NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 0440

STATE OF LOUISIANA

VERSUS

DEMETRI A. JAMES

Judgment rendered NOV 28 2018

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On Appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 583274-3, Div. C

The Honorable Richard A. Swartz, Judge Presiding

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Warren L. Montgomery
District Attorney
Matthew Caplan
Assistant District Attorney
Covington, LA

Attorneys for Appellee
State of Louisiana

Jane Beebe
New Orleans, LA

Attorney for Defendant/Appellant
Demetri A. James

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BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

HOLDRIDGE, J.

The defendant, Demetri A. James, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1, and pled not guilty.[1] The trial court denied the defendant's oral motion to exclude telephone calls made by the defendant, and granted in part and denied in part, the defendant's subsequent written and oral motions in limine. Following a trial by jury, the defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The defendant now appeals, assigning error to the admission of Instagram posts and jailhouse telephone calls. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On October 4, 2016, at approximately 2:30 a.m., Deputy Ryan Ruple, a dispatcher for the St. Tammany Parish Sheriff's Office (STPSO), received a 911 call reporting the shooting inside of a room at the Green Springs Motel, located at 72533 Highway 21 in Covington. Deputy Troy White of the STPSO Patrol Division, the first officer who responded to the scene, immediately made contact with the motel manager and two subjects standing outside of room 10, where the shooting took place. As Deputy White entered the room, he observed a black male, the victim (later identified as Brandon Washington), lying face down on the bed, covered in what appeared to be a pool of blood. The victim appeared to be deceased, as he was not breathing and showed no other signs of life. A single spent shell casing was located on the bed next to the victim, who had an apparent gunshot wound above his left ear. The two subjects who were standing outside of

[1]The defendant and codefendants Terry L. Hookfin, Tyreek K. Sandifer, and Devon D. Decoud were charged on count two of the grand jury indictment with armed robbery with a firearm, violations of La. R.S. 14:64 and La. R.S. 14:64.3. Count two was severed for purposes of the trial. According to the record, the three codefendants pled guilty prior to the defendant's trial.

the room upon Deputy White's arrival, Steve Turner and Nancy Gaines, were transferred to the STPSO to be interviewed.

Detective Jason Dammon of the STPSO major crimes unit, the lead investigator in this case, responded to the scene shortly before 4:00 a.m. and was briefed on the known circumstances at that time. Detective Dammon viewed motel surveillance footage from approximately thirty minutes before the shooting was reported to have taken place up to a couple of minutes after the shooting. At 2:09 a.m., the compiled footage shows a silver Nissan Murano pull up occupied by four individuals. The front passenger exited the vehicle followed by two backseat passengers (one identifed as Terry Hookfin, also known as "T-Hook"). Each individual had their heads covered as they walked towards room 10 of the motel. The driver (later identified as Devin Decoud) remained in the vehicle. Moments later, at 2:12 a.m., the surveillance shows the three individuals as they quickly ran from the room and past the Nissan Murano. According to Detective Dammon, the video showed a gun in the first subject's hand.[2] One of the individuals ran back to and reentered the Nissan Murano just before it was driven away from the scene.

Detective Dammon took statements from Turner and Gaines and received the name "Terry Hookfin" as a suspect who may have been involved in the incident. Detective Dammon noted that a red Chevy Trailblazer was also observed on the scene that night. The officers consulted history reports in their database and began patrolling certain areas, on the lookout for the identified vehicles. They discovered that Hookfin's mother owned a red Chevy Trailblazer that fit the description of the one on the scene. They further found the Chevy Trailblazer while patrolling that night, as it was being driven by Adam Jackson and occupied by Tyreek Sandifer. Sandifer, the front seat passenger, had outstanding arrest

[2] This court has viewed the surveillance footage shown to the jury. We note that the footage is slightly blurred and this court is unable to detect a firearm being held by one of the individuals.

warrants and was immediately arrested. The defendant's wallet and identification card were recovered from underneath a white hooded sweatshirt located in the Chevy Trailblazer.

As the police continued looking around and asking about Hookfin, at one point Hookfin approached the officers and said, "Hey, you're looking for me." At that point, Hookfin was also taken into custody and transported to the STPSO for questioning. The defendant was developed as a suspect based on the interviews with the other suspects. The police showed the defendant's identification card to the other individuals and conducted photographic lineups with Hookfin and Sandifer, wherein the subjects identified the defendant. On October 6, 2016, the police executed a search warrant for the defendant's residence. On October 11, 2016, with the assistance of the United States Marshal's Task Force and a SWAT team, the defendant was arrested for murder.

Gaines and Turner testified that on October 3, 2016, they were dropped off at the Green Springs Motel, where they rented a room to get away from the crowd at Gaines's mother's house, where they lived at the time. That night, Brandon Washington (the victim), Turner's friend who he called "Snag," came to their room and asked Turner if he could sleep in one of the double beds. Turner was outside with his cousin Will Jones ("Squally") at the time, and agreed to allow the victim, who Turner described as being "under the influence" at the time, to sleep there that night before leaving with Squally. After being left in the room alone with the victim for hours as he slept, Gaines called around looking for Turner, before leaving the motel on foot. When Turner returned to the motel room, Gaines was gone, and he subsequently received a call from Devin Decoud, informing him that Gaines was on foot in the neighborhood. Turner woke up the victim and asked to borrow his vehicle, and saw another friend, Hookfin, just as he was leaving the

motel to look for Gaines. Hookfin briefly rode with Turner, but exited the vehicle before Turner found Gaines. As Gaines was walking, Turner pulled up in the victim's vehicle, apologized for being gone so long, and coaxed her to get into the vehicle with him. When they arrived back at the motel, the room door was slightly ajar, the victim was on his knees, and there was blood throughout the room. Turner, who was crying, ran to the office to get the attendant, and Gaines yelled for someone to call 911.

Hookfin and Decoud, admitted drug dealers whose criminal histories included drug possession and distribution offenses, testified at trial. Hookfin stated that he was driving a red Chevy Trailblazer that day and that he, the defendant, and Sandifer were riding around together, "chilling," and smoking marijuana. Hookfin received a call from someone seeking to buy drugs and set up a drug deal at the Green Springs Motel. Hookfin wanted to "hit a lick" (street terminology indicating that he was looking for someone to rob) and asked Decoud if he knew who was staying at the motel that night.[3] Hookfin and Decoud testified that they were unarmed. They each further testified that Sandifer had a silver gun, and the defendant had a black gun that night.[4]

Decoud, who was driving the Nissan Murano that night, ultimately informed them (Hookfin, Sandifer, and the defendant) that the victim was in one of the rooms and that there was money and drugs in the room. Hookfin, the defendant, and Sandifer approached the room and Hookfin used an identification card to pry

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[3] They initially attempted to execute a plan to rob Nathaniel Peters, but Peters became suspicious after speaking to Decoud and left the motel.

[4] The police later recovered a silver semi-automatic handgun in the execution of the search warrant for Sandifer's apartment. Patrick Lane, the expert in firearm examinations who examined the evidence in this case, testified that the silver handgun was eliminated as the murder weapon both by caliber and by class characteristics. Lane further testified that a spent cartridge case and fired bullet in evidence were most consistent with being nine millimeter and having been fired from an unknown Glock or Glock- type firearm.

open the room door. As they entered the room, the victim was in the bed sleeping. Hookfin held the victim's hands down as Sandifer rummaged through his pockets. The victim jumped up and grabbed Hookfin's shirt. Hookfin pulled away and heard a gunshot as he turned to run out of the room. When Hookfin turned around, he saw the defendant and Sandifer running out of the room. Decoud testified that he heard the gunshot while he was waiting in the car, and then saw Hookfin, the defendant, and Sandifer run past his vehicle. Decoud exited the vehicle, unsure of what to do at that point. The defendant ordered him to get back in the truck, stating, "Drive, bitch. Or I'll murc[5] you like I did your boy."[6]

OTHER CRIMES EVIDENCE

In the sole assignment of error, the defendant notes that he filed a motion in limine to preclude the use of jail calls and Instagram posts. He contends that the State could not prove that he made the Instagram postings at issue. In that regard, the defendant contends that social media accounts can easily be manipulated and hijacked by "nefarious characters with dark or criminal purposes." He further argues that the photograph of him holding a gun and the post indicating that he was looking for a gun before the instant shooting was being used to prejudice him and inflame the jury's emotions. He contends that the gun in the posted photograph could not be linked as the definite murder weapon. The defendant argues that the posts were not relevant to the crime charged and served only to depict him as a bad person. Finally, the defendant argues that the admission of the evidence in question was not harmless as it was prejudicial and depicted the defendant as the

[5] Decoud testified that "murc" was street terminology for kill or shoot.

[6] The victim suffered a single gunshot wound to the left side of face. Dr. Michael DeFatta, who performed the autopsy, testified that the cause of death was a gunshot wound of the head and the manner of death was homicide.

shooter as opposed to one of the other robbers or many other drug dealers at the motel that evening. In arguing that the jury's verdict cannot be considered unattributable to the alleged error, he contends that the State "flipped the three codefendants with sweetheart deals and decided to pin the murder on [the defendant]."

As to the Instagram posts, at the hearing on the motion in limine the defendant merely argued that there was no showing that the gun depicted in one of the photographs was the murder weapon in this case. Specifically, in challenging the relevancy of the evidence, the defense attorney stated, "Just because it's a Glock -- there's different calibers of Glock." In his written motion in limine, the defendant argued that the Instagram posts are not relevant, and that the State could not show that the defendant made the postings. Thus, the defendant did not argue below that the evidence at issue constituted other crimes evidence. This argument constitutes a new ground for objection and cannot be raised for the first time on appeal. See La. Code Crim. P. art. 841; La. Code Evid. art. 103(A)(1); See also **State v. Williams**, 2002-1030 (La. 10/15/02), 830 So.2d 984, 988; **State v. Lawson**, 95-1604 (La. App. 1st Cir. 12/20/96), 684 So.2d 1150, 1152, writ denied, 97–0191 (La. 6/13/97), 695 So.2d 986; **State v. Lockhart**, 629 So.2d 1195, 1205 (La. App. 1st Cir. 1993), writ denied, 94-0050 (La. 4/7/94), 635 So.2d 1132. The reasons for the objection must be sufficiently brought to the attention of the trial court to allow it the opportunity to make the proper ruling and prevent or cure any error. A defendant is limited on appeal to the grounds for the objection articulated at trial. **State v. McCutcheon**, 93-0488 (La. App. 1st Cir. 3/11/94), 633 So.2d 1338, 1344, writ denied, 94-0834 (La. 6/17/94), 638 So.2d 1093. Moreover, by orally articulating a specific ground for the motion in limine at the hearing, defense counsel limited the defendant's written motion in limine to that specific ground.

See **State v. Schaub**, 563 So.2d 974, 975 n. 3 (La. App. 1st Cir. 1990). Further, we do not find that the evidence at issue constituted inadmissible other crimes evidence.

The Instagram posts were introduced during the trial testimony of Detective Tim Crabtree of the STPSO major crimes unit. After discovering that the defendant was known as "Marlo" or "Marlow," Detective Crabtree performed an open web search of "HG Marlow," and obtained a search warrant for Instagram records. The evidence at issue was part of the return on the search warrant provided by Instagram. Items such as an Instagram post containing three images of the defendant with the word "Marlo" across them, do not constitute evidence of a crimes, wrongs or acts committed by the defendant and were introduced by the State for purposes of identifying the Instagram account. Detective Crabtree identified the defendant as the person holding a firearm that he further identified as a Glock.

While demonstrative evidence must be identified, it is well settled that this identification can be visual, that is, by testimony at trial that the object exhibited is the one related to the case. **State v. Patton**, 2010-1841 (La. App. 1st Cir. 6/10/11), 68 So.3d 1209, 1222. In order to introduce demonstrative evidence, threshold legal requirements are satisfied if the foundation laid establishes that it is more probable than not that the object is the one connected to the case. **Id.** Lack of positive identification or a defect in the chain of custody goes to the weight of the evidence, rather than to its admissibility. Ultimately, a chain of custody or connexity of the physical evidence is a factual matter for determination by the jury. **Id.**

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. Tilley**, 99-0569 (La. 7/6/00), 767 So.2d 6, 22, cert. denied, 532

U.S. 959, 121 S.Ct. 1488, 149 L.Ed.2d 375 (2001). 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. **Id.** However, evidence of other crimes, wrongs, or acts may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding. La. Code Evid. art. 404(B)(1); **State v. Lockett**, 99-0917 (La. App. 1st Cir. 2/18/00), 754 So.2d 1128, 1130, writ denied, 2000-1261 (La. 3/9/01), 786 So.2d 115.

For other crimes to be admissible under the integral act exception (formerly known as "res gestae"), they 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 as well. See **State v. Schwartz**, 354 So.2d 1332, 1334 (La. 1978). Thus, evidence of other crimes forms part of the res gestae when said crimes are related and intertwined with the charged offense to such an extent that the State could not have accurately presented its case without reference to the other crime. **State v. Brewington**, 601 So.2d 656, 657 (La. 1992) (per curiam). In such cases, the purpose served by admission of other crimes evidence is not to depict the defendant as a bad person, but rather to complete the story of the crime on trial by proving its immediate context of happenings near in time and place. **Id.** Evidence of crimes committed in connection with the crime charged does not affect the accused's character because the offenses are committed as parts of a whole. **Id.**

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 before, during, or after the commission of the crime, if a continuous chain of events is evident under the circumstances. **State v. Kimble**, 407 So.2d 693, 698 (La. 1981). Integral act evidence in Louisiana incorporates a rule of narrative completeness without which the State's case would lose its "narrative momentum and cohesiveness, 'with power not only to support conclusions but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict.'" **State v. Colomb**, 98-2813 (La. 10/1/99), 747 So.2d 1074, 1076 (per curiam) (quoting **Old Chief v. United States**, 519 U.S. 172, 187, 117 S.Ct. 644, 653, 136 L.Ed.2d 574 (1997)).

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. Code Evid. art. 401. All relevant evidence is admissible except as otherwise provided by positive law. Evidence which is not relevant is not admissible. La. Code Evid. 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, or misleading the jury, or by considerations of undue delay, or waste of time. La. Code Evid. art. 403.[7] A trial court'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.

The Instagram posts were introduced during the trial testimony of Detective Tim Crabtree of the STPSO major crimes unit. After discovering that the defendant

[7] The Louisiana Supreme Court has left open the question of the applicability of the Article 403 test to integral act evidence admissible under La. Code Evid. art. 404(B). See **Colomb**, 747 So.2d at 1076.

was known as "Marlo" or "Marlow," Detective Crabtree performed an open web search of "HG Marlow," and obtained a search warrant for Instagram records. The evidence at issue was part of the return on the search warrant provided by Instagram. At the outset we note that items such as an Instagram post containing three images of the defendant with the word "Marlo" across them, do not constitute evidence of a crimes, wrongs or acts committed by the defendant and were introduced by the State for purposes of identifying the Instagram account.

Further, other Instagram posts were introduced as evidence of the instant offense, not a separate "other crime" within the meaning of Article 404(B). For example, an August 19, 2016, Instagram post included the following language: "need a gun" (authored by "hg_ marlo") ... "What kind you need bro" (authored by "darealbelock") ... "Glock" (authored by "hg_ marlo"). Less than a month later, a post on September 5, 2016 (approximately one month prior to the shooting), constituted an image of the defendant holding a gun specifically identified by Detective Crabtree as a Glock based on the recognizable emblem on the firearm. After the search warrant for the defendant's residence on October 6, 2016, the following day, on October 7, 2016 (three days after the shooting), a post stated "They ant get nothing." A subsequent post on October 7, 2016, three days after the shooting, stated, "I'm on tha run for a M." The defendant was arrested on October 11, 2016.

We find that the above described evidence constitutes an integral part of the transaction. The evidence forms an inseparable link in the continuous chain of events leading to the defendant's arrest and the discovery of the evidence that formed the basis for the instant conviction. It was used merely to complete the story of the crime

on trial and allow the State to accurately present its case. Moreover, the relevancy of the evidence at issue was not outweighed by any danger of confusion or prejudice.[8]

We note that in his appeal brief, the defendant's argument does not pertain to the phone calls or provide a description of any disputed content.[9] Listing errors does not constitute briefing. Thus, it appears, as contended by the State, that any argument pertaining to the admission of jailhouse telephone calls was abandoned. See **State v. Williams**, 632 So.2d 351, 353 (La. App. 1st Cir. 1993), writ denied, 94-1009 (La. 9/2/94), 643 So.2d 139; Uniform Rules–Louisiana Courts of Appeal, Rule 2–12.4(B)(4). Nonetheless, we note that we do not find that the phone calls were improperly admitted.

The Confrontation Clause bars the admission of an out-of-court "testimonial" statement against a criminal defendant unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. **Crawford v. Washington**, 541 U.S. 36, 68, 124 S.Ct. 1354, 1374, 158 L.Ed.2d 177 (2004). However, phone calls from an inmate to another private citizen are generally non-testimonial. In **State v. Norah**, 2012-1194 (La. App. 4th Cir. 12/11/13), 131 So.3d 172, 190, writs denied, 2014-0084 (La. 6/13/14), 140 So.3d 1188 and 2014-0082 (La. 6/20/14), 141 So.3d 287, the court discussed the nature of inmate calls as follows:

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[8] Even assuming, arguendo, that the balancing test of La. Code Evid. art. 403 is applicable to integral act evidence admissible under La. Code Evid. art. 404(B)(1), in this case that test was satisfied. Evidence that the defendant, in the time period leading to the instant offense, was seeking and obtained a gun of the same type that was, according to expert testimony, used in the commission of the instant offense was highly probative and unlikely to mislead or cause the jury to confuse the issues.

[9] At the hearing on the motion in limine, the defendant argued that the jailhouse phone calls constituted hearsay. On appeal, in the summation of his argument, he simply states that the calls and Instagram posts were "irrelevant to the crime charged and prejudicial to the jury's fair consideration of [his] guilt or innocence in the murder of Brandon Washington." In his statement of facts, he notes that in one of the jail calls played for the jury, he can be heard saying that the police will not find anything at his residence in their search. The defendant's brief does not otherwise address the jailhouse phone calls.

> Phone calls from an inmate to another private citizen are generally "non-testimonial." These conversations are simply too attenuated in kind from a police interrogation. While inmates are warned that their calls are being recorded, the statements of inmates and those with whom they are speaking are "non-testimonial" in that they are not attempting to prove some fact for introduction at trial such as when the police interrogate a suspect. These statements are not made "to a police officer, during the course of an investigation, or in a structured setting designed to elicit responses that are intended to be used to prosecute him." These calls were conversations amongst friends, and in no way could be considered testimonial. [citation and footnote omitted]

In the instant case, the recorded telephone conversations are non-testimonial under **Crawford**. Hence, the admission of the jailhouse recordings did not violate the defendant's right of confrontation. Accordingly, we find that the sole assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.