NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 KA 1122

STATE OF LOUISIANA

VERSUS

JACQULYNE LYNETTE SCOTT

Judgment Rendered: APR 20 2017

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 10-12-429

Honorable Trudy White, Judge

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Hillar C. Moore, III, D.A. Allison Miller Rutzen, A.D.A. Baton Rouge, LA	Attorneys for Appellee State of Louisiana
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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

Holdridge J. concurs

WELCH, J.

The defendant, Jacqulyne Lynette Scott, was charged by grand jury indictment[1] with second degree murder, a violation of La. R.S. 14:30.1, and she pled not guilty. The trial court denied the defendant's motion to exclude other crimes evidence. Following a trial by jury, the defendant was found guilty as charged. The trial court denied the defendant's motion for new trial. The defendant was sentenced to life imprisonment at hard labor.[2] The defendant now appeals, assigning error to the admission of other crimes evidence and the denial of a motion to continue the hearing on the motion for new trial. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On August 11, 2012, between 3:00 and 3:30 a.m., Corporal Brandon Bethany of the Baton Rouge City Police Department (BRPD) was dispatched to 2565 Bartlett Street, the residence of Dale Bentley (the victim) due to a damage to property report. At that time, the victim informed Corporal Bethany of an altercation he had with his ex-girlfriend (the defendant) at his place of employment (a night club), and that the defendant damaged his belongings with bleach while he was still at the club. Corporal Bethany observed the damage to the victim's property, called his supervisor, Sergeant David Fauntleroy, to the scene to take photographs, and made a police report before resuming patrol. The defendant was not present at the time.

A couple of hours later, at approximately 5:00 a.m., Corporal Bethany was again dispatched to the victim's residence due to a 911 hang-up call, and

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[1] The defendant's first name is interchangeably spelled in the record as "Jacqulyne," "Jaquelyne," or "Jacqueline." The spelling used herein is consistent with the grand jury indictment and the defendant's signature in the record.

[2] While the trial court failed to restrict parole as statutorily mandated, the parole restriction is automatic pursuant to La. R.S. 15:301.1. See also La. R.S. 14:30.1(B).

discovered the victim's body under the carport. At that time, the defendant was standing in the driveway using her cell phone, and the victim was lying in the driveway, between the front door of the residence and a vehicle parked under the carport. The defendant informed the officer that she shot the victim in self-defense after he "jumped on" her and hit her with a stick, further indicating a history of abuse.[3] Corporal Bethany immediately placed the defendant in his police unit, and called the City of Baton Rouge/Parish of East Baton Rouge Department of Emergency Medical Services (EMS) to send a unit to the scene. Corporal Bethany then returned to the victim's body and observed that he had multiple apparent gunshot wounds, was bleeding profusely, and was unconscious and unresponsive though he was still breathing. The victim's body was lying on his right side, facing the roadway, while his head and shoulders were resting on the steps leading to the residence's entry. Corporal Bethany did not recall seeing a stick or any weapons near the victim's body, and did not observe any visible injuries on the defendant.

After securing the scene, Corporal Bethany further questioned the defendant regarding the location of the weapon, which she stated was inside of the residence. Corporal Bethany checked the defendant for any weapons on her person, recovering only a cell phone. BRPD Detective Caan Castleberry and Sergeant Fauntleroy, who arrived to process the scene, took photographs, recovered the weapon, and interviewed the victim's next-door neighbor. The officers noted that the weapon was located on a table and that all of the rounds had been fired.[4] Detective Castleberry recalled the defendant having a cut and swelling under her right eye with no other visible injuries.

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[3] The audio and video recorder in Corporal Bethany's unit captured the dialogue at the scene between the victim and the officer.

[4] The police later checked the firearm through a database and determined that it was registered to the defendant and had been purchased through a local pawn shop.

Markeith Bryant, the next door neighbor of four months who was somewhat acquainted with the victim, recalled hearing the defendant and the victim arguing outside before the shooting. Bryant described the defendant as the victim's live-in girlfriend. Bryant, who was just waking up, went outside on his porch to smoke marijuana and to be "nosey." He observed the victim and the defendant, about twenty feet away, in the victim's driveway. Bryant noted that the vehicle parked under the victim's carport was making a "ding, ding, ding..." sound, and that the car door was open, providing a little light in the otherwise dark area, as it was a couple of hours before sunrise. Bryant also noted that the victim had a cigarette in his hand at the time, but denied that the victim had a stick. Bryant further denied that the victim ever touched the defendant or threatened her in any way. Bryant and the victim made eye contact as the victim turned, laughed, and began walking away from the defendant toward the vehicle and house. Bryant indicated that the victim was at the bottom of the carport, while the defendant was under a tree outside of the carport area. Just prior to the first gunshot, Bryant heard the defendant state, "Oh, you just gone walk off from me?" Bryant proceeded to quickly reenter his home as he heard additional gunshots.

According to the defendant's trial testimony, at the time of the offense she and the victim (her boyfriend) were living together, back and forth between her residence and his, and had an "on and off," troubled relationship. She indicated that the argument that morning ensued when the victim discovered text messages in the defendant's cell phone between the defendant and a male and a photograph of them together. She further stated that the victim jumped on her, and that she fell between the table and the dryer as he was hitting her, indicating that he busted her lip. She cleaned her face, put clothes in her vehicle, and asked the victim to return her cell phone, but he refused. As they were apparently both outside by this point, the victim picked up a meter stick and hit her in the head and shoulder. The

defendant reached into her car and grabbed her gun that she kept in the car door, in order to scare the victim. She stated that the victim was lunging at her with the meter stick and trying to take the gun from her when it went off. As they struggled over the gun, it fired additional shots and the victim went down.[5]

According to Cameron Francis Snider, the expert in forensic pathology who performed the autopsy, the victim died from multiple gunshot wounds and was struck by three bullets, one entering his head, one travelling through his arm and across his chest, and one entering his back. The gunshot wounds were categorized as indeterminate-range, as there was no evidence such as soot, stippling, or tattooing to indicate that the gun was within a close-range of inches or several feet of the body at the time of the shooting.

ASSIGNMENT OF ERROR NUMBER ONE

In assignment of error number one, the defendant contends that the trial court erred in allowing the State to introduce testimony to show that she damaged the victim's property hours before the shooting. The defendant argues that there was no evidence that she caused the damage, noting that no one was present when the damage occurred. The defendant argues that the testimony was based on mere conjecture and speculation on the part of the victim. The defendant contends that the testimony had no relevance to this case. In the event that this court finds the evidence relevant, the defendant alternatively argues that its prejudicial effect outweighed its probative value. The defendant contends that unproven evidence that she acted in a vindictive manner toward the victim by damaging his property only hours before the shooting undermined her defense that the shooting was an accident.

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[5] It is unclear as to who made the 911 hang-up call. The defendant testified that immediately after the victim went down from the gunshots, she asked him for the location of her cell phone, telling him that she would call the police, but he stated that he had already done so. The defendant then retrieved her cell phone from inside of the house, and the police were arriving as she was about to call 911.

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C.E. art. 401. All relevant evidence is admissible except as otherwise provided by positive law. Evidence which is not relevant is not admissible. La. C.E. art. 402. Although relevant, evidence may be excluded if its probative value is 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. La. C.E. art. 403. A trial judge's determination regarding the relevancy and admissibility of evidence will not be overturned on appeal absent a clear abuse of discretion. **State v. Freeman**, 2007-0470 (La. App. 1st Cir. 9/14/07), 970 So.2d 621, 625, writ denied, 2007-2129 (La. 3/14/08), 977 So.2d 930.

It is well settled that courts may not admit evidence of other crimes to show the defendant as a man of bad character who has acted in conformity with his bad character. La. C.E. art. 404(B)(1). Evidence of other crimes, wrongs, or acts committed by the defendant is generally inadmissible because of the substantial risk of grave prejudice to the defendant. **State v. Pierre**, 2012-0125 (La. App. 1st Cir. 9/21/12), 111 So.3d 64, 68, writ denied, 2012-2227 (La. 4/1/13), 110 So.3d 139. However, La. C.E. art. 404(B)(1), in pertinent part, 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." For other crimes evidence to be admissible under the integral-act exception (formerly known as *res gestae*), the evidence must bear such a close relationship with the charged crime that the indictment or information as to the charged crime can fairly be said to have given notice of the other crime evidence as well. **State v. Odenbaugh**, 2010-0268 (La. 12/6/11), 82 So.3d 215, 251, cert. denied, ___ U.S. ___, 133 S.Ct. 410, 184 L.Ed.2d 51 (2012). 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 (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**, 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)). The Louisiana Supreme Court has left open the question of whether *res gestae* evidence presented under La. C.E. art. 404(B)(1) must pass the balancing test of La. C.E. art. 403. See **State v. Colomb**, 98-2813 (La. 10/1/99), 747 So.2d 1074, 1076 (*per curiam*).

Any inculpatory evidence is "prejudicial" to a defendant, especially when it is "probative" to a high degree. **State v. Germain**, 433 So.2d 110, 118 (La. 1983). As used in the balancing test, "prejudicial" limits the introduction of probative evidence of prior misconduct only when it is unduly and unfairly prejudicial. **Germain**, 433 So.2d at 118; see also **Old Chief v. United States**, 519 U.S. at 180, 117 S.Ct. at 650) ("The term 'unfair prejudice,' as to a criminal defendant, speaks

to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.").

In the instant case, before opening statements, the defense counsel objected to the State's intent to introduce evidence, on the basis of *res gestae*, that two hours before the shooting, the victim reported damage to his property by the defendant. The State argued that the story would be incomplete without reference to the evidence in question, noting that the police officers who arrived on the scene and found the victim's body were the same police officers who arrived there and took a statement from the victim a mere two hours earlier. The defense counsel argued that the 911 call and statement by the victim did not prove that the defendant committed the particular act. The defense counsel further noted that the evidence would be highly prejudicial as it would place a presumption in the jurors' minds that the defendant was responsible for the damage committed. In overruling the defendant's objection, the trial court found a sufficient connection to link the two matters together, noting that the incidents occurred at the same residence, involving the same individuals, on the same day, and the same responding police officers.

During the trial, Corporal Bethany described what he observed upon his initial arrival to the scene after the victim reported the property damage. He noted that most of the damage was in the main bedroom, including bleached articles of clothing, flooring, and other objects. He noted that the smell of bleach in the house was strong such that his eyes were watering. Photographs of the damage were viewed by the jury. The victim told the police that the defendant did the damage, noting that she took his keys after the verbal argument at his job, and that when he returned home the door was open, and bleach had been poured throughout the house. Detective Castleberry stated that when he arrived at the scene after the shooting, the residence still had a strong odor of bleach, he observed the clothing

that had been doused with bleach, and the defendant was wearing bleach-stained pants.

We find no error or abuse of discretion by the trial court in allowing the testimony at issue. The circumstances surrounding the police officers' initial arrival on the scene, just hours before the shooting, constituted an integral part of the crime and was part of the *res gestae*. To have disallowed evidence of the full picture of what occurred that morning would have deprived the State's case of its narrative momentum and cohesiveness. The State could not have accurately presented its case without reference to the evidence. Further, assuming, for sake of argument that the balancing test of La. C.E. art. 403 is applicable to integral act evidence admissible under La. C.E. art. 404(B)(1), that test was satisfied in this matter. The facts were unambiguous, included the police officers' personal observations, and did not present any danger of confusion. Accordingly, the prejudicial effect to the defendant from the challenged evidence did not rise to the level of undue or unfair prejudice when balanced against the probative value of the evidence.

Moreover, the introduction of inadmissible "other crimes" evidence results in a trial error subject to harmless error analysis on appeal. **Odenbaugh**, 82 So.3d at 251. Accordingly, even if we were to determine that the trial court allowed impermissible other crimes evidence in this regard, that would not end our inquiry. The test for determining whether an error is harmless is whether the verdict actually rendered in this case was surely unattributable to the error. See **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993). The pertinent inquiry 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**, 508 U.S. at 279; **State v. Johnson**, 94-1379 (La. 11/27/95), 664 So.2d 94, 100. We

note that the evidence in this case included eyewitness testimony from the next-door neighbor, who had an unobstructed view as he observed the circumstances leading up to and as the shooting occurred. Further, expert testimony indicated the shooting was not at close range, and that one of the gunshots was to the victim's back. Thus, the evidence was in direct conflict with the defendant's self-serving account of the shooting. We are convinced that the verdict rendered in this case was surely unattributable to any error in the admission of the above referenced testimony. Considering the foregoing conclusions, assignment of error number one is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In assignment of error number two, the defendant argues that the trial court erred in denying her motion to continue the hearing on the motion for new trial. The defendant contends that the defense attorney asked for a one-month delay to prepare for a hearing on the motion for new trial because he had been hired by the defendant's family the day before the hearing and needed time to review the record. The defendant further contends that in denying the motion to continue, the trial court assumed that it was a delay tactic without inquiring about or considering the need for a delay. The defendant contends that there were no prior motions to continue by the State or the defendant in this case, and that sentencing had not previously been delayed. The defendant notes that pursuant to La. C.Cr.P. art. 853(A), the trial court had the discretion to postpone the imposition of sentencing. The defendant notes that she was facing a life sentence and argues that the trial court abused its discretion in denying the motion to continue.

Herein, on the date of the defendant's conviction, July 17, 2015, sentencing was set for December 3, 2015 and a presentence investigation (PSI) was ordered. When the sentencing date arrived, the defendant filed the motion for new trial. At the hearing, the defendant's trial attorney (Jeffrey Rice) was present in addition to

an attorney from the law firm that filed the motion for new trial, who was hired to represent the defendant at sentencing (Brent Stockstill). The motion for new trial was based on the grounds that the verdict was contrary to the law and evidence. Stockstill, who subsequently enrolled as the counsel of record, informed the trial court that he did not have sufficient information to proceed on the motion, requesting "some additional time." The State objected, noting that the trial had taken place in July, that the verdict was unanimous, and that the defendant had sufficient time prior to the sentencing date to pursue the motion for new trial. The State further noted that the sole grounds in the motion was that the verdict was contrary to the law and evidence and that the defendant's appeal rights would be preserved. The defense counsel countered that there would be no harm in granting the continuance to assure that the verdict was properly founded. The trial court noted that the motion to continue seemed to be a delay tactic, noted its preparedness to impose sentence, and indicated that the defense had plenty of time prior to the sentencing date to file a motion for new trial.

The trial court then gave Rice, the attorney who represented the defendant at trial, an opportunity to speak. Rice informed the trial court that shortly after the trial, family members of the defendant contacted him and informed him that they were hiring Stockstill's law office. Rice further stated that one of the defendant's family members came to his office and retrieved the case file well in advance of the date set for the completion of the PSI. Rice, however, urged the trial court to grant the additional time, arguing that a delay would be detrimental and that to deny the continuance would be a disservice to the interest of justice.

The trial court considered the heavy burden that granting such delays would have, noting the efforts to manage the docket by the trial court staff, district attorneys, and defense counsels in other cases. Stockstill again contended that he was not prepared to represent the defendant on the motion for a new trial, stating

that he did not know the facts of the case and had simply filed the motion to preserve the defendant's appeal rights. Regarding Rice's contention that before the PSI was complete a member of the defendant's family retrieved the case file and indicated that Stockstill had been hired, Stockstill stated, "And we got hired yesterday. So as a result of being hired, I filed a motion for a new trial." The trial court denied the motion for a continuance and denied the motion for new trial. The sentencing was rescheduled for the following day, December 4, 2015.

The granting or denial of a motion for continuance rests within the sound discretion of the trial court, and its ruling shall not be disturbed on appeal absent a showing of a clear abuse of discretion. See **State v. Castleberry**, 98-1388 (La. 4/13/99), 758 So.2d 749, 755, cert. denied, 528 U.S. 893, 120 S.Ct. 220, 145 L.Ed.2d 185 (1999). Whether refusal of a motion for continuance is justified depends on the circumstances of the case. Generally, the denial of a motion for continuance is not reversible absent a showing of specific prejudice. **State v. Strickland**, 94-0025 (La. 11/1/96), 683 So.2d 218, 229. When a motion to continue is based upon a claim of inadequate time to prepare a defense, the specific prejudice requirement has been disregarded only when the time has been "so minimal as to call into question the basic fairness of the proceeding." **State v. Jones**, 395 So.2d 751, 753 (La. 1981).

As noted, the defendant points to La. C.Cr.P. art. 853(A), which provides:

> Except as otherwise provided by this Article, a motion for a new trial must be filed and disposed of before sentence. The court, on motion of the defendant and for good cause shown, may postpone the imposition of sentence for a specified period in order to give the defendant additional time to prepare and file a motion for a new trial.

As stated in the official comments, La. C.Cr.P. art. 853 provides for postponement of the imposition of sentence because sometimes the three-day delay between conviction and sentence pursuant to La. C.Cr.P. art. 873, will not afford sufficient time to prepare the motion for a new trial. Official Revision Comment (a).

Furthermore, in reference to La. C.Cr.P. art. 853, the Louisiana Supreme Court noted as follows in **State v. Prejean**, 379 So.2d 240, 246 (La. 1979), cert. denied, 449 U.S. 891, 101 S.Ct. 253, 66 L.Ed.2d 119 (1980), "[t]here is considerable question as to whether that article was meant to apply where the motion for a new trial has already been made and the defendant merely seeks time to gather evidence in support of that motion."

In this case, the motion to postpone the hearing was made after the motion for new trial had already been filed. Additionally, the more than four-month delay between the conviction on July 17, 2015, and sentencing on December 4, 2015, is well over the three-day delay contemplated in Article 853. We note that the defendant failed to show good cause for a delay. Even assuming that Stockstill was hired the day before the sentencing, there was no explanation as to why the defendant waited several months before hiring an attorney on the eve of her sentencing. Further, although the defendant claims otherwise on appeal, the record herein reveals that the defense counsel did not indicate how much time would be needed to prepare for the motion for new trial and never requested a specific period of time.

Herein, the defense attorney merely stated that he had not yet been able to prepare and was unaware of the facts of the case. Despite a four-month interval between the conviction and sentencing, there was no showing of any measures taken by the defendant to secure new representation in a more timely manner. Thus, we cannot say that the trial court was incorrect in determining that the defendant's request for a continuance was interposed merely for the purpose of delay. The defendant has not presented any claim on appeal as to what information, if any, she could have argued below had the continuance been granted. She does not challenge the sufficiency of the evidence or make any specific argument as to why the verdict was contrary to the law and the evidence.

The trial court was aware of the grounds provided in the motion for new trial and was in the position to rule on the motion on its face, as submitted. The defendant has not shown how the denial of the motion for a continuance affected her substantial rights. See La. C.Cr.P. art. 921. The defendant has not alleged nor do we find specific prejudice arising out of the denial of the motion to continue.[6] Considering the foregoing, we find that the trial court did not abuse its considerable discretion when it denied the motion to continue the hearing on the motion for new trial. Assignment of error number two lacks merit.

For the foregoing reasons, the defendant's conviction and sentence are affirmed

CONVICTION AND SENTENCE AFFIRMED.

[6] We further note that the defendant failed to follow the procedure set forth in La. C.Cr.P. art. 707, in that the motion for continuance was not in writing. See **State v. Hill**, 552 So.2d 556, 557-58 (La. App. 2d Cir. 1989), writ denied, 559 So.2d 136 (1990) (wherein the courts held that the requirements of Article 707 are applicable to posttrial motions for continuance). Moreover, the facts of this case do not warrant an extension of the exception to the requirement that motions to continue be in writing, recognized by the Louisiana Supreme Court where the circumstances that allegedly made the continuance necessary arose unexpectedly so that defense counsel did not have an opportunity to prepare a written motion. **State v. Parsley**, 369 So.2d 1292, 1294, n.1 (La. 1979). Under the circumstances herein, the defense counsel was not surprised by any unexpected events. To the contrary, the circumstances were such that the defense counsel should have been able to prepare a written motion for continuance as counsel was aware of the sentencing date and prepared a motion for new trial.