to the shooting, the defendant had gone with Pigott to get the pistol used in the shooting from the pawnshop. Brannon also indicated, after Pigott was killed in a car accident, the defendant stated, "by [Pigott] getting killed, there's no way they can prove [the defendant] had anything to do with it." In regard to the defendant's statements to the police concerning the shooting, Brannon indicated the defendant had stated that Pigott had never held a gun to the

defendant's head, and the defendant gave a contrary statement to the police "[t]o cover [the defendant] up" and to avoid being charged with murder.

Jodie Spears testified the victim was one of her best friends and she had spent the night with the victim two to three times per week. Spears indicated the victim sold Oxycontin from his home, and the defendant would come to the victim's home to purchase Oxycontin or to borrow money. According to Spears, she was present at the victim's house on Saturday, February 15, 2003, and overheard the defendant speaking with the victim. The defendant wanted Oxycontin from the victim, but had no money. The victim was very upset with the defendant because the victim had given the defendant many pills before and the defendant owed the victim "lots of money." The victim told the defendant the victim would not front the defendant any more drugs.

Kimberly McDaniel testified she was the defendant's girlfriend at the time of the shooting. She indicated in February of 2003, neither Pigott nor the defendant was working, and both men were living off of food provided by Pigott's parents. According to McDaniel, late on February 16, 2003, the defendant and Pigott left together, and the defendant told her the men were going "[t]o take care of business." Pigott and the defendant returned approximately an hour later and immediately went to the back room of Pigott's house. Pigott was nervous-looking and sick. The defendant did not appear to be nervous and did not appear to be scared of Pigott. McDaniel heard the washing machine being started, and the defendant came out of the laundry room wearing only his boxer shorts. The defendant had some one hundred dollar bills stuffed into the elastic of the shorts. He gave McDaniel one of the bills, but then took it back, stating McDaniel's family would ask where she had obtained the money. The defendant commented that Pigott did not have to

worry about the "Pill Guy" anymore. The defendant also stated he was not the one who pulled the trigger.

According to McDaniel, after she and the defendant went to bed, Pigott woke up the defendant and told him they had "left some evidence." One of the men said something about a wallet, and the defendant and Pigott left together again.

According to McDaniel, the next day, she, the defendant, and Pigott rode to the store together in Pigott's truck. The defendant asked Pigott what the defendant should do with a shirt that the defendant had found under the seat. Pigott told the defendant to throw the shirt out of the window, and the defendant threw the shirt out of the window.

Also according to McDaniel, on either Monday, February 17, 2003 or Tuesday, February 18, 2003, the defendant asked her if fingerprints could be recovered from a shirt or pants, and she replied that she did not know.

On cross-examination, the defense showed McDaniel a statement of receipts for 2003 from the Louisiana Department of Labor Unemployment indicating the defendant had received $2,322 from that office in 2003. McDaniel also conceded that the defendant usually wore boxer shorts to bed.

The defendant also testified at trial. He indicated he was addicted to oxycodone and Oxycontin[4] at the time of the shooting and purchased drugs from the victim. He claimed at approximately 4:30 p.m. or 5:30 p.m. on the day of the shooting, he had pawned a rifle to the victim for one Oxycontin pill and had given the victim $30 for another Oxycontin pill. He claimed when he and Pigott left to go to the victim's house later that evening, McDaniel was

---

[4] Oxycontin is a trade name for the drug oxycodone hydrochloride. Oxycodone is a Schedule II controlled substance. La. R.S. 40:964.

watching television, and when he and Pigott returned from the victim's house, McDaniel was asleep. He denied having money in the waistband of his boxer shorts that night. He denied washing clothes when he and Pigott returned from the victim's house. He denied giving McDaniel $100 and then taking it back. He denied returning to the victim's house after the shooting. He denied throwing a shirt out of Pigott's truck on the day after the shooting. The defendant claimed the closest he got to the victim's home on the night of the shooting was approaching the steps. He claimed, in his first statement, he did tell Detective Varnado that Pigott had "put a gun on [the defendant]." He also claimed, in his second statement, he repeated that Pigott had threatened his life and had put a gun to his head.

The defendant indicated that when he and Pigott went to the victim's house on the night of the shooting, he thought Pigott would purchase some Oxycontin from the victim with Pigott's income tax refund, which was over $1,000. The defendant claimed he was in the truck when he heard the shot. He also claimed he did not know Pigott had a gun when he and Pigott left to go to the victim's house. He claimed he did not go to the police until the Wednesday after the shooting because his life was in danger from Pigott, who had several weapons at his home.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number seven, the defendant argues the State failed to prove each and every element of the offense beyond a reasonable doubt and did not exclude every reasonable hypothesis of innocence.

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator

of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," every reasonable hypothesis of innocence is excluded. **State v. Wright**, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **Wright**, 98-0601 at p. 3, 730 So.2d at 487.

Louisiana Revised Statute 14:130.1, in pertinent part, provides:

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

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

criminal consequences to follow his act or failure to act." La. R.S. 14:10(1). Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Specific intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Henderson**, 99-1945, p. 3 (La. App. 1st Cir. 6/23/00), 762 So.2d 747, 751, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235.

After a thorough review of the record, we are convinced the evidence presented in this case, viewed in the light most favorable to the State, proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of obstruction of justice and the defendant's identity as the perpetrator of that offense. The verdict rendered against the defendant indicates the jury accepted the testimony of the State's witnesses and rejected the defendant's testimony that he did not remove anything from the scene of the shooting and only assisted Pigott under duress. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. Furthermore, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **State v. Johnson**, 99-0385, pp. 9-10 (La. App. 1st Cir. 11/5/99), 745 So.2d 217, 223, writ denied, **State ex rel. Johnson v. State**, 2000-0829 (La. 11/13/00), 774 So.2d 971. On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Glynn**, 94-0332, p. 32 (La. App. 1st

Cir. 4/7/95), 653 So.2d 1288, 1310, writ denied, 95-1153 (La. 10/6/95), 661 So.2d 464.

Moreover, when a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. See **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). No such hypothesis exists in the instant case.

This assignment of error is without merit.

CHALLENGE FOR CAUSE

In assignment of error number one, the defendant argues the trial court erred in granting the State's challenge for cause as to juror Justin Fowler because he was rehabilitated after being questioned by the defense.

Initially we note, the defendant does not challenge the manner in which Fowler was replaced. See La. C.Cr.P. art. 789(A); see also La. C.Cr.P. art. 796. Nor does the defendant raise any challenge against the alternate juror used to replace Fowler on the jury.

A challenge for cause should be granted, even when a prospective juror declares his ability to remain impartial, if the prospective juror's responses as a whole reveal facts from which bias, prejudice, or inability to render judgment according to the law reasonably may be inferred. However, the trial court is vested with broad discretion in ruling on a challenge for cause; its ruling will not be disturbed on appeal absent a showing of an abuse of discretion. **Henderson**, 99-1945 at p. 9, 762 So.2d at 754. The State or the defendant may challenge a juror for cause on the ground that the juror will not accept the law as given to him by the court, or on the ground that the juror is not

impartial, whatever the cause of his partiality. La. C.Cr.P. art. 797(2) & 797(4).

Following the selection of the jury, but prior to the presentation of any evidence, juror Justin Lindsey Fowler advised the court that while he did not know the defendant, he did know the defendant's mother, and he had taken care of the defendant's grandmother on a regular basis. When the court asked Fowler if he could be fair and impartial to both sides in the case, Fowler replied, "I don't know if I could." Fowler stated, "Well, I would be afraid to face them the next time I see them, you know. I mean, when I go in there and take care of the grandmother, she's sitting there saying well, there's the man that put my grandson in jail." Fowler also indicated he worked with the defendant's first cousin on a daily basis and would also have a hard time facing her.

In response to questioning by the defense, Fowler indicated he would be more willing to find in favor of the defendant. When asked if there was nothing the State could do to change his opinion, Fowler replied, "No, I don't think that." When asked if he could find the defendant guilty if the State put on evidence, as to the crime of obstruction of justice and met its burden of proof, the defendant replied, "Yes, I think I could." Fowler also indicated he would go into deliberations with an open mind.

The court asked Fowler, "So, let me not put words in your mouth, but are you telling me that you are going to hold the State to a little bit higher standard? They've got to prove it just a little bit more, before you say, guilty?" Fowler replied, "I guess so, yes."

The State argued Fowler should be removed as a juror because he had stated he would hold the State to a higher burden of proof and it would be very difficult for him to render a decision adverse to the defendant. The defense

argued Fowler was a qualified juror. The trial court granted the State's challenge for cause against Fowler. The court found that although the defense had made a "grand effort" to try and rehabilitate Fowler, Fowler had stated he would hold the State to "even a higher standard." The defense objected to the court's ruling.

The trial court did not abuse its broad discretion in granting the State's challenge for cause. Fowler's responses as a whole revealed facts from which his bias, prejudice, or inability to render judgment according to the law could reasonably be inferred.

Moreover, even if there were insufficient grounds for a cause challenge against Fowler, removal of Fowler on the basis of his statements and his replacement with the first alternate juror, represented the proper exercise of the trial court's discretion. A trial judge has the discretion to replace a juror with an alternate upon finding that the juror has "become unable to perform or disqualified from performing" his or her duty. La. C.Cr.P. art. 789(A); **State v. Derouselle**, 99-3283, p. 1 (La. 4/28/00), 761 So.2d 1269, 1270 (per curiam).

This assignment of error is without merit.

OTHER CRIMES EVIDENCE

In assignment of error number two, the defendant argues, in its opening statement, the State inflamed the jury and prosecuted the defendant for a crime for which he was not charged by remarking that the defendant was a drug addict, that the defendant and Pigott were Oxycontin customers of the victim, that the State would prove that the defendant and Pigott went to the victim's residence on February 16, 2003, with the intent to get Oxycontin "any way they could," and that the defendant was just as culpable as Pigott in the murder, obstruction of justice, and tampering with evidence.

The defendant also argues he requested pre-trial notice of La. C.E. art. 404(B) evidence, but the State failed to give notice of the evidence.

In assignment of error number three, the defendant argues the trial court erred in not granting the defense motion in limine to exclude the State's use of evidence of the murder of the victim and the defendant's possession of Oxycontin. He also argues the crime scene photographs should not have been introduced into evidence because they were unduly prejudicial and created irreparable harm, which violated his Sixth Amendment right to receive a fair trial.

In assignment of error number four, the defendant argues the trial court erred in failing to grant a mistrial after Jodie Spears testified about the defendant's drug use and drug transactions between the defendant and the victim.

Louisiana Code of Evidence article 403 provides:

> Although 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.

Louisiana Code of Evidence article 404, in pertinent part, provides:

> **B. Other crimes, wrongs, or acts.** (1) Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Photographs which illustrate any fact, shed light upon any fact or issue in the case, or are relevant to describe the person, place, or thing depicted, are generally admissible, provided their probative value outweighs any prejudicial

effect. **State v. McKnight**, 98-1790, p. 18 (La. App. 1st Cir. 6/25/99), 739 So.2d 343, 355, writ denied, 99-2226 (La. 2/25/00), 755 So.2d 247.

Generally, evidence of criminal offenses other than the offense being tried is inadmissible as substantive evidence because of the substantial risk of grave prejudice to the defendant. However, La. C.E. art. 404(B)(1) authorizes the admission of evidence of other crimes, wrongs, or acts when the evidence "relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding." **State v. Wilkerson**, 96-1965, p. 2 (La. App. 1st Cir. 11/7/97), 704 So.2d 1, 2, writ denied, 97-3038 (La. 4/3/98), 717 So.2d 646. In **State v. Brewington**, 601 So.2d 656, 657 (La. 1992) (per curiam), the Louisiana Supreme Court indicated its approval of the admission of other crimes evidence, under this portion of La. C.E. art. 404(B)(1), "when it is related and intertwined with the charged offense to such an extent that the state could not have accurately presented its case without reference to it."

The *res gestae* doctrine in Louisiana is broad and includes not only spontaneous utterances and declarations made before or after the commission of the crime, but also testimony of witnesses and police officers pertaining to what they heard or observed during or after the commission of the crime if a continuous chain of events is evident under the circumstances. **State v. Taylor**, 2001-1638, pp. 10-11 (La. 1/14/03), 838 So.2d 729, 741, cert. denied, 540 U.S. 1103, 124 S.Ct. 1036, 157 L.Ed.2d 886 (2004).

Further, the *res gestae* doctrine incorporates a rule of narrative completeness by which, "the prosecution may fairly seek to place its evidence before the jurors, as much to tell a story of guiltiness as to support an inference of guilt, to convince the jurors a guilty verdict would be morally reasonable as much as to point to the discrete elements of a defendant's legal fault." **Taylor**,

2001-1638 at pp. 12-13, 838 So.2d at 743 (quoting **Old Chief v. United States**, 519 U.S. 172, 188, 117 S.Ct. 644, 654, 136 L.Ed.2d 574 (1997)).

In its opening statement, the State set out its theory of the case that the defendant was guilty of obstruction of justice because he aided Pigott in discarding the murder weapon and/or wiped fingerprints from the weapon, harbored a fugitive, discarded clothing he wore at the time of the murder, or took evidence out of the residence. The State indicated it would prove beyond a reasonable doubt that the defendant and Pigott were "podnuhs," that they both bought Oxycontin from the victim, and that they went to the victim's residence on February 16, 2003, intending to get Oxycontin "any way they could."

Initially, we note the defendant's challenge to the opening argument of the State was not preserved for review. The defendant failed to contemporaneously object to the challenged statements.[5] An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the party made known to the court the action which he desired the court to take, or of his objections to the action of the court, and the grounds therefore. La. C.Cr.P. art. 841; La. C.E. art. 103(A)(1).

Moreover, the evidence concerning the circumstances surrounding the victim's death was admissible at trial. The charge of obstruction of justice against the defendant did not exist in a vacuum, but rather as part of "an actual or potential present, past, or future criminal proceeding." See La. R.S. 14:130.1(A). The challenged evidence was "related and intertwined with the charged offense to such an extent that the state could not have accurately presented its case without reference to it." **Brewington**, 601 So.2d at 657.

---

5 The defense filed motions in limine on the day *after* the opening arguments, seeking, inter alia, to prevent the use of "extraneous information" at trial.

This evidence constituted an integral part of the defendant's crime and was part of the *res gestae*.[6]

Additionally, assuming arguendo, the balancing test of La. C.E. art. 403 is applicable to integral act evidence admissible under La. C.E. art. 404(B),[7] that test was satisfied in this matter. The probative value of the evidence that the defendant was a drug customer of the victim and that the defendant drove his friend Pigott to and from the victim's home, in connection with Pigott shooting the victim to death, was highly probative under the State's theory of the case and was not 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.

These assignments of error are without merit.

TESTIMONY CONCERNING VIDEOTAPED STATEMENT OF THE DEFENDANT

In assignment of error number five, the defendant argues, under the "best evidence rule," Detective Varnado should not have been permitted to testify concerning the defendant's second statement. The defendant also argues the introduction of Detective Varnado's testimony without the audio portion of the videotape violated the defendant's right to cross-examine a key State witness and forced the defendant to testify.

Prior to trial, the defense moved to suppress evidence, including any confession or inculpatory statement. Following a hearing, the motion was denied.

---

6 We also note the defendant's complaints of lack of notice of the "other crimes" evidence are without basis in the record. The defendant was formally indicted and arraigned for the "other crime" at issue herein and that offense (second degree murder) was an integral part of his defense at trial, i.e., Pigott threatened him into aiding Pigott after Pigott murdered the victim.

7 The Louisiana Supreme Court has left open the question of the applicability of the Article 403 test to integral act evidence admissible under La. C.E. art. 404(B). See **State v. Colomb**, 98-2813, pp. 4-5 (La. 10/1/99), 747 So.2d 1074, 1076 (per curiam).

Prior to the testimony of Detective Varnado, the State indicated it could not utilize the videotape of the defendant's statement because the tape was inaudible. The State gave the videotape to the defense. The defense objected to any testimony from Detective Varnado which implicated the defendant in any other crimes. The trial court overruled the objection.

Initially, we note that the defense has not challenged the pre-trial ruling that the videotape was admissible at trial. Pursuant to that ruling, the videotape, and thus, its contents, was admissible into evidence. See La. C.Cr.P. art. 703(F) ("A ruling prior to trial on the merits, upon a motion to suppress, is binding at the trial.") When the State discovered the videotape was inaudible, it surrendered the videotape to the defense and presented evidence of the contents of the tape through the testimony of Detective Varnado.

No substantial rights of the accused were affected by the presentation of the contents of the videotape through the testimony of Detective Varnado. The defense cross-examined Detective Varnado concerning the challenged testimony and had the videotape at its disposal. Further, the substance of Detective Varnado's testimony was also presented through the testimony of Brannon. Additionally, while the defendant's testimony at trial did address the challenged testimony, the defendant's testimony focused on denying the testimony of McDaniel concerning the defendant's actions before and after the shooting and setting forth the defendant's theory that his actions following the shooting were not free, but were compelled by a threat from Pigott.

We note the defendant's reliance on the best evidence rule is inappropriate. The broad best evidence rule upon which the defendant relies no longer exists. The repeal of La. R.S. 15:436 and the adoption of the Code

of Evidence resulted in the demise of any broad best evidence rule of exclusion of evidence. See **State v. Francis**, 597 So.2d 55, 58-59 (La. App. 1st Cir. 1992).

Moreover, even the best evidence rule would not have required the State to introduce an inaudible videotape that had been surrendered to the defense. See **Francis**, 597 So.2d at 59; **State v. Taylor**, 553 So.2d 873, 883 (La. App. 1st Cir. 1989), writ denied, 558 So.2d 600 (La. 1990).

This assignment of error is without merit.

INCONSISTENT TRIAL COURT RULINGS

In assignment of error number six, the defendant argues the trial court rendered inconsistent rulings by granting the defense objection to the special jury instruction on the law of principals while not prohibiting the State from discussing the law of principals in closing argument.

Following a charge conference, the trial court granted the objection of the defense to a charge concerning principals requested by the State. Thereafter, the court stated, "[w]e won't state it as being the law, but certainly, I will allow both sides to talk about that issue." The defense did not object to the court's ruling.

The instant assignment of error was not preserved for review. The defendant failed to contemporaneously object to the challenged ruling. An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the party made known to the court the action which he desired the court to take, or of his objections to the action of the court, and the grounds therefor. La. C.Cr.P. art. 841.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.