NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0562

STATE OF LOUISIANA

VERSUS

ANTHONY DUANE CRAIG

Judgment rendered NOV 0 1 2013

* * * * * *

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 08-10-0579
Honorable Trudy White, Judge

* * * * * *

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ANTHONY DUANE CRAIG

* * * * * *

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McClendon J. concurs.

PETTIGREW, J.

The defendant, Anthony Duane Craig, was charged by grand jury indictment with one count of second degree murder, a violation of La. R.S. 14:30.1, and pled not guilty. Following a jury trial, he was found guilty as charged by unanimous verdict. During trial, he moved for mistrial, but the motions were denied. He was sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. He now appeals, filing a counseled and a pro se brief. In his counseled brief, he challenges the denial of one of his motions for mistrial. In his pro se brief, he argues the evidence was insufficient to support the verdict because he acted in self-defense. In the alternative, he argues the evidence was insufficient to support the verdict because it supported only a conviction for manslaughter. He also contends the trial court erred in failing to order a mistrial after the State told the jury the defendant did not make a statement at the time of his arrest. Additionally, he argues he is being denied proper judicial review due to an incomplete record. Lastly, he argues he received ineffective assistance of counsel. For the following reasons, we affirm the conviction and sentence.

FACTS

Elton Clark testified at trial. He lives on East Brookstown, next door to 5042 East Brookstown, in Baton Rouge, Louisiana, where the offense took place. Clark's mother's cousin is the mother of the victim, Thomas Barton. The defendant is Clark's "sister's baby daddy's brother." Corey Craig is Clark's sister's husband and the defendant's brother.

Clark testified that on May 22, 2010, he was in a group of people "outside playing dominoes and just chilling." The victim was drinking and listening to music in a truck with "Uncle June." The defendant drove up in a small car to the group of people. The victim exited Uncle June's truck and began talking to the defendant "like it was a regular day." Thereafter, however, the men began arguing from a distance. Before the men were close enough to fight each other, Corey Craig told the defendant to "just go," and the defendant drove away.

Five or six minutes later, however, the defendant returned. The victim stated, "If this p___ a___ n___r get out the car, I'm going to smash him. I'm going to smash him.

I'm tired of him. I'm going to smash him." The defendant backed up his vehicle "like he was fixing to leave," and the victim approached the vehicle. Clark told the victim to get away from the defendant's car "before this crazy m___ f___ run over you." The defendant put his head down "like he was saying a prayer," and opened the door of his vehicle. Clark testified, "when [the defendant] opened the door, [the victim] seen the gun. Because when [the victim] seen the gun, [the victim] went like he was fixing to run." Clark stated, the defendant then aimed the gun at the victim and shot him. He then looked "at everybody in the yard" and stated, "Anybody can get it." Thereafter, he drove away. Clark testified the victim had no guns or knives on him and never threatened to kill the defendant, but just wanted to fight him. He also indicated there had been "a prior incident" between the victim and the defendant.

Corey Craig also testified at trial. The defendant knocked on Corey Craig's window at 5042 East Brookstown on the day of the incident. Thereafter, the defendant and the victim, who had been with Corey Craig inside the house, began arguing. The victim wanted the defendant to "come to the street." The men were not close to each other during the argument, and there was no physical contact between them. Corey Craig broke up the argument, and the defendant got into his vehicle and backed it up to leave. Corey Craig indicated he prevented the victim from walking up to the defendant's car, and told him to, "just let [the defendant] leave." The defendant then drove away.

Corey Craig testified the defendant returned in his vehicle approximately three minutes later and asked for a cigarette. Corey Craig gave the defendant a cigarette, and he backed up his car to leave again. According to Corey Craig, the victim got out of a truck and ran up to the driver's-side door of the defendant's vehicle and tried to reach for the door handle. Corey Craig did not see any weapons on the victim. Thereafter, the defendant "got out and [shot the victim]." According to Corey Craig, the defendant did not say anything after the shooting. Corey Craig indicated he did not think the defendant was trying to shoot the victim, but rather, "was shooting down, but [the victim] tried to turn around and like duck, tried to run." Corey Craig testified he did not hear the victim threaten to kill the defendant on the day of the incident.

Bruce Harrison also testified at trial. The defendant was his wife's nephew. On the day of the incident, the defendant visited Harrison in Brusly. The defendant told Harrison that the defendant had killed someone because the man was "calling [the defendant] names." The defendant did not indicate the victim had struck the defendant or had been armed with any weapons.

The victim died as a result of being shot above and behind his right ear. His blood-alcohol level was .289. He also had marijuana "in his system."

SUFFICIENCY OF THE EVIDENCE

In pro se assignment of error number 1, the defendant argues his actions on the day of the incident were justified because he was in fear of receiving great bodily harm or death if he did not prevent the victim from opening the door of his vehicle. In the alternative, in pro se assignment of error number 2, he argues the evidence supported only a conviction for manslaughter.

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," every reasonable hypothesis of innocence is excluded. **State v. Wright**, 98-0601, p. 2 (La. App. 1 Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 & 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a

reasonable doubt that the defendant was guilty of every essential element of the crime. **Wright**, 98-0601 at 3, 730 So.2d at 487.

Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1(A)(1). Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Specific intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. Specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. **State v. Henderson**, 99-1945, p. 3 (La. App. 1 Cir. 6/23/00), 762 So.2d 747, 751, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235.

Manslaughter is a homicide that would be either first or second degree murder, but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. "Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed." La. R.S. 14:31(A)(1). "Sudden passion" and "heat of blood" are not elements of the offense of manslaughter; rather, they are mitigatory factors in the nature of a defense which exhibit a degree of culpability less than that present when the homicide is committed without them. The State does not bear the burden of proving the absence of these mitigatory factors. A defendant who establishes by a preponderance of the evidence that he acted in a "sudden passion" or "heat of blood" is entitled to a manslaughter verdict. In reviewing the claim, this court must determine if a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the mitigatory factors were not established by a

preponderance of the evidence. **State v. Huls**, 95-0541, pp. 26-27 (La. App. 1 Cir. 5/29/96), 676 So.2d 160, 177, writ denied, 96-1734 (La. 1/6/97), 685 So.2d 126.

When a defendant charged with a homicide claims self-defense, the State has the burden of establishing beyond a reasonable doubt that he did not act in self-defense. **State v. Rosiere**, 488 So.2d 965, 968 (La. 1986).

Louisiana Revised Statutes 14:20, in pertinent part, provides:

> A. A homicide is justifiable:
>
> (1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.
>
> (2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.
>
> . . . .
>
> (4)(a) When committed by a person lawfully inside ... a motor vehicle ... against a person who is attempting to make an unlawful entry into the ... motor vehicle, ... and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry ....
>
> . . . .
>
> B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a ... motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto, ... if both of the following occur:
>
> (1) The person against whom deadly force was used was in the process of unlawfully and forcibly entering ... the ... motor vehicle.
>
> (2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring ....
>
> C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.
>
> D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and

apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.

Louisiana Revised Statutes 14:20(A) sets forth situations when a homicide may be justifiable depending on the reasonable belief of the person committing the homicide, the danger presented to that person or others, and the need for the use of deadly force. While La. R.S. 14:20(C) provides that there is "no duty to retreat before using deadly force," that statement is limited by the language "as provided for in this Section[.]" Louisiana Revised Statutes 14:20(D) prohibits consideration of the possibility of retreat by the fact finder, but in doing so, tracks the language of La. R.S. 14:20(A)(2) ("When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm ...") and La. R.S. 14:20(A)(4)(a) ("When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40), against a person who is attempting to make an unlawful entry ..."). In order for La. R.S. 14:20(A)(2) to apply, "[t]he circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing." Louisiana Revised Statutes 14:20(A)(4)(a) only applies when "the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the premises or motor vehicle." **State v. Morris**, 2009-0422, p. 19 (La. App. 1 Cir. 9/11/09), 22 So.3d 1002, 1013.

The presumption of reasonableness in La. R.S. 14:20(B) is not a license to kill. The legislature's decision to use the term "presumption" rather than a mandatory inference of reasonableness means that the State is entitled to offer proof that a person's use of deadly force was unreasonable. If the State can prove beyond a reasonable doubt that the use of force was unreasonable, the defendant may still be guilty of homicide. See **State v. Ingram**, 45,546, pp. 9-10 (La. App. 2 Cir. 6/22/11), 71 So.3d 437, 445, writ denied, 2011-1630 (La. 1/11/12), 77 So.3d 947.

The relevant inquiry on appeal is whether, after viewing the evidence in the light most favorable to the prosecution, a rational fact finder could have found beyond a

reasonable doubt that the defendant did not act in self-defense. **Rosiere**, 488 So.2d at 968-969; see also **State v. Wilson**, 613 So.2d 234, 238 (La. App. 1 Cir. 1992), writ denied, 93-0533 (La. 3/25/94), 635 So.2d 238.

A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict. La. R.S. 14:21.

A thorough review of the record indicates that any rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that 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 of that offense against the victim. The verdict rendered in this case indicates the jury credited the testimony of the witnesses against the defendant and rejected his attempts to discredit those 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. **State v. Lofton**, 96-1429, p. 5 (La. App. 1 Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. Further, 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, pp. 14-15 (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, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

Additionally, even if it could be found that the defendant was not the aggressor, any rational trier of fact could find, beyond a reasonable doubt, that he did not act in self-defense. The defendant had the opportunity to drive away from the unarmed victim at any time and, in fact, minutes before the fatal shooting, had driven away from him

without incident. Further, the victim was not only unarmed, he was highly intoxicated and, according to Elton Clark and Corey Craig, attempted to run away from the defendant as soon as he realized the defendant had a gun. The defendant shot the victim in the head, told the other people at the scene, "Anybody can get it," and fled. The defendant's actions after the incident were inconsistent with a theory of justifiable homicide. See **State v. Wallace**, 612 So.2d 183, 191 (La. App. 1 Cir. 1992), writ denied, 614 So.2d 1253 (La. 1993).

Any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could also find that the mitigatory factors required to support manslaughter were not established by a preponderance of the evidence. Any rational trier of fact could conclude that the unarmed, intoxicated victim's cursing the defendant and threatening to "smash" him was insufficient provocation for the defendant to shoot him in the head.

This assignment of error is without merit.

MOTIONS FOR MISTRIAL

In his sole counseled assignment of error, the defendant argues the trial court erred in denying the motion for mistrial after the defendant's rap sheet was mentioned during the playing of State Exhibit #35. In pro se assignment of error number 3, he argues the trial court erred in denying the motion for mistrial after Baton Rouge Police Department Detective Scott Blake testified the defendant did not make a statement at the time of his arrest.

Louisiana Code of Criminal Procedure article 770 provides:

> Upon motion of a defendant, a mistrial shall be ordered when a remark or comment, made within the hearing of the jury by the ... district attorney, ... during the trial or in argument, refers directly or indirectly to:
>
> . . . .
>
> (2) Another crime committed or alleged to have been committed by the defendant as to which evidence is not admissible;
>
> (3) The failure of the defendant to testify in his own defense.
>
> . . . .
>
> An admonition to the jury to disregard the remark or comment shall not be sufficient to prevent a mistrial. If the defendant, however, requests

that only an admonition be given, the court shall admonish the jury to disregard the remark or comment but shall not declare a mistrial.

Louisiana Code of Criminal Procedure article 771, in pertinent part, provides:

> In the following cases, upon the request of the defendant ... the court shall promptly admonish the jury to disregard a remark or comment made during the trial, or in argument within the hearing of the jury, when the remark is irrelevant or immaterial and of such a nature that it might create prejudice against the defendant, or the state, in the mind of the jury:
>
> (1) When the remark or comment is made by ... the district attorney, ... and the remark is not within the scope of Article 770; or
>
> (2) When the remark or comment is made by a witness or person other than the judge, district attorney, or a court official, regardless of whether the remark or comment is within the scope of Article 770.
>
> In such cases, on motion of the defendant, the court may grant a mistrial if it is satisfied that an admonition is not sufficient to assure the defendant a fair trial.

Upon motion of a defendant, a mistrial shall be ordered, and in a jury case the jury dismissed, when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial, or when authorized by Articles 770 or 771. La. Code Crim. P. art. 775. A mistrial is a drastic remedy that should be granted only when the defendant suffers such substantial prejudice that he has been deprived of any reasonable expectation of a fair trial. Determination of whether a mistrial should be granted is within the sound discretion of the trial court, and the denial of a motion for a mistrial will not be disturbed on appeal without abuse of that discretion. **State v. Berry**, 95-1610, p. 7 (La. App. 1 Cir. 11/8/96), 684 So.2d 439, 449, writ denied, 97-0278 (La. 10/10/97), 703 So.2d 603.

EVIDENCE OF OTHER CRIMES COMMITTED BY THE DEFENDANT

Louisiana Revised Statutes 15:450 provides:

> Every confession, admission or declaration sought to be used against any one must be used in its entirety, so that the person to be affected thereby may have the benefit of any exculpation or explanation that the whole statement may afford.

A defendant is entitled to insist upon introduction of the entirety of a statement sought to be used against him, although, of course, he may waive the benefits of the protective statute. Consequently, when the State seeks to introduce a confession,

admission or declaration against a defendant that contains other crimes evidence, but that is otherwise fully admissible, the defendant has two options. He may waive his right to have the whole statement used, object to the other crimes evidence, and require the court to excise it before admitting the statement; or, he may insist on his right to have the statement used in its entirety so as to receive any exculpation or explanation that the whole statement may afford. A third alternative, that of keeping the whole statement out, is not available to defendant, unless, of course, the confession itself is not admissible. **State v. Morris**, 429 So.2d 111, 121 (La. 1983).

At trial, Clark testified the defendant talked to him "a couple nights ago" and attempted to persuade him not to come to court. The defendant had telephoned his brother, and the defendant's brother had taken the phone to Clark's house. Thereafter, the State played State Exhibit #35, a recording of a telephone conversation between the defendant and Clark and other persons. The call originated from jail and began with an automated statement indicating it "was subject to monitoring and recording." In the conversation, the defendant told Clark that the defendant needed Clark "not to come to court." Clark stated he had been subpoenaed to appear and would tell the truth. The defendant complained to an unidentified female in the conversation that Clark was "about to send [the defendant] to Angola for the rest of his life," and called Clark "a f___ rat." The female tried to calm the defendant and stated if he testified it would be "your word against his." The defendant replied it was not a good idea for him to testify because then the State could bring up his "old charges" and referenced certain convictions.

The defense moved for a mistrial under Article 770, arguing "they should have edited it to exclude his rap sheet." The State argued the recording had been given to the defense the previous day, the defense had never requested that the recording be edited, and "anytime you play a document like that, it's got to be played in its entirety." The trial court overruled the objection and also denied a request to admonish the jury because "that would bring more attention to it." The defense stated, "Okay."

There was no abuse of discretion in denying the motion for mistrial based on other crimes committed by the defendant. The defendant's phone conversation, referencing his

"old charges" did not provide a basis for a mandatory mistrial under Article 770. At most, the comment implicated the discretionary mistrial provisions of Article 771(2) as "irrelevant or immaterial and of such a nature that it might create prejudice against the defendant ... in the mind of the jury." The trial court also did not abuse its discretion in refusing to admonish the jury because the admonishment would have brought more attention to the defendant's "old charges." Additionally, the defendant waived his right to have his phone conversation edited to remove the reference to other crimes evidence. He failed to object to the other crimes evidence and ask for its excise before State Exhibit #35 was admitted into evidence.

POST-ARREST SILENCE

Article 770(3) is inapplicable to references to post-arrest silence. See **State v. Colarte**, 96-0670, pp. 8-9 (La. App. 1 Cir. 12/20/96), 688 So.2d 587, 593, writ denied, 97-1015 (La. 10/3/97), 701 So.2d 197. Under the authority of Article 771, where the prosecutor or a witness makes a reference to a defendant's post-arrest silence, the trial court is required, upon the request of the defendant or the State, promptly to admonish the jury. In such cases, where the court is satisfied that an admonition is not sufficient to assure the defendant a fair trial, upon motion of the defendant, the court may grant a mistrial. **Colarte**, 96-0670 at 9-10, 688 So.2d at 593.

At trial, Detective Blake testified he was the lead detective in the investigation of the incident. The State asked Detective Blake, "When [the defendant] was arrested, did he give you a statement?" The defense moved for a mistrial under Article 770(3), arguing the question referenced the defendant's right to remain silent. The trial court overruled the objection. Thereafter, Detective Blake answered the question, "No, he did not."

There was no abuse of discretion in the denial of the motion for a mistrial based on reference to post-arrest silence. The reference to the post-arrest silence of the defendant did not result in such substantial prejudice to him that he was deprived of any reasonable expectation of a fair trial. At most, the defense would have been entitled to an admonition, but the defense failed to request an admonition. Article 771 mandates a request for an admonishment. **State v. Jack**, 554 So.2d 1292, 1296 (La. App. 1 Cir.

1989), writ denied, 560 So.2d 20 (La. 1990). Further, the defendant did not testify at trial, and there is no indication in the record that the State used the defendant's silence, at the time of arrest and after receiving **Miranda**[1] warnings, for impeachment. Compare **Doyle v. Ohio**, 426 U.S. 610, 617-619, 96 S.Ct. 2240, 2244-2245, 49 L.Ed.2d 91 (1976).

These assignments of error are without merit.

DENIAL OF REVIEW ON COMPLETE RECORD

In pro se assignment of error number 4, the defendant argues this court is denying him a "proper review on direct appeal" because the record does not contain transcripts of voir dire, opening statements, and closing arguments.

Louisiana Constitution article I § 19 guarantees defendants a right of appeal "based upon a complete record of all evidence upon which the judgment is based." Additionally, La. Code Crim. P. art. 843, in pertinent part, provides:

> In felony cases, ... the clerk or court stenographer shall record all of the proceedings, including the examination of prospective jurors, the testimony of witnesses, statements, rulings, orders, and charges by the court, and objections, questions, statements, and arguments of counsel.

The Louisiana Supreme Court has reversed a conviction and death sentence when the appellate record was so deficient that the court could not properly review the case for error. See **State v. Landry**, 97-0499, pp. 1-4 (La. 6/29/99), 751 So.2d 214, 214-216. However, a slight inaccuracy in a record or an inconsequential omission from it which is immaterial to a proper determination of the appeal does not require reversal of a conviction. **State v. Campbell**, 2006-0286, p. 99 (La. 5/21/08), 983 So.2d 810, 872, cert. denied, 555 U.S. 1040, 129 S.Ct. 607, 172 L.Ed.2d 471 (2008). Further, an incomplete record may be adequate for appellate review, and a defendant will not be entitled to relief on the basis of an incomplete record absent a showing that he was prejudiced by the missing portions of the record. **Campbell**, 2006-0286 at 99, 983 So.2d at 872-873.

In connection with filing the appeal in this matter, defense counsel requested that a transcript of the trial, with the exception of "voir dire, opening, and closing," and a

[1] **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

transcript of sentencing be prepared. See La. Code Crim. P. art. 914.1(A) ("The party making the motion for appeal shall, at the time the motion is made, request the transcript of that portion of the proceedings necessary, in light of the assignment of errors to be urged"). The record was prepared in accordance with the designation, and appellate counsel filed a counseled brief challenging the denial of a motion for mistrial. Thereafter, the defendant requested that a copy of the trial transcript be sent to Mrs. Trish Foster, Director of Legal Programs, Louisiana State Prison, for preparation of a supplemental appeal brief. Additionally, he requested that the opening statement and closing argument be transcribed "so that [the defendant] [could] file a complete brief." This court denied the motion.

The record in the instant case is adequate for appellate review, and the defendant has failed to show that he was prejudiced by the absence of transcripts of voir dire, opening statements, and closing arguments. The minutes of these portions of the trial reflect no objections. Accordingly, error, if any, that occurred during these portions of trial was not preserved for review. A defendant may not assign as error a ruling refusing to sustain a challenge for cause made by him, unless an objection thereto is made at the time of the ruling. The nature of the objection and grounds therefor shall be stated at the time of objection. La. Code Crim. P. art. 800(A). See **State v. Law**, 2012-1024, p. 6 (La. App. 3 Cir. 4/3/13), 110 So.3d 1271, 1276; see also La. Code Crim. P. art. 841(A) ("An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence"). The grounds for objection must be sufficiently brought to the court's attention to allow it the opportunity to make the proper ruling and prevent or cure any error. **State v. Trahan**, 93-1116, p. 16 (La. App. 1 Cir. 5/20/94), 637 So.2d 694, 704.

This assignment of error is without merit.

INEFFECTIVE ASSISTANCE OF COUNSEL

In pro se assignment of error number 5, the defendant argues appellate counsel was ineffective for preparing an appeal (presumably the counseled defense brief) on an incomplete record, for assigning only one error, and for failing to challenge the sufficiency of the evidence.

A claim of ineffective assistance of counsel is generally relegated to post-conviction proceedings, unless the record permits definitive resolution on appeal. **State v. Miller**, 99-0192, p. 24 (La. 9/6/00), 776 So.2d 396, 411, cert. denied, 531 U.S. 1194, 121 S.Ct. 1196, 149 L.Ed.2d 111 (2001).

A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the United States Supreme Court in **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to establish that his trial attorney was ineffective, the defendant must first show that the attorney's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. Secondly, the defendant must prove that the deficient performance prejudiced the defense. This element requires a showing that the errors were so serious that the defendant was deprived of a fair trial; the defendant must prove actual prejudice before relief will be granted. It is not sufficient for defendant to show that the error had some conceivable effect on the outcome of the proceeding. Rather, he must show that but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. **State v. Serigny**, 610 So.2d 857, 859-860 (La. App. 1 Cir. 1992), writ denied, 614 So.2d 1263 (La. 1993).

As noted in our treatment of pro se assignment of error number 4, the record in the instant case is adequate for appellate review. Accordingly, appellate counsel did not render deficient performance in preparing the counseled brief. The defendant's remaining claims of ineffective assistance of counsel concern matters of strategy. The investigation of strategy decisions requires an evidentiary hearing[2] and, therefore, cannot possibly be

[2] The defendant would have to satisfy the requirements of La. Code Crim. P. art. 924, et seq., in order to receive such a hearing.

reviewed on appeal. **State v. Allen**, 94-1941, p. 8 (La. App. 1 Cir. 11/9/95), 664 So.2d 1264, 1271, writ denied, 95-2946 (La. 3/15/96), 669 So.2d 433.

This assignment of error is without merit or otherwise not subject to appellate review.

CONVICTION AND SENTENCE AFFIRMED.