NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 2421

STATE OF LOUISIANA

VERSUS

JAMES NORWOOD WEBER

Judgment Rendered: May 4, 2007.

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On Appeal from the
Nineteenth Judicial District Court,
in and for the Parish of East Baton Rouge
State of Louisiana
District Court No. 02-04-0415

The Honorable Wilson Fields, Judge Presiding

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* * * * *

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

CARTER, C.J.

The defendant, James Norwood Weber, was charged by indictment with three counts of attempted first degree murder, a violation of LSA-R.S. 14:30 and 14:27. A plea of not guilty was entered. Following a jury trial, the defendant was found guilty as charged on all three counts. The defendant filed motions for post verdict judgment of acquittal and new trial, which were denied. The defendant was sentenced to forty (40) years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence for each count, with the sentences ordered to run concurrently. The defendant filed a motion to reconsider sentence, which was denied. The defendant appeals. We affirm the convictions and sentences.

FACTS

On January 23, 2004, at about 8 p.m., Baton Rouge City Police officers became involved in the pursuit of an Isuzu Rodeo being driven by the defendant. The defendant had stolen the Rodeo from his parents and armed himself with his mother's .38 revolver. The chase ended in the 8300 block of Florida Boulevard when the defendant lost control and spun out, stalling the Rodeo. Several police officers pulled up near the Rodeo and instituted a felony stop. With weapons drawn, the officers yelled at the defendant to put up his hands. The defendant remained in the vehicle. Officers Caleb Eisworth, Thomas Morse, Jr., and Lance Robinson approached the driver's-side door of the vehicle. Officer Derrick Evans approached the front of the vehicle. Several other police officers were at the scene with their weapons drawn. The defendant momentarily put his hands up, as if to surrender. Officer Morse attempted to open the driver's door, but

it was locked. Without warning, the defendant reached toward the center console, grabbed the .38, and began firing at the officers. The defendant shot Officers Morse, Eisworth, and Robinson. Officer Morse was hit in the stomach and the head. Officer Eisworth was hit in his head. Officer Robinson was hit in his forearm. Officer Evans testified at trial that the defendant also shot at him through the windshield, but he was not hit. Several of the officers returned fire, wounding the defendant. No officer was killed.

The defendant was taken to Earl K. Long Hospital, where he was treated by Dr. Stewart Yoas, a trauma resident physician. Dr. Yoas testified at trial that he asked the defendant who had shot him. When the defendant told him the police shot him, Dr. Yoas asked why the police shot him. The defendant responded that it was because he was dumb and he shot at them.

All of the police officers involved in the shooting used .40 Glock pistols. The .38 the defendant used during the shooting was found on the floorboard of the Rodeo with six spent casings. Charles R. Watson, Jr., an official with the Louisiana State Police Crime Laboratory, was qualified as an expert at the trial in the field of firearms examination and tool markings. Officer Morse was wearing a bulletproof vest when he was shot in the stomach. Watson examined the bullet that was removed from Officer Morse's vest and determined that it was a .38 caliber. Watson subsequently test-fired the gun that the defendant used and determined that the spent bullet that was found in Officer Morse's vest was fired from the .38 used by the defendant.

SUFFICIENCY OF THE EVIDENCE

The defendant argues the evidence was not sufficient to support his conviction. Specifically, the defendant contends that the State failed to prove that he had the specific intent to kill three police officers.

A conviction based on insufficient evidence cannot stand, as it violates Due Process. See U.S. Const. amend. XIV; LSA-Const. art. I, § 2. In reviewing claims challenging the sufficiency of the evidence, this Court must consider "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also LSA-C.Cr.P. art. 821B; **State v. Mussall**, 523 So.2d 1305, 1308-1309 (La. 1988). The **Jackson v. Virginia** standard of review incorporated in Article 821 is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **State v. Patorno**, 01-2585 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

Under LSA-R.S. 14:30A(2), first degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm upon a peace officer in the performance of his lawful duties.[1] An attempted offense is committed when a defendant, "having a specific intent to commit a crime, does or omits an act for the purpose of and tending

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[1] Also applicable under the facts of this case is LSA-R.S. 14:30A(3), which provides that first degree murder is the killing of a human being when the offender has a specific intent to kill or inflict great bodily harm upon more than one person.

directly toward the accomplishing of his object." LSA-R.S. 14:27A. Specific criminal intent is defined as "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." LSA-R.S. 14:10(1). To be guilty of attempted murder, a defendant must have the specific intent to kill and not merely the specific intent to inflict great bodily harm. Thus, a specific intent to kill is an essential element of the crime of attempted first degree murder. **State v. Butler**, 322 So.2d 189, 192 (La. 1975). Specific intent to kill can be implied by the use of a deadly weapon such as a gun. **State v. Templet**, 05-2623 (La. App. 1 Cir. 8/16/06), 943 So.2d 412, 421. Further, specific intent may be inferred from a defendant's actions and the circumstances. **State v. Broaden**, 99-2124 (La. 2/21/01), 780 So.2d 349, 362, cert. denied, 534 U.S. 884, 122 S.Ct. 192, 151 L.Ed.2d 135 (2001). Deliberately pointing and firing a deadly weapon at close range are circumstances that support a finding of specific intent to kill. **Broaden**, 780 So.2d at 362.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when 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. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932.

We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See **State v. Mitchell**, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1 Cir. 1985).

The testimony at trial established that, pursuant to a nighttime felony stop of the stolen Rodeo that the defendant was driving, several police officers with weapons drawn approached the vehicle and ordered the defendant to put up his hands. Without warning, the defendant fired at the officers with a .38 revolver he had taken from his mother's closet. The defendant's gun was loaded with six bullets, and the defendant fired all six shots. Officer Morse was shot in the stomach and in the head. Officer Eisworth was then shot in the head.[2] When the defendant fired his first shot,

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[2] Officer Eisworth, for the most part, is consistent in his testimony about being shot. However, there appears to be some discrepancy as to whether he was hit in the head by a bullet or a piece of metal. On direct examination, Officer Eisworth testified as follows:

> Q. And you heard [Morse] yell he had been hit?
> A. Yes, sir.
> Q. What was your reaction to that?
> A. As soon as he pretty much said he got shot, I felt a pain in my head and realized I had been shot also and hit the ground. And then I got up and fired.
> ....
> Q. Were you taken to the hospital at some point?
> A. Yes, sir.
> Q. What was the purpose of that?
> A. Because I had a piece of glass in my eye and a piece of metal in my head.

On cross-examination, Officer Eisworth testified as follows:

> Q. Okay. And when did you fire your weapon? And tell the jury exactly when you fired your weapon. What circumstances existed that caused you to fire your weapon?
> A. After I saw a muzzle flash and I hit the ground, a bullet hit me or a piece of metal hit me in the head, I realized he was shooting, and I got back up off the ground and shot back at him.
> ....
> Q. Which means that you wasn't [sic] really directly behind the vehicle?
> A. No, sir. At one point I was when I approached it, I was at the rear of the vehicle. But when I got shot, I was at the rear driver's side door.
> ....
> Q. Okay. And then that's when you started firing?
> A. No, sir. I started firing after [Morse] said I had been shot, I felt a bullet hit me and I went down. But then I got up and shot.
> ....
> Q. You didn't know. So you didn't see Burrell Robinson, right?
> A. No, sir. Not until after I started running back behind my unit after I had been shot.

Officer Robinson threw his ASP (police baton) into the defendant's rolled-up driver's-side window, shattering the glass. As Officers Morse and Eisworth lay on the ground, Officer Robinson returned fire. The defendant then fired at Officer Robinson, striking Officer Robinson in his forearm. Officer Robinson fell down, got back up, and again returned fire at the defendant. By this point, Eisworth had gotten up and also returned fire. The defendant lunged across the center console. His upper body was in the front-passenger seat, and his legs were on the driver's seat. As Officer Robinson was returning fire, the defendant fired at Officer Robinson again but missed him. A citizen eyewitness and other police officers also testified to seeing a muzzle flash inside of the vehicle prior to any shooting by the police officers.

The defendant states in his brief that "it was disputed as to whether the bullet from [his] gun actually struck either of the police officers in question."[3] However, the defendant did not call any witnesses, expert or otherwise, to refute the direct eyewitness testimony of the officers who were shot. Also uncontested by the defendant was the corroborating testimony of Watson and Dr. Yoas. In finding the defendant guilty, it is clear the jury rejected a "friendly fire" defense and determined that the defendant shot at three police officers at close range. Since specific intent need not be proven as a fact but may be inferred from the defendant's actions, it is reasonable

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[3] The defendant further states in his brief:

> Several of the officers testified that they have tunnel vision during incidents like this one, which makes it extremely difficult to remember where the other officers may have been standing or doing. Though several officers actually approached Weber's vehicle, none of them could actually say that the other officer shot two, three or four rounds into Weber's vehicle in a certain direction.
>
> Because there were so many variables that could explain how these three officers were injured on the night in question, the specific intent element was not establish[ed]. (Footnotes omitted.)

It would appear that the defendant is suggesting that one or more of the injured police officers were struck not by the defendant but by "friendly fire" or bullets from the guns of other police officers.

that the jury concluded the defendant had the specific intent to kill three police officers.

After a thorough review of the record, we are convinced that, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of the attempted first degree murder of Officers Morse, Eisworth, and Robinson.

This assignment of error is without merit.

DISCLOSURE OF EVIDENCE

The defendant argues that the State withheld potentially material evidence. The defendant further argues that the late testing of the spent bullet found in Officer Morse's vest was prejudicial to his case and that, accordingly, he should be granted a new trial.

In **State v. Marshall**, 94-0461 (La. 9/5/95), 660 So.2d 819, 825-826, the Louisiana Supreme Court stated:

> The state's failure to disclose material evidence favorable to a criminal defendant implicates more than the defendant's discovery rights; the prosecutor has an affirmative duty to disclose such evidence under the Fourteenth Amendment's Due Process Clause. Failure to reveal this evidence implicates the defendant's right to a fair trial.
>
> *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-1197, 10 L.Ed.2d 215 (1963) held "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."
>
> ....
>
> *U.S. v. Bagley*, 473 U.S. 667, 676, [682], 105 S.Ct. 3375, 3380, [3383], 87 L.Ed.2d 481 (1985) . . . established that, regardless of whether a request is made, "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." A reasonable probability was defined as "a probability sufficient to undermine confidence in the outcome."

> *Kyles v. Whitley*, 514 U.S. 419, [434], 115 S.Ct. 1555, [1566], 131 L.Ed.2d 490 (1995) . . . explained that the meaning of "reasonable probability" of a different result "is not whether the defendant would more likely than not have received a *different verdict* with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." (emphasis supplied). A "reasonable probability" of a different result is shown when the state's suppression of evidence "undermines confidence in the outcome of the trial."
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> ....
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> The issue is whether the exculpatory evidence is material under the *Brady-Bagley-Kyles* line of cases. Evidence is material only if it is reasonably probable that the result of the proceeding would have been different had the evidence been disclosed to the defense. A reasonable probability is one which is sufficient to undermine confidence in the outcome. (Some citations omitted.)

We note at the outset that the results of Watson's test firing of the defendant's gun were not suppressed, so **Brady** is inapplicable. The test was performed the same day that Watson testified at trial. The test results were included in Watson's scientific analysis report. Both the State and defense counsel had copies of the report while Watson testified. Furthermore, the testing merely confirmed what was already known by the State prior to the test firing of the defendant's gun and well before the beginning of the trial—that the bullet in Morse's vest did not come from a police officer's gun. On January 28, 2004, two years prior to the trial, Watson received the bullet that had pierced Morse's vest. Watson testified that he was able to determine from the bullet's rifling that it did not come from a .40 Glock, the only type of gun used by every police officer at the crime scene. Watson further determined that the bullet was a .38 caliber. Watson testified that this preliminary finding regarding this bullet was not put in writing but was explained to Detective Madeline "Mickey" Brooks with the Baton Rouge City Police. Watson further testified that the test

firing of the defendant's gun was performed on the morning of the trial because, up to that point, he had not been requested to do any testing.

The result of the test firing of the defendant's gun confirmed that the bullet that struck Morse's vest came from the defendant's gun. Although the test was performed late, the results were not exculpatory, and they were disclosed to the defendant. Accordingly, there was no **Brady** violation.[4]

The only evidence that could be construed as suppressed is the bullet fragment. Assuming it was suppressed, the issue becomes whether the evidence was material. The defendant states in his brief, "Defense counsel was not given the opportunity to test the bullet fragment that was allegedly found in Weber's vehicle. In fact, no other examiner—other than Charles Watson—even knew of the bullet fragment." It is not clear as to what particular "bullet fragment" the defendant is referring. Watson's scientific analysis report states in pertinent part: "Exhibit # 89A: Bullets and Bullet fragments from inside Isuzu Rodeo[.]" On cross-examination, Watson testified as follows:

> Q. Okay. I'm talking about the one that you found in the vehicle?
>
> A. I didn't examine the stuff that I found in the vehicle. I just packaged it up and submitted it back to the agency.

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[4] In the event that possible confusion might arise due to the discussion contained in the State's brief, we also find that there was no **Brady** violation regarding a photograph of the roof of the vehicle. The defendant does not raise this issue in his brief, yet the State dedicates most of its response to the issue of an allegedly missing or suppressed photograph. During trial, defense counsel informed the trial court that he had seen in the possession of the State a photograph that showed the roof of the Rodeo with bullet holes in it but that now the photograph was missing. The State informed the trial court that, while it chose not to use certain photographs for its case, the entire stack of photographs was present in the courtroom, and the defendant was free to go through the stack and use any photograph he wanted for his case. Defense counsel went through the stack, found the photograph(s) he was looking for, and apologized to the court. Later during trial, defense counsel again raised the issue of allegedly missing photographs. The State informed the trial court that it did not know to which photograph the defendant was alluding. Further, the prosecutor stated, "This is every picture we have. They've always been on or near this table. We're not hiding any pictures." Defense counsel informed the trial court that he would deal with the issue on appeal. We find noteworthy that defense counsel hired Joseph Dejean, a commercial photographer, to take photographs of the Rodeo. Dejean testified at the trial and identified two of the photographs he took as showing five holes in the roof of the vehicle. Defense counsel submitted these photographs, along with others taken by Dejean, into evidence.

Q. But I'm going right back to this, though. You said bullets and bullet fragment from inside the vehicle?

A. That's Exhibit 89-A.

Q. Okay. Now you didn't package that?

A. I packaged it up and it has been returned to the District Attorney's Office here. That is not any of this evidence we've already discussed.

Q. It's none of this evidence?

A. No.

Q. But you are telling me though, that there is a bullet and a bullet fragment that you retrieved from that vehicle that's not part of none of this evidence?

A. That's correct.

Later at trial, outside the presence of the jury, the trial court questioned Watson about Exhibit 89A:

The Court: Yes, sir. If you don't mind. I'm interested in in (sic) particular, not the items of evidence that are before us. I'm not interested in that. I'm interested in the items that are not before us. That's what I want to know about.

[Watson]: Specifically Exhibit 89-A and the bullets and bullet fragments that I removed from the Isuzu Rodeo itself.

The Court: Yes, sir. All right. Eighty-nine --

[Watson]: (A) down here at the bottom. There you are. When I examined the vehicle at the crime lab, that's bullets and bullets (sic) fragments that -- that thing was pretty badly shot up. And I literally took those out. I packaged them in envelopes labeled them as to where they were found in the vehicle and packaged them in-globo as Exhibit 89-A. Put them in an envelope and sealed it up.

The Court: And there is no way from your investigation -- or you were not asked, or I don't know if it was possible to determine as you did from that piece of led (sic), you said from the piece of led (sic) it was your opinion that that came from a revolver?

[Watson]: Correct.

> The Court: Were you able to make any similar determination with regard to 89-A?
>
> [Watson]: I didn't try. I remember most of them being Glock bullets, which is what's going to be expected in this case. I don't have any notes. I don't have any direct recollection of any of them actually being from a revolver. It's possible. But I didn't look at the stuff to make a determination on it. I wasn't asked to. They said what we needed was what I gave today.

At a bench conference out of the presence of the jury following the State's resting of its case, defense counsel asserted a **Brady** violation in the State's failure to test the bullet fragment found in the vehicle. Defense counsel's theory was that the five bullet holes found in the roof of the vehicle and the unidentified bullet fragment found on the floorboard of the vehicle could suggest that the defendant fired five shots through the roof and one shot into the floor.[5] The implication is that the police officers were struck by "friendly fire."[6] Following is the relevant portion of that colloquy between defense counsel and the trial court:

> The Court: How is it **Brady**? Those fragments, those bullet fragments that are found in the car, and they are not analyzed, how is that **Brady**? Explain to me a scenario from your perspective.
> ....

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[5] While Watson testified he found bullet fragments in the vehicle, he did not testify that he found a fragment on the floorboard. The defendant's gun was found on the floorboard, so perhaps this is the source of defense counsel's confusion with regard to his notion that a bullet fragment was found on the floorboard.

[6] We note that the factual posture of this case does not lend itself, strictly speaking, to a **Brady-Bagley-Kyles** analysis. The complained of bullet fragment was never tested. Accordingly, there is no exculpatory evidence before this court. See LSA-C.Cr.P. art. 718; **State v. Lande**, 06-24 (La. App. 5 Cir. 6/28/06), 934 So.2d 280, 297; **State v. Hill**, 601 So.2d 684, 689-690 (La. App. 2 Cir.), writ denied, 608 So.2d 192 (La. 1992). Watson collected the unidentified bullet fragments on January 28, 2004. The trial of this matter began January 30, 2006. It is unclear, therefore, why for two years defense counsel did not request, on his own, the testing of these bullet fragments. Since Watson's scientific analysis report had been generated only recently and produced to the defendant for the first time on the first day of trial, it is possible that defense counsel had no knowledge of the untested bullet fragments until the start of the trial. Thus, while the State did not have in its possession undisclosed exculpatory evidence per se, the defendant was presumably entitled to disclosure by the State of the untested bullet fragments (assuming the State never disclosed such information). Accordingly, since defense counsel raised the issue of **Brady** violations several times throughout the trial, and the defendant has suggested a **Brady** violation in his brief, we will address the **Brady** issue. Such an analysis requires us to assume that had the bullet fragments been tested, the testing would have revealed that the bullet fragment in question came from a bullet from the defendant's gun.

Mr. Harrell: Glock, was used by all of the officers there. It didn't matter who that officer was, or what their involvement was, they all used the same kind of weapon. And it was a semi-automatic weapon.

The Court: Yes, sir.

Mr. Harrell: The defendant allegedly had a revolver.

The Court: Yes, sir.

Mr. Harrell: And that revolver has only six shots. A witness testified that all six shots were spent out of that weapon. Nobody testified that that weapon was ever reloaded, okay.

The Court: All right. I'm with you.

Mr. Harrell: So there's only six bullets that was shot by the defendant allegedly. Now I'm just trying to ascertain where those bullets went. The State's position is those bullets went at the victims and the people around him, which is a reasonable contention. But I got a defense. Okay. And my defense is that those bullets went in the roof of the vehicle. Okay.

The Court: All right.

Mr. Harrell: Now I got a roof picture that I seen (sic) that shows five bullet holes in it. Okay. Five. And people shooting at a car they ain't going to be shooting at the top of the vehicle coming down like that.

The Court: All right.

Mr. Harrell: That's five out of six. And there was a piece of fragment found on the floorboard by the Louisiana State Police that has not been examined that might be number six. Okay. Then the issue is going to come up, well, are there any other .38 caliber weapon fragments out there.

The Court: All right.

Mr. Harrell: So, it's a valid issue. And if I would have had those photographs through regular discovery like I was suppose to when you ask for discovery through normal time and you have a motion date, I've asserted this, that is **Brady** information. That would be **Brady**. That's enough for me to at least work the idea of reasonable doubt.

The Court: All right. You have noted your objections for the record. You have noted these objections throughout. My ruling does not change.

When the defendant rested his case, the State recalled Watson as a rebuttal witness. The trial court found Watson to be an expert in the field of crime scene investigation. Watson testified that he performed a trajectory recreation of the bullets that entered and exited the Rodeo. According to Watson, three bullet holes were identified as exit holes (relative to the firing of the defendant's gun). In other words, three holes were caused by bullets being fired from inside of the vehicle. Of these three exit holes identified, two were in the roof and one was in the rear driver's-side window. These two shots that went through the roof originated from the general area of the passenger seat. The bullets traveled up toward the driver's side and went out. They did not travel straight up through the roof.

Three other holes also were in the roof. Watson testified that these three holes in the roof were at very shallow angles and came from the driver's side toward the passenger side. It was Watson's opinion that these three holes were most consistent with bullets being fired from outside of the vehicle.

The evidence established through the testimony of Watson, four police officers, and Dr. Yoas (as discussed in the facts) that the defendant clearly did not shoot five shots through the roof of the Rodeo but, instead, fired at the police officers surrounding him, hitting three of them. Thus, the complained of bullet fragment, whether identified or not, does not change the facts of this case. When the defendant shot at the police officers, bullets from his gun tore through glass and metal. As such, there would be nothing unusual in finding a fragment or fragments of the defendant's bullets inside of the vehicle. Even had the bullet fragment been identified as having come from part of a bullet from the defendant's gun, such a finding would not

have constituted material evidence because such evidence, assuming it to be favorable, could not reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdicts. See **Marshall**, 660 So.2d at 826.

There was no **Brady** violation. It is not reasonably probable that the result of the proceeding would have been different had evidence that a bullet fragment from the defendant's gun found in the vehicle been disclosed to the defense. Accordingly, the defendant is not entitled to a new trial.

This assignment of error is without merit.

JURY INSTRUCTIONS

The defendant argues that the trial court erred in giving improper jury instructions. Specifically, the defendant contends that the trial court opened an "interactive session" with the jury and "answered any and all" of its questions after deliberations had commenced.

Louisiana Code of Criminal Procedure article 808, which provides for the manner of giving further charges after the jury retires, states:

> If the jury or any member thereof, after having retired to deliberate upon the verdict, desires further charges, the officer in charge shall bring the jury into the courtroom, and the court shall in the presence of the defendant, his counsel, and the district attorney, further charge the jury. The further charge may be verbal, but shall be in writing if requested by any juror. No charge shall be reduced to writing at the request of a juror pursuant to this Article unless consent is obtained from both the defendant and the state in open court but not within the presence of the jury. The lack of consent by either the defendant or the state shall not be communicated to the jury. A copy of the court's written charge shall be delivered to the defendant, the state, and the jury.

The defendant asserts that the trial court did not follow proper procedure for giving further instructions to the jury. According to the defendant:

> Generally, when the jury has a question . . . it presents its question in writing to the court. The district court would then call the State and Defense counsel to its chambers to discuss how it should answer the jury's question. Once both parties come to an agreement as to how the court should answer the jury's question, the jury is called into court and the judge usually re-reads the pertinent part of the jury instructions that may answer the question.

About an hour into deliberations, the jury submitted a written question to the sheriff. With all parties present and the jury present, the trial court read aloud the question regarding specific intent and explained the elements of attempted first degree murder. In elaborating on intent, the trial court offered a hypothetical. When one juror asked a specific question about shooting out of the window in the direction of three officers, the trial court informed the juror that it was a fact question and that the trial court could not comment on the facts. See LSA-C.Cr.P. art. 806. At no time did either party object to the trial court's instructions.

The trial court further charged the jury in the presence of the defendant, defense counsel, and the assistant district attorneys. At no time did a juror request that the new charge be reduced to writing. The few questions the jurors asked were to clarify the law on intent, and the responses by the trial court were specifically limited to questions of law. It is well established that the trial court may recharge the jury, or explain his charge verbally in greater detail upon being requested to do so by the jury, as long as he does not misstate the law. **State v. Ducksworth**, 496 So.2d 624, 634 (La. App. 1 Cir. 1986).

The trial court did nothing in violation of LSA-C.Cr.P. art. 808. Accordingly, this assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.