NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1844

STATE OF LOUISIANA

VERSUS

PATRICK JEROME WILLIAMS

Judgment Rendered: MAY 23 2012

* * * * * * * * * *

On Appeal from the 21st Judicial District Court
In and For the Parish of Tangipahoa
Trial Court No. 703180

The Honorable Ernest G. Drake, Jr., Judge Presiding

* * * * * * * * * *

Scott M. Perrilloux
District Attorney
Patricia Parker Amos
Assistant District Attorney
Amite, Louisiana

Counsel for Appellee
State of Louisiana

J. Rodney Baum
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Patrick Jerome Williams

* * * * * * * * * *

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

The defendant, Patrick Jerome Williams, was charged by grand jury indictment with one count of second degree murder of Darren Williams[1], a violation of LSA-R.S. 14:30.1. He pled not guilty. Following a jury trial, the defendant was convicted as charged. The defendant was sentenced to life imprisonment at hard labor to be served without benefit of parole, probation, or suspension of sentence. The defendant now appeals, urging the following assignments of error:

> 1. The trial court erred by denying defense counsel's challenges for cause of potential juror Gerard LeBlanc during voir dire and by improperly granting the State's for cause challenges of potential jurors Lakesheila Dickerson and Karen Cannino.
>
> 2. The trial court erred by allowing the State to recall its witness, case agent Lieutenant Jerry McDowell, to the stand during its case-in-chief.
>
> 3. The trial court erred by allowing the State to play the recorded statement of its witness, Krissa Donaldson, during the trial.
>
> 4. The court erred by not granting the defendant's motion for mistrial after two or more jurors were allowed to see the defendant, while he was in handcuffs, being escorted by a sheriff's deputy.
>
> 5. The defendant was denied his right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, §2 of the Louisiana Constitution, as there was insufficient evidence to support his conviction.
>
> 6. Due to error under LSA-C.Cr.P. art. 920(2), the defendant's conviction and/or sentence should be reversed.

For the reasons set forth below, we affirm the defendant's conviction and sentence.

BACKGROUND

On September 22, 2007, the victim was found lying face down on Towers Road in Ponchatoula. He had a single gunshot wound to his right temporal scalp and superficial abrasions to his head and lower extremities. A motorist, who was

[1] The defendant is not related to the victim.

traveling on Towers Road at approximately 1:50 p.m. and again shortly after 2 p.m., called 911 at 2:15 p.m. and reported seeing a motionless body lying face down on Towers Road. Police and emergency medical personnel responded to the scene within minutes of the call. The victim had a very weak pulse and was unresponsive and not breathing. Emergency personnel transported him to a local hospital. Shortly after arriving at the hospital, the emergency room physician pronounced the victim dead. Later, the victim was identified as Darren Williams.

Lieutenant Jerry McDowell of the Ponchatoula Police Department headed the investigation in this matter. The officers at the scene immediately noticed the victim was wearing socks but no shoes. Police searched the area but did not find any shoes.

An autopsy conducted the next day revealed that the abrasions found on the right side of the victim's body were "road rash" injuries caused by the victim being dragged over the road's surface. The autopsy also revealed the victim's "road rash" injuries occurred while he was alive and close in time to the gunshot injury. Because the victim had "road rash" injuries to his feet, the pathologist, who conducted the autopsy, surmised the victim did not have shoes on when he received the "road rash" injuries.

Police immediately began to receive information that quickly moved the investigation forward. Lt. McDowell learned from the victim's close friend and roommate, Greg Jones, Jr., that the victim was driving Greg's black Dodge Charger that day and the victim always carried his cell phone with him and never let anyone borrow it. Greg informed Lt. McDowell that the victim had not answered any of his calls from Greg the afternoon of the murder. Hoping to locate the victim's missing cell phone, Lt. McDowell requested the victim's cell phone records for the day of the murder.

Greg also provided Lt. McDowell with information about the victim's missing shoes. Although he did not know what shoes the victim was wearing that day, he informed Lt. McDowell that he and the victim wore the same sized shoes and they frequently shared shoes. Greg searched the apartment and discovered the only shoes missing were a pair of his own high top Air Jordan shoes. Greg told Lt. McDowell that the victim must have been wearing his Air Jordan shoes the day he was murdered. He gave Lt. McDowell a post card showing the different style of Air Jordan shoes and he circled the style of his missing shoes. He also gave Lt. McDowell a detailed description of the color of his missing Air Jordan shoes.

One day into the investigation, Lt. McDowell obtained the names of three individuals who lived in the Towers Road area who might have information about the crime. Subsequently, he interviewed a person named Donnie McKay and ruled him out as a suspect. On the day after the murder, Lt. McDowell interviewed two cousins, Keno Walker and Charlton Walker. He learned that the victim had been with the Walker cousins and the defendant the day of the murder. Keno Walker lived with the Walker cousins' grandmother in a residence on Murray Road and Charlton Walker lived with his mother and an aunt three houses away on a street off of Murray Road.[2] The victim also lived in the Murray Road area. Towers Road is less than three minutes in driving time from the Walker cousins' homes. The Walker cousins told Lt. McDowell on the day of the murder the victim picked up Charlton and they drove to Keno's house. They decided to go to a nearby neighborhood stand to buy a pack of cigarettes. As they were getting ready to leave, the defendant stopped by and decided to go with them to buy the cigarettes. Before they could leave, the Walker cousins' grandmother told Keno and Charlton to get out of the car. Keno got out of the car right away. Charlton rode with the victim and the defendant the short distance to Charlton's house and got out there.

[2] The Walker cousins knew the victim by the nickname "Ali." They referred to the victim by that nickname when they testified at trial.

Charlton told Lt. McDowell that when the victim and the defendant drove away they were alone in the car. Less than five minutes after they drove away, Charlton and his aunt heard a loud boom that his aunt thought was a gunshot. The Walker cousins told Lt. McDowell these events occurred somewhere between 1:00 p.m. and 2:00 p.m.

Subsequently, Lt. McDowell located the defendant. Initially, the defendant denied being with the Walker cousins and the victim that day. When Lt. McDowell told the defendant that he had spoken to the Walker cousins, the defendant admitted to being in the car with the victim but said he got out of the car with Keno.

The police found the missing Dodge Charger three days after the murder. The police were able to lift eight latent fingerprints from the vehicle. However, due to the poor quality of the lifted prints, the police were unable to match the prints to anyone. Inside the car, the police found marijuana, a Taco Bell receipt, Taco Bell cup and food wrappers, and two other empty beverage containers. They also found an empty pack of cigarettes on the ground near the vehicle.

The Taco Bell receipt was dated the day of the murder and showed a purchase was made at 1:33 p.m. Lt. McDowell traced the receipt to a Taco Bell on Thomas Street in Hammond, which was less than ten minutes away from the Towers Road/Murray Road area. Lt. McDowell spoke to a cashier who remembered seeing the victim that day. The victim was driving the black Dodge Charger and there were two black male passengers with him, one in the front passenger seat and the other in the back seat. The cashier did not recognize the passengers and she was unable to identify the passengers from a photographic lineup that included a picture of the defendant.

When Lt. McDowell received the victim's cell phone records for the day of the murder, the records showed the victim spoke with his friend, Shawna Henry, at

12:36 p.m. Ms. Henry testified the victim said he was going to check on a pending employment application that afternoon and would stop by her house afterwards. When she did not hear back from him, she called his cell phone at 2:27 p.m. but the victim did not answer. Ms. Henry testified that the victim always answered his cell phone and did not lend his cell phone to anyone. The victim's cell phone records also showed that Greg's unanswered calls were made at 2:22 p.m. and again at 2:23 p.m.

After the victim was shot, his cell phone was used to make numerous outgoing calls to several different phone numbers. Subpoenas were issued to the service providers for the phone records of the numbers called. From these phone records, Lt. McDowell was ultimately able to establish the defendant used the victim's cell phone to call his father, Jerry Williams, and three friends, Krissa Donaldson, Herman Jackson, and William Young.

The calls began at 2:23 p.m., which was just eight minutes after the motorist made the 911 call. Herman Jackson and William Young testified that the defendant called several times from a number they did not recognize, asking for a ride. Mr. Jackson and Mr. Young were unable to give the defendant a ride. Mr. Jackson did not have access to a car and Mr. Young's girlfriend had his car. Mr. Jackson testified that the defendant sounded like something was wrong. Mr. Young testified that the defendant called right back to see if the car had been returned.

On October 1, 2007, Lt. McDowell and Detective Barry Tullier of the Ascension Parish Sheriff's Office conducted a recorded interview with Krissa Donaldson. In the recorded interview, Ms. Donaldson described her phone conversations with the defendant. According to Ms. Donaldson, the defendant said he "messed up again," he was in trouble, and he shot someone who tried to rob him. The defendant said he took that person's drugs so he could sell them and that

he had hidden some items under the steps of his grandmother's home. The defendant wanted Ms. Donaldson to call his father and tell him to get rid of these items.

The police also seized three letters the defendant wrote to Ms. Donaldson from jail. In a letter postmarked December 12, 2008, the defendant told Ms. Donaldson that he did not want her to come to court because "nothing good gone [sic] come out of it." In January of 2009, the defendant wrote two more letters to Ms. Donaldson. In a January 5, 2009 letter, he wrote "I know you want to see me at court. But I got [sic] my reason why I don't want you to bee [sic] there." In the last letter, he wrote, "I will bee[sic] getting out if you don't come to court."

At trial, Krissa Donaldson said she could not remember what the defendant said during the phone calls or even when the calls were made. She also claimed she could not remember what she may have told the officers during the October 1, 2007 recorded interview. Over the defense's objection, Ms. Donaldson's recorded interview was played in court. The three letters the defendant wrote to Ms. Donaldson were also introduced into evidence.

Later in the investigation, Lt. McDowell seized a pair of Air Jordan shoes from the defendant that matched the description given by Greg Jones. DNA swabs were taken from the shoes and from the defendant, Keno Walker, and Charlton Walker. The DNA from the shoes revealed a mixture of DNA from at least three people. The DNA analyst was unable to exclude the defendant from the profile. At trial, Greg Jones identified the shoes seized from the defendant as his missing pair of Air Jordan shoes. Keno and Charlton Walker established the victim was wearing shoes that day.

During the presentation of the defense, the defendant's father and Ms. Donaldson testified. The defendant also testified on his own behalf. Ms. Donaldson testified she made the statements in her recorded interview because Lt.

McDowell and Det. Tullier said she would go to jail if she did not tell them something. She also clarified that the defendant never said he murdered someone.

The testimony from the defendant's father and the defendant attempted to establish that the shoes Lt. McDowell seized from the defendant were actually the defendant's own pair of Air Jordan shoes. The defendant said he called his father from jail and asked his father to bring the Air Jordan shoes to him. According to the defendant, he bought the Air Jordan shoes from a store in Hammond the week before the victim was killed. The prosecutor asked the defendant why he did not produce the receipt for the shoes to the police. The defendant explained that he could not produce a receipt from the store because he was arrested the day after the murder on an "assault with a firearm" charge and has been in jail since that arrest. When asked why he did not ask his parents to get a copy of the receipt, the defendant said he did not discuss the matter with his parents.

The defendant's father testified that Keno Walker brought the Air Jordan shoes to his house the day after the murder. According to the defendant's father, Keno said he borrowed the Air Jordan shoes from the defendant and wanted to return them. The defendant's father brought the shoes to the jail because his son was wearing house slippers when he was arrested and he thought his son could use the shoes. When asked why he did not give this information to the police, the defendant's father simply replied, "Why should I?"

At trial, the defendant gave his own account of the events that happened on the day Darren Williams was murdered. In the defendant's version, he, Keno, and the victim were in the car at the neighborhood stand when it began to rain. According to the defendant, the stand was closed and they left. After they left, the victim dropped Keno off at his home and offered to take the defendant to his grandmother's home. The defendant got out of the car three blocks from his

grandmother's house. He testified that he arrived at his grandmother's house between noon and 12:20 p.m.

The defendant offered an explanation as to why he had possession of the victim's cell phone. The defendant explained that he was using one of his father's cell phones that day. According to the defendant, when he got into the Dodge Charger, he placed his father's cell phone on the front console next to the victim's cell phone. When the victim dropped him off near his grandmother's house, the defendant said he accidentally grabbed the victim's cell phone instead of the cell phone his father let him use.

Notably, the defendant's testimony placed him in possession of the victim's cell phone somewhere between noon and 12:20 p.m. However, the victim's cell phone records and Ms. Henry's testimony established the victim used his cell phone at 12:36 p.m. when he spoke with Ms. Henry. During the State's case-in-chief, Keno and Charlton Walker testified they did not recall seeing the defendant use a cell phone that day. Charlton Walker said the defendant always used Charlton's or Keno's cell phone if he needed to make a call.

The defendant also provided an explanation as to why he used the victim's cell phone to make outgoing calls but did not answer any incoming calls. The defendant said he did not answer the incoming calls because he did not recognize the numbers. The defendant further explained that his father gets calls concerning jobs on his cell phones. According to the defendant, his father had been getting a lot of calls about jobs, and the defendant thought that the incoming calls from the unknown numbers pertained to his father's work. He did not answer because he did not want to "mess it up."

Lastly, the defendant explained why he called Mr. Young and Mr. Jackson, asking for a ride. The defendant said he wanted a ride to the store to buy a pack of cigarettes. He called so many times because everyone was busy.

DISCUSSION

ASSIGNMENT OF ERROR NUMBER FIVE

In cases such as this one, where the defendant raises issues on appeal both as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should preliminarily determine the sufficiency of the evidence before discussing the other issues raised on appeal. When the entirety of the evidence, both admissible and inadmissible, is sufficient to support the conviction, the accused is not entitled to an acquittal, and the reviewing court must review the assignments of trial error to determine whether the accused is entitled to a new trial. **State v. Hearold**, 603 So.2d 731, 734 (La. 1992). Accordingly, we proceed first to determine whether the entirety of the evidence, both admissible and inadmissible, was sufficient to support a conviction of second degree murder.

In his fifth assignment of error, the defendant urges he was convicted on circumstantial evidence that clearly left room for reasonable doubt as to key elements of the State's case against him. Specifically, he contends that the circumstantial evidence was insufficient to prove that he shot and killed Darren Williams or that he had the requisite "specific intent." In addition, he asserts the evidence presented did not exclude every reasonable hypothesis of innocence. He argues that the State failed to establish a consistent timeline of events that placed him alone with the victim immediately prior to the murder. He further argues that it was just as reasonable to infer from the trial testimony that the shoes seized from him were his own shoes, that he accidentally took the victim's cell phone instead of his father's cell phone when he got out of the car, and that someone other than the defendant was responsible for the murder.

Lastly, the defendant asserts that the recorded interview given by Krissa Donaldson did not establish his confession to the crime. In this regard, he argues the statements Krissa Donaldson attributed to him did not specifically mention the

name of the person the defendant supposedly admitted to shooting.[3] Considering the defendant testified at trial that he was arrested the day after the instant offense on an unrelated "assault with a firearm" charge, he urges that it is reasonable to infer the defendant was referring to the unrelated charge. At best, the defendant suggests the evidence merely establishes he was alone with the victim in the Dodge Charger at some point on the day of the murder.

The standard of review for the sufficiency of evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime and the defendant's identity as the perpetrator beyond a reasonable doubt. LSA-C.Cr.P. art. 821; **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1st Cir. 1984). The **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), 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, La. R.S. 15:438 provides the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **State v. Patorno**, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

The applicable definition of second degree murder in the instant case is the killing of a human being when "the offender has a specific intent to kill or to inflict great bodily harm;" or when "the offender is engaged in the perpetration ... of ... armed robbery, first degree robbery, second degree robbery, simple robbery, ... even though the offender has no intent to kill or inflict great bodily harm." LSA-R.S. 14:30.1(A)(1) & (2). Specific criminal intent is the 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).

[3] The admissibility of Ms. Donaldson's recorded interview is addressed in the defendant's third assignment of error.

Specific intent may be proved by direct evidence, such as statements by the defendant, or by inference from circumstantial evidence, such as the defendant's actions or facts depicting the circumstances. **State v. Cummings**, 99-3000 (La. App. 1st Cir. 11/3/00), 771 So.2d 874, 876. In addition, specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. See **State v. Burns**, 98-0602 (La. App. 1st Cir. 2/19/99), 734 So.2d 693, 695, writ denied, 99-0829 (La. 9/24/99), 747 So.2d 1114.

At trial, the evidence established the victim was shot and left on Towers Road between 1:50 p.m. and 2:15 p.m. Keno Walker and Charlton Walker placed the defendant alone with the victim in the Towers Road/Murray Road area immediately prior to the window of time in which the victim was shot. The place where the victim was left on Towers Road was less than five minutes from the Walker cousins' residences. Charlton Walker and his aunt heard a loud boom believed to be a gunshot less than five minutes after the victim and the defendant drove away in the Dodge Charger.

On appeal, the defendant claims the testimony from Keno Walker and Charlton Walker does not establish a consistent timeline placing him alone with the victim during the window of time when the victim was shot. At trial, even when pressed for an answer, Keno and Charlton Walker could not recall the exact time they decided to leave to buy the cigarettes. However, Charlton clearly remembered it was not sunny that day and it started to rain a few minutes before they decided to go buy the cigarettes. When pressed by the defense as to the accurate time, Charlton answered, "I couldn't really remember the time right now, but I remember [sic] the time during that day." On the day after the murder, the Walker cousins told Lt. McDowell the events occurred between 1:00 p.m. and 2 p.m.

The weather conditions in the Towers Road/Murray Road area also played a role in establishing a timeline that placed the defendant alone with the victim immediately prior to the crime. Charlton Walker said it had just started to rain when they decided to drive to the stand to buy the cigarettes. The defendant's testimony also placed him in the Dodge Charger with the victim when it began to rain. The motorist, who called 911, testified that it started raining when she began her return trip on Towers Road shortly after 2 p.m. Because of the rain, she did not realize the object in the road was a body until she got close to it. Lt. McDowell testified that it had just started to rain around 2 p.m. He remembered the time because he had just finished officiating a football game when it began to rain and he received the call about the murder after he left the field.

The evidence at trial also established the defendant robbed the victim of his cell phone and shoes. As previously noted, the evidence established the defendant was the last person seen with the victim immediately before the murder. Lt. McDowell seized the missing Air Jordan shoes from the defendant. The victim's roommate identified the Air Jordan shoes seized as his missing pair of Air Jordan shoes. As to the victim's missing cell phone, the defendant admitted to having possession of the victim's cell phone after the murder. The victim's phone records established the defendant began making calls on the victim's phone just minutes after the 911 call was made reporting a body on Towers Road. The testimony of Herman Jackson and William Young established that the first calls the defendant made were to ask for a ride and the defendant sounded like something was wrong.

During the time immediately following the murder, the defendant also used the victim's cell phone to call Krissa Donaldson numerous times. Although she claimed she could not recall her phone conversations with the defendant when she testified at trial, the recorded interview Ms. Donaldson had with Lt. McDowell and Det. Tullier showed she recalled what the defendant said to her when she was

interviewed less than two weeks after the murder. The defendant's letters to Ms. Donaldson also revealed that he instructed her not to come to court and that he would be back with her soon if she did not come to court.

The unanimous guilty verdict indicates the jury accepted the testimony of the State's witnesses and rejected the defendant's testimony and that of the defense's other witnesses. This Court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The trier of fact may 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. **State v. Lofton**, 96-1429 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331.

We are convinced that any rational trier of fact, viewing the evidence presented at trial in the light most favorable to the State, could find the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of second degree murder and the defendant's identity as the perpetrator. The verdict rendered in this case indicates the jury rejected the defendant's version of events and his hypothesis that someone else murdered Darren Williams. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984). We find no such hypothesis exists in the instant case.

In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **State v.**

Ordodi, 2006-0207 (La. 11/29/06), 946 So.2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by the jury. **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBERS TWO AND THREE

In the defendant's second assignment of error, he challenges the trial court's ruling that permitted the State to recall its case agent, Lt. McDowell. The defendant contends allowing the State to recall its case agent during its case-in-chief violated the restrictions the trial court imposed on the State in its initial sequestration order and the requirements set out in **State v. Lopez**, 562 So.2d 1064 (La. App. 1st Cir. 1990) and **State v. Revere**, 572 So.2d 117 (La. App. 1st Cir. 1990), writ denied, 581 So.2d 703 (La. 1991).

Louisiana Code of Evidence article 615 provides, in pertinent part:

> **A. As a matter of right.** On its own motion the court may, and on request of a party the court shall, order that the witnesses be excluded from the courtroom or from a place where they can see or hear the proceedings, and refrain from discussing the facts of the case with anyone other than counsel in the case. In the interests of justice, the court may exempt any witness from its order of exclusion.
>
> **B. Exceptions.** This Article does not authorize exclusion of any of the following:
>
> . . .
>
> (2) A single officer or single employee of a party which is not a natural person designated as its representative or case agent by its attorney.

The trial court exempted the State's case agent, Lt. McDowell, from sequestration on the condition the State call Lt. McDowell as its first witness. The trial court also ordered Lt. McDowell be sequestered during the presentation of the defense, but allowed the State to call him on rebuttal.

After Lt. McDowell testified, he was permitted to hear the testimony of the State's other witnesses. The State called Krissa Donaldson as a witness for the purpose of providing testimony about the inculpatory statements the defendant made to her during the phone calls after the murder. At trial, the prosecutor was taken by surprise when Ms. Donaldson asserted her Fifth Amendment privilege against self-incrimination. However, the State quickly granted Ms. Donaldson complete immunity from any criminal charges that could result from her testimony in this matter. After she was granted immunity, Ms. Donaldson testified that she did not remember any of the statements she made to the officers during her recorded interview or what the defendant told her after the murder.

The prosecutor asked Ms. Donaldson if she received a copy of her October 1, 2007 recorded interview from the District Attorney's Office. Ms. Donaldson admitted that she received a copy but said she did not review it. Having been granted permission to treat Ms. Donaldson as a hostile witness, the prosecutor went through each of the inculpatory statements Ms. Donaldson attributed to the defendant during her recorded interview. Despite the prosecutor bringing each statement to her attention, Ms. Donaldson continued to maintain she had no recollection.

It is against this backdrop that the prosecutor sought to recall Lt. McDowell for the purpose of laying a foundation for impeaching Ms. Donaldson with her October 1, 2007 recorded statements. Over the defense's objection, the trial court modified its initial sequestration ruling and allowed the State to recall Lt. McDowell during its case-in-chief. The trial court restricted the scope of Lt. McDowell's testimony to the impeachment issue.[4]

---

[4] Thereafter, the trial court also allowed the state to question Lt. McDowell for the additional purpose of laying a foundation to introduce handwriting exemplars taken from the defendant. Although the defense objected to this additional ruling, the defendant did not raise this issue on appeal.

The defendant urges **Lopez** supports his contention that recalling Lt. McDowell was improper. We find the defendant's reliance on **Lopez** is misplaced. In **Lopez**, the State's case against the defendant depended almost completely on the credibility of its law enforcement witnesses. The State's case agent was permitted to hear the testimony of some of the other State witnesses before he testified as the principal witness against the defendant. On appeal, the **Lopez** defendant argued that the trial court erred by not requiring the State to call its representative as its first witness. This court agreed, finding particularly troublesome the fact that, before he testified, the **Lopez** case agent was allowed to hear the testimony of the law enforcement officer who made the initial traffic stop. **Lopez,** 562 So.2d at 1066. In **Lopez**, this court held that permitting the law enforcement officer to serve as the representative of the State without requiring the representative to testify first, violated applicable law. See **Lopez,** 562 So.2d at 1066-67.

Unlike **Lopez**, in the instant matter, the trial court took appropriate measures to minimize the possibility of potential prejudice to the defendant. In its initial sequestration order, the trial court complied with the requirements set out in **Lopez** by requiring the State to call Lt. McDowell as its first witness. When the trial court modified its initial ruling to allow the State to recall Lt. McDowell, it restricted the scope of the State's examination of Lt. McDowell to the impeachment issue. A thorough review of Lt. McDowell's subsequent testimony reveals the prosecutor in fact limited the scope of Lt. McDowell's direct examination as ordered by the trial court. Moreover, the record shows Lt. McDowell's testimony when recalled was subject to cross-examination by the defense. Although the defense's questioning of Lt. McDowell during cross-examination arguably opened the door for the State to question Lt. McDowell

about the defendant's unrelated aggravated assault charge and arrest, the prosecutor declined to pursue that specific area of testimony on redirect. Under these particular facts, we find the trial court did not abuse its discretion where it modified its initial sequestration order to allow the State to recall Lt. McDowell during its case-in-chief.

In his third assignment of error, the defendant raises two distinct arguments. First, he contends that allowing the State to impeach Ms. Donaldson was inappropriate because her credibility was not at issue. Specifically, the defendant distinguishes Ms. Donaldson's inability to remember the prior statements she made to Lt. McDowell and Det. Tullier from a situation in which a witness denies making a prior statement. Essentially, the defendant contends impeachment is not proper when a witness is merely unable to remember her prior statements. Second, to the extent impeachment was proper, the defendant contends the trial court erred in allowing the State to impeach Ms. Donaldson with her recorded statements.

Louisiana has long sanctioned the use of inconsistent statements to impeach the general credibility of a witness, subject to the rule that such statements are admissible only for their impeachment value and not as substantive evidence. See **State v. Jackson**, 2000-1573 (La. 12/7/01), 800 So.2d 854, 855 (per curiam). In the instant matter, the defendant asserts that the State did not simply rely on Ms. Donaldson's prior recorded statements for impeachment purposes. Rather, the State used the inculpatory statements that Ms. Donaldson attributed to the defendant as evidence that he confessed to shooting and robbing the victim. The defendant contends this was an improper use of extrinsic impeachment evidence. The defendant also points out that the prosecutor referred to Ms. Donaldson's recorded statement, during the State's closing argument, as the defendant's phone

confession to robbing and shooting someone.[5] The defendant urges that whatever probative value the recorded statements had as impeachment evidence was substantially outweighed by the prejudicial impact that potentially resulted from the jury's improper use of the evidence. See **State v. Cousin**, 96-2973 (La. 4/14/98), 710 So.2d 1065.

A violation of LSA-C.E. art. 607(D)(2) is subject to harmless error analysis. See **Cousin**, 710 So.2d at 1073-74. Thus, even if the admission of Ms. Donaldson's recorded statements as impeachment evidence was error, the defendant is not entitled to a new trial if the error was harmless beyond a reasonable doubt. See LSA-C.Cr.P. art. 921. The proper analysis for determining harmless error "is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error." **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993). In the instant case, the issue thus becomes, whether the guilty verdict actually rendered in this trial was surely unattributable to the inculpatory statements Ms. Donaldson attributed to the defendant in her October 1, 2007 recorded interview.

A thorough review of the record convinces us that allowing the jury to hear Ms. Donaldson's recorded interview, even if error, was harmless beyond a reasonable doubt for two reasons. First, contrary to the defendant's assertion in

---

[5] In its brief, the state contends the defendant did not raise an objection at trial to the admissibility of Ms. Donaldson's recorded statements on the grounds of unfair prejudice. Accordingly, the state contends the defendant's argument is not proper on appeal. A thorough review of the record reveals that the parties' respective arguments concerning the propriety of recalling Lt. McDowell and using the recorded statements to impeach Ms. Donaldson occurred over the span of two days. The trial court allowed counsel to research these issues overnight and to present further argument the next morning.

The record reveals that the state and the defense used this opportunity to bolster their initial position and to expand their respective arguments. When the parties returned to court the next day, counsel presented their final arguments to the trial court. Without referring to **Cousin** or LSA-C.E. art. 607(D)(2), in a less than eloquent argument, the defense attempted to argue the recorded statements should not be admitted because the risk of confusion of the issues or unfair prejudice clearly outweighed whatever probative value the recorded statements had as evidence of Ms. Donaldson's credibility. Thus, in the interest of justice, we find the defense sufficiently raised a LSA-C.E. art. 607(D)(2) objection at trial and we consider this argument.

brief that no limiting instruction was given, the trial court did in fact charge the jury on this issue. The trial court instructed the jury that such prior statements are admitted only to attempt to discredit the witness, not to show that the statements are true. Second, and most importantly, the overall evidence, even disregarding Ms. Donaldson's recorded interview, was sufficient to convict the defendant. As previously discussed in the fifth assignment of error, the State produced evidence that established a twenty-five minute window of time, between 1:50 p.m. and 2:15 p.m., in which the victim was shot once in the head and left on Towers Road. The particular weather conditions in the Towers Road/Murray Road area that day further tightened the window of time to shortly after 2:00 p.m., after it began to rain.

Keno and Charlton Walker established the victim and the defendant were alone in the Dodge Charger in the Towers Road/Murray Road Area after it started to rain. The loud boom Charlton heard that he and his aunt believed was a gunshot happened less than five minutes after the victim and the defendant drove away from Charlton's house. Charlton's house was less than three minutes away from Towers Road.

The evidence and testimony produced at trial established that the victim had a cell phone and was wearing shoes. When the police arrived at the crime scene shortly after 2:15 p.m., the victim's shoes and cell phone were missing. The defendant had possession of the victim's cell phone and began making calls seeking a ride from friends at 2:23 p.m. and he sounded like something was wrong. The victim's cell phone records and Ms. Henry's testimony established that the defendant could not have accidently taken the victim's cell phone between noon and 12:20 p.m. as he claimed.

Medical testimony established that the victim was no longer wearing shoes when he incurred "road rash" injuries to his feet. Medical testimony also

established the victim's gunshot injury and "road rash" injuries occurred close in time. Greg Jones, Jr.'s testimony established the victim was wearing his own missing Air Jordan shoes on the day of the murder. Greg identified the Air Jordan shoes Lt. McDowell seized from the defendant as Greg's missing pair of Air Jordan shoes.

The State produced compelling evidence in this matter that the defendant was the person who robbed and murdered the victim, Darren Williams. We find that the jury's verdict in the instant case was surely unattributable to the purported erroneous admission of Ms. Donaldson's recorded statements. Thus, the defendant's second and third assignments of error lack merit.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant urges the trial court erred in denying his challenge for cause of prospective juror Gerard LeBlanc and erred in granting the State's challenge for cause of prospective jurors, Lakesheila Dickerson and Karen Cannino.

An accused in a criminal case is constitutionally entitled to a full and complete voir dire examination of the prospective jurors and to the exercise of peremptory challenges. La. Const. art. I, §17(A). The purpose of voir dire examination is to determine prospective jurors' qualifications by testing their competency and impartiality and discovering bases for the intelligent exercise of cause and peremptory challenges. **State v. Burton**, 464 So.2d 421, 425 (La. App. 1st Cir.), writ denied, 468 So.2d 570 (La. 1985). A challenge for cause should be granted, even when a prospective juror declares his ability to remain impartial, if the juror's responses as a whole reveal facts from which bias, prejudice, or inability to render judgment according to law may be reasonably implied. A trial court is accorded great discretion in determining whether to seat or reject a juror for cause, and such rulings will not be disturbed unless a review of the voir dire as

a whole indicates an abuse of that discretion. **State v. Martin**, 558 So.2d 654, 658 (La. App. 1st Cir.), writ denied, 564 So.2d 318 (La. 1990).

In this assignment of error, the defendant contends Mr. LeBlanc did not truthfully answer questions presented to the jury panel. Specifically, he claims that when prospective jurors were asked if they knew any of the participants in the case, including the trial judge, prosecutor, and defense counsel, Mr. LeBlanc did not acknowledge he knew the judge and defense counsel. The defendant asserts he was prejudiced by the trial court's error because he was forced to use a peremptory challenge to strike Mr. LeBlanc.

To prove there has been error warranting reversal of the conviction, the defendant must show (1) the erroneous denial of a challenge for cause, and (2) the use of all his peremptory challenges. See **State v. Robertson**, 92-2660 (La. 1/14/94), 630 So.2d 1278, 1281. Moreover, the defendant must show that he objected at the time of the ruling to the court's refusal to sustain a challenge for cause of the prospective juror. LSA-C.Cr.P. art. 800(A). In the instant matter, our review of the entire voir dire examination does not support the defendant's assertion that Mr. LeBlanc was untruthful or not forthcoming with truthful answers during voir dire.

During voir dire, the trial court asked the defendant, defense counsel, and prosecutor to stand. The trial court then asked the panel if anyone knew these three people. All of the prospective jurors shook their heads, indicating they did not know them. The trial court later asked if anyone had prior jury service. Mr. LeBlanc did not hesitate to inform the trial court that he had previously served as a juror in the judge's court. When the trial court asked if he remembered what the case was about or if the jury got to decide the case, Mr. LeBlanc answered he "really" did not recall and he thought "we were sworn in" and "they pled out or something." Later, defense counsel directed a question to Mr. LeBlanc concerning

his recollection of whether the jury had a chance to deliberate. Specifically, counsel asked, "And you were chosen on the jury, but he pled out before . . . he actually went to trial or before . . . it reached y'all for a decision?" Mr. LeBlanc answered, "Yes, sir," and immediately added, "He was your client."

At the challenges conference, the defense argued Mr. LeBlanc was not telling the truth because he did not tell the trial judge that he knew defense counsel or the judge when initially asked the question. However, the defendant's argument fails to consider Mr. LeBlanc's initial response in context of the full voir dire examination or that the initial question was susceptible to different interpretations. Clearly, a prospective juror could have reasonably interpreted the trial court's question to imply the existence of a relationship other than recognizing counsel in the context of prior jury service. Although Mr. LeBlanc did not inform the trial court when first asked that he had served on a jury before the judge that involved defense counsel, we find Mr. LeBlanc's later voir dire responses indicate he was forthcoming with this information. Thus, based on our thorough review of Mr. LeBlanc's complete voir dire examination, we find that the trial court did not abuse its great discretion in denying the defendant's challenge for cause of prospective juror Gerard LeBlanc.

The defendant also argues the trial court erred in granting the State's challenge for cause of prospective jurors, Lakesheila Dickerson and Karen Cannino. He contends this error had the effect of giving the State more peremptory challenges than the defense. In his brief, the defendant represents that the State and the defense used all of their peremptory challenges. Conversely, the State asserts the defendant cannot complain of the alleged improper grant of the State's challenge for cause of Ms. Dickerson and Ms. Cannino, because the State used only seven of its twelve peremptory challenges.

Louisiana Code of Criminal Procedure art. 800(B) provides that the erroneous allowance to the State of a challenge for cause does not afford the defendant a ground for complaint, unless the effect of such ruling is the exercise by the State of more peremptory challenges than it is entitled to by law. In the instant matter, the defendant and the State each had twelve peremptory challenges. LSA-C.Cr.P. art. 799. The transcript of the challenge conferences, which is at times difficult to follow, and the jury forms counsel submitted to the trial court, reveal the State used seven peremptory challenges during the seating of the jury and one peremptory challenge during the selection of the two alternates. Clearly, the State had more than two peremptory challenges remaining after the jury was seated. Accordingly, even if the trial court's rulings were erroneous, the State could have used two of its remaining peremptory challenges to strike these prospective jurors. Thus, we find the defendant cannot meet his burden of showing the effect of the alleged erroneous granting of these for cause challenges was the exercise by the State of more peremptory challenges than it was entitled to by law. This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER FOUR

In this assignment of error, the defendant asserts that the trial court erred in denying defendant's motion for mistrial after two or more jurors saw him while he was being escorted in handcuffs to the men's restroom by two sheriff's officers. The alleged viewing of the defendant in handcuffs occurred during the last break on the last day of the trial while the judge was finalizing jury instructions. When the trial court was advised of the incident, it immediately held a hearing and questioned the officers involved. The bailiff, who had escorted three male jurors to the restroom, advised the court that when he noticed the officers and the defendant coming around the corner, he immediately stood between the jurors. The bailiff testified that he kept saying "stop" and "back up."

Away from the jurors, the bailiff explained to the officers escorting the defendant "what had just happened." The bailiff testified that he did not know if these jurors actually saw the defendant. However, he informed the trial court that they were in a position to see the defendant. The record reveals that the trial court was clearly angry and upset that the escorting officers failed to use the elaborate protocols the district court had in place to prevent jurors from seeing a defendant in any condition other than what appears to be a regular person on trial. However, not wanting to draw any more attention to the matter than necessary, the trial court decided to question the members of the jury after the verdict was returned.

After the unanimous guilty verdict was rendered, the trial court explained to the members of the jury what had occurred during the break. The twelve jurors and two alternate jurors were asked to indicate by a show of hands if they saw the defendant in handcuffs during the break. Two jurors, one who deliberated in the verdict and an alternate juror who did not take part in deliberations, indicated they saw the defendant during the last break. The non-deliberating, alternate juror told the trial court he saw the defendant in handcuffs. The deliberating juror said he saw the defendant but did not see the handcuffs. The trial court questioned the deliberating juror about the effect, if any, seeing the defendant during the break had on him. The following exchange occurred:

> Q: Did you notice anything about it that led you to believe one way or the other or anything about this?
>
> A: No, I just saw him come out.
>
> Q: And they ushered him back in?
>
> A: Yes, sir.
>
> Q: And, you didn't think anything -- did you think anything of that?
>
> A: No, sir.

Q: Okay. Did that in anyway enter into your deliberations about -- you obviously voted guilty, did that help you get ... to the guilty finding?

A: No, it did not.

The defendant contends that the trial court's decision to question the jury members after deliberation allowed the two jurors to have contact with other jury members. While the deliberating juror said he did not think anything about the incident, the defendant argues that it was important for the trial court to question these jurors as to whether they discussed what they saw and heard with the other jurors. Because the trial court failed to do so, the defendant asserts that granting a mistrial is appropriate because it is impossible to tell from the record what damages may have been caused by this incident.

Ordinarily, a defendant before the court should not be shackled, handcuffed, or garbed in any manner destructive of the presumption of his innocence and of the dignity and impartiality of the judicial proceeding. See **State v. Brown**, 594 So.2d 372, 392 (La. App. 1st Cir. 9/23/91). Mistrial is a drastic remedy and should only be granted on a showing of substantial prejudice. **State v. Jackson**, 584 So.2d 266, 269 (La. App. 1st Cir.), writ denied, 585 So.2d 577 (La. 1991). To find reversible error, the record must show an abuse of the trial court's reasonable discretion resulting in clear prejudice to the accused. See **Brown**, 594 So.2d at 392.

In the instant matter, we find that the trial court did not abuse its discretion in refusing to grant the defendant's motion for mistrial. The record does not support the scenario envisioned by the defendant that the two jurors may have discussed what they saw with the other jurors. We find the defendant's contention that the record is insufficient to tell what damages may have resulted from the incident also lacks merit. Although the record establishes two jurors saw the defendant during the break, the juror who deliberated in the verdict did not see any

handcuffs. The trial court's questioning of the deliberating juror sufficiently established that his seeing the defendant briefly during the break had no effect or impact in his deliberation or in his finding the defendant guilty as charged. Lastly, the record reveals that while the defendant was testifying on his own behalf, he revealed to the jury that he was arrested shortly after the date of the instant offense on an unrelated charge and had been in jail for the last two years. Under these circumstances, we find there is no showing that the defendant was clearly prejudiced by this event. This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER SIX

The defendant also requests that this Court examine the record for error under LSA-C.Cr.P. art. 920(2). This Court routinely reviews the record for such errors, whether or not such a request is made by the defendant. Under Article 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See **State v. Price**, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONCLUSION

For all of the reasons set forth above, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.