NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 KA 1534

STATE OF LOUISIANA

VERSUS

BERNELL EARL

Judgment Rendered: APR 24 2015

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 539204-1

Honorable August J. Hand, Judge

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Walter P. Reed, D.A. Covington, LA and Kathryn Landry Baton Rouge, LA	Attorneys for Appellee State of Louisiana
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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WELCH, J.

Defendant, Bernell Earl, and two codefendants[1] were charged by amended bill of information with armed robbery with a firearm, a violation of La. R.S. 14:64 and 14:64.3 (count one); and with possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1 (count two). He pled not guilty and filed motions to suppress the evidence and his identification, which the trial court denied. The state severed count two[2] and proceeded to trial on count one only. Following a jury trial, defendant was found guilty as charged. He filed motions for new trial and postverdict judgment of acquittal, which the trial court denied. Subsequently, the state filed a habitual offender bill of information.[3] Following a hearing, the trial court adjudicated defendant a fourth-felony habitual offender and sentenced him to life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence. The trial court denied defendant's motion to reconsider sentence. Defendant now appeals, alleging two counseled assignments of error, both of which relate to his sentence. He also raises three pro se assignments of error, alleging an incomplete appellate record, ineffective assistance of appellate counsel, and that the trial court erred in denying his motions to suppress. For the following reasons, we affirm defendant's conviction, habitual offender adjudication, and sentence.

FACTS

On July 19, 2013, Boris Allen (the victim) met Adriena Williams at a Church's Chicken restaurant. They exchanged cell phone numbers and communicated later that evening and on the following day. On Sunday, July 21,

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[1] The codefendants, Adriena Williams and William Branch, were not tried with defendant and are not parties to the instant appeal.

[2] This count was later nol-prossed by the state.

[3] The predicate convictions alleged in the habitual offender bill of information are as follows: 1) a February 3, 2000 conviction for simple burglary under Washington Parish docket number 98-CR2-72812; 2) a December 12, 2000 conviction for simple burglary under Washington Parish docket number 98-CR3-72830; 3) an August 29, 2000 conviction for simple burglary under Washington Parish docket number 98-CR2-75909; and 4) a November 2, 2000 conviction for attempted simple burglary under St. Tammany Parish docket number 308136.

2013, Williams called and texted Allen, telling him that her car had broken down. Allen drove to meet Williams at her car.[4] As Allen attempted to fix Williams's vehicle, two men jumped out from some bushes near the side of the road. The men, defendant and William Branch, brandished firearms. According to Allen, who identified defendant at trial, defendant told him to "give it up." As Allen gave his wallet to defendant, Branch began to go through Allen's vehicle. Eventually, defendant joined Branch to search through Allen's vehicle. At that point, Allen ran to a nearby trailer, where he called 911 and described the suspect vehicle as a black, 2000-model Lincoln LS. When Allen fled, defendant and Branch also ran from the scene, and Williams eventually picked them up from a nearby location.

St. Tammany Parish Sheriff's Office Deputies Rickey Edwards and Bryant Estes were among the officers who responded to the robbery. They assisted Lieutenant Kevin Nielsen and others in performing a traffic stop of the suspect vehicle as it entered Interstate 12 from U.S. Hwy. 11. After defendant, Branch, and Williams were secured from the vehicle, Deputy Edwards secured Williams's consent to retrieve and search her purse, which was located inside the suspect vehicle. Inside, he found various cards belonging to the victim. Pursuant to a consent search, Deputy Estes later discovered two handguns stashed in the vehicle.[5] Allen was eventually transported to the scene of the traffic stop, and he was able to confirm the identities of the three perpetrators through a show-up procedure.

EXCESSIVE SENTENCE

In related counseled assignments of error, defendant argues that the trial court erred in denying his motion to reconsider sentence because the sentence imposed is unconstitutionally excessive. Specifically, he contends that despite the mandatory

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[4] The exact area where Allen met Williams is not clear from the record. From Deputy Bryant Estes's description of the dispatch he received, it appears that the meeting occurred in the area of 5th Street and St. Tammany Avenue.

[5] The consent for this search was allegedly given by defendant, who Deputy Estes determined was the actual owner of the vehicle. The validity of this consent search will be discussed further below in relation to defendant's third pro se assignment of error. In that section, the vehicle will be referred to either as "defendant's vehicle" or as "the suspect vehicle."

nature of the sentence of life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence, this sentence is excessive as it applies to him.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. **State v. Hurst**, 99-2868 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962. A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *Id.* A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. *Id.*

In the instant case, defendant was adjudicated a fourth-felony habitual offender. If a defendant's fourth felony and two of his prior felonies are crimes of violence under La. R.S. 14:2(B), other felonies punishable by imprisonment for twelve years or more, or a combination thereof, he shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence. See La. R.S. 15:529.1(A)(4)(b).[6] Here, defendant's fourth felony – armed robbery – is a crime of violence. See La. R.S. 14:2(B)(21). His three predicate convictions for simple burglary are felonies punishable by imprisonment for twelve

[6] We note that despite the trial court's adjudication of defendant as a fourth-felony habitual offender, the court stated that it was sentencing him under La. R.S. 15:529.1(A)(3)(b) – one of the provisions relating to third-felony habitual offenders – instead of La. R.S. 15:529.1(A)(4)(b). Nonetheless, the provisions of La. R.S. 15:529.1(A)(3)(b) and (A)(4)(b) are structurally identical (minus the former's reference to the third felony and the latter's reference to the fourth felony), and they require the same sentence.

years or more. See La. R.S. 14:62(B). Therefore, defendant's fourth-felony habitual offender sentence of life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence, was mandatory under La. R.S. 15:529.1(A)(4)(b).

Even though a sentence is the mandatory minimum sentence, it may still be excessive if it makes no "measurable contribution to acceptable goals of punishment" or amounts to nothing more than the "purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime." **State v. Dorthey**, 623 So.2d 1276, 1280-81 (La. 1993). In order for a defendant to rebut the presumption that a mandatory minimum sentence is constitutional, he must "clearly and convincingly" show that:

> [he] is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case.

State v. Johnson, 97-1906 (La. 3/4/98), 709 So.2d 672, 676.

Departures downward from the minimum sentence should only occur in rare situations. See **Johnson**, 709 So.2d at 677. Defendant argues that the mandatory sentence is inappropriate in this case because the instant conviction is his first for a crime of violence. He characterizes his earlier convictions as resulting from "non-violent property offenses."

We have reviewed the record and find that it supports the sentence imposed. Based on our review, we cannot say that the trial court erred or abused its discretion in imposing the mandatory sentence under La. R.S. 15:529.1(A)(4)(b). At the time of his sentencing, defendant did not argue to the trial court that three of his predicate convictions were for "non-violent property offenses." However, the trial court was plainly aware of the general nature of these offenses. Because he made no actual argument to the trial court at the time of his sentencing, defendant failed to show

"clearly and convincingly" that he is "exceptional." See **Johnson**, 709 So.2d at 676. He failed to cite any unusual or exceptional circumstances to show that he is a victim of the legislature's failure to assign a sentence meaningfully tailored to his culpability, to the circumstances of his case, and to his status as a fourth-felony habitual offender. Therefore, there was no reason for the trial court to deviate from the mandatory minimum sentence.

These assignments of error are without merit.

INCOMPLETE APPELLATE RECORD

In his first pro se assignment of error, defendant alleges that he has been denied a right to proper judicial review on his direct appeal. Specifically, he contends that several documents were never made part of the appellate record and that the court reporter failed to transcribe several off-the-record conversations that took place during his proceedings.

A criminal defendant has a right of appeal based on a complete record of all evidence upon which the judgment is based. See La. Const. art. I, § 19; see also **State v. Hoffman**, 98-3118 (La. 4/11/00), 768 So.2d 542, 586, cert. denied, 531 U.S. 946, 121 S.Ct. 345, 148 L.Ed.2d 277 (2000). Additionally, 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. La. C.Cr.P. art. 843.

Material omissions from the transcript of the proceedings at trial, bearing on the merits of an appeal, will require reversal. See **State v. Boatner**, 2003-0485 (La. 12/3/03), 861 So.2d 149, 153. However, an incomplete record may be adequate for full appellate review. See **State v. Hawkins**, 96-0766 (La. 1/14/97), 688 So.2d 473, 480. Where a defendant cannot show any prejudice from the missing portions, he is not entitled to relief based on the missing portions. See **Hawkins**, 688 So.2d at 480

(citing **State v. Rodriguez**, 93-0461 (La. App. 4th Cir. 3/29/94), 635 So.2d 391, 396-97, writ denied, 94-1161 (La. 8/23/96), 678 So.2d 33).

Waiver-of-Rights Form

The first document which defendant contends should have been made part of the appellate record is an alleged waiver-of-rights form that he signed on July 22, 2013. He contends that this form would show that he was not read his **Miranda**[7] rights until the day after the offense.

Based on our review of the record, we cannot say that any such form even exists. The state did not introduce at trial any statements that were allegedly made by defendant. No one testified that defendant was ever interrogated in connection with the instant offense, and nothing in the record indicates that defendant had any conversation with the police outside of the time he was detained following the traffic stop. Because the state never attempted to introduce any such waiver-of-rights form at any of the proceedings related to defendant's case, it was not a material omission for any alleged form not to be included in defendant's appellate record.

Consent-to-Search Form

Defendant also argues that the appellate record failed to include a consent-to-search form. In this case, it is clear from the record that no such form exists. At defendant's suppression hearing, Deputy Estes testified that he searched the vehicle after he secured defendant's verbal consent. He explicitly stated that he did not have defendant execute a consent-to-search form. Therefore, the absence of such a form in defendant's appellate record is not a material omission.

Missing Transcripts of Off-the-Record Conversations

In his pro se brief, defendant cites three specific off-the-record discussions that were not transcribed. These discussions occur at pages 258, 296, and 307 of the appellate record.

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

We note initially that defendant has failed to make any particularized arguments with respect to these off-the-record discussions. He cites generalized law regarding his right to appellate review upon a full and complete record, but he makes no allegations about what the substance of those off-the-record discussions might have been. In contrast to his developed, companion arguments regarding the alleged missing documentation, defendant's contentions regarding these off-the-record discussions list only the record page number of these conversations and nothing more. Assignments of error not briefed by a defendant on appeal are considered abandoned. Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4. Because defendant makes no arguments and cites no authorities relating to these allegations within his first pro se assignment of error, they are deemed 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.

Even if we assume that defendant's mere citations to these three off-the-record discussions were enough to sufficiently raise this issue, none of the missing transcriptions rise to the level of materiality such that they would deny his right to review upon a complete record. On page 258 of the record, the state notified the trial court prior to defendant's suppression hearing that it would be introducing a copy of the search warrant for defendant's vehicle. The court instructed the state to share a copy of the warrant with defense counsel, and an off-the-record discussion was held. Following that discussion, the state called its first witness for the suppression hearing. Following the suppression hearing, the court asked the parties if they were ready to begin with preliminary instructions and opening statements. Both replied affirmatively on page 296 of the record, and an off-the-record discussion was held. Following that discussion, the court stated, "I'm going to allow, for purposes of the hearing only, the search warrant." Defense counsel clarified that the search warrant would not be published to the jury, and the state

marked the search warrant as "Motion 1" for the record. Lastly, during the victim's direct examination, the state began to show the victim several photographs, which were marked for identification. On page 307, before the state approached the witness, the trial court instructed the state to share those photographs with defense counsel. The state complied, and another off-the-record discussion was held. Following that discussion, the state approached the victim with the photographs.

Nothing about the circumstances surrounding any of these off-the-record discussions would support the conclusion that defendant was prejudiced by the fact that these discussions were unrecorded. All of the discussions appear to be related to simple, logistical aspects of the proceedings. With respect to the introduction of the search warrant at the suppression hearing, we note that defense counsel actually made extensive, on-the-record arguments against its introduction. Therefore, defendant's right to appellate review was clearly reserved and articulated by these arguments. The off-the-record discussion at page 307 of the record is clearly tied to the introduction of the pictures, to which defense counsel made no objection. Defendant has made no allegation of any materiality with respect to any of these off-the-record discussions, and based on the above, we are convinced that defendant's rights to a full appellate review are not prejudiced by these unrecorded, off-the-record discussions.

This assignment of error is without merit or otherwise unreviewable.

MOTIONS TO SUPPRESS

In his third pro se assignment of error (addressed out of turn), defendant contends that the trial court erred in denying his motions to suppress. Defendant first argues that the trial court erred in denying his motion to suppress the evidence because he was not advised of his **Miranda** rights and because no warrant was obtained prior to the discovery of the evidence. Defendant also argues that the trial court erred in denying his motion to suppress his identification because the victim

allegedly lied "in an effort to get the [defendant's] girlfriend for himself."

A defendant adversely affected may move to suppress any evidence from use at a trial on the merits on the ground that it was unconstitutionally obtained. La. C.Cr.P. art. 703(A). The state bears the burden of proof when a defendant files a motion to suppress evidence obtained without a warrant. See La. C.Cr.P. art. 703(D). A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. **State v. Jones**, 2001-0908 (La. App. 1st Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 2002-2989 (La. 4/21/03), 841 So.2d 791. Reviewing courts should defer to the credibility findings of the trial court unless its findings are not adequately supported by reliable evidence. See **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 281. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 2009-1589 (La. 12/1/09), 25 So.3d 746, 751.

Motion to Suppress Evidence

It is well settled that a search conducted without a warrant issued upon probable cause is per se unreasonable, subject only to a few specifically established and well delineated exceptions. See **State v. Thompson**, 2011-0915 (La. 5/8/12), 93 So.3d 553, 574; **State v. Hubbard**, 506 So.2d 839, 841 (La. App. 1st Cir. 1987). A consent search is a recognized exception to the warrant requirement. See **Thompson**, 93 So.3d at 574; **State v. Musacchia**, 536 So.2d 608, 610-11 (La. App. 1st Cir. 1988).

Defendant cites the general law regarding the right of a police officer to make an initial stop, but he does not appear to argue that such a stop was improper in this case. Nonetheless, we clarify that the initial traffic stop of the vehicle was proper because a law enforcement officer may stop a person in a public place whom he reasonably suspects has committed an offense. See La. C.Cr.P. art. 215.1(A). Based

upon the armed robbery dispatch, the victim's description of the suspect vehicle, and the location of the suspect vehicle (in relation to the crime scene) at the time it was stopped, the officers clearly had at least reasonable suspicion to conduct a traffic stop.

The suppression hearing addressed two distinct categories of evidence seized: 1) that from Williams's purse; and 2) that from defendant's vehicle. There was uncontroverted testimony from Deputy Edwards, both at the hearing and at trial,[8] that Williams consented to the search of her purse. The trial court concluded that Williams's consent was freely and voluntarily given, and nothing in the record undermines that determination. Therefore, the trial court correctly denied the motion to suppress as it relates to the evidence seized from Williams's purse.

Defendant also argued during his suppression hearing that the evidence seized from his vehicle, namely the handguns used and the victim's CD case, was improperly obtained prior to the time the police secured a search warrant. Deputy Estes described the procedure by which the non-purse evidence was found as follows:

> When we first pulled [the suspects] out, we went to the vehicle. Searched the vehicle to make sure there were no weapons available, because it was suspected armed robbery, and we knew there to be firearms at hand. Then, we came back to the vehicle. At that time, I believe is when Deputy Edwards got permission to go to the vehicle to get her purse. I received consent from [defendant] and we also went back. When we went to look for the weapons, Ms. Williams had also told us that they were in there, and we found them behind the seat. As soon as we saw them, we didn't remove them until evidence could photograph, the crime lab.

Deputy Estes explained that he had received verbal consent to search from defendant, who owned the vehicle, and that he secured a search warrant after finding the handguns, but before they were actually collected.

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[8] In determining whether the ruling on defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n.2 (La. 1979).

Defendant testified at his suppression hearing. He stated that he never consented to a search of his vehicle and that he told the officers that he did not even want to speak with them. Defendant also argues on appeal that he was not read his **Miranda** rights prior to his alleged consent. Williams testified at trial that she told the officers where the guns were stashed inside the vehicle after they threatened to call OCS to pick up her child, who was also present in the vehicle at the time it was stopped. Defendant cites this allegation as support for his contention that all three of the suspects should have been read their **Miranda** rights prior to any alleged consent search.

The evidence presented at the suppression hearing was clearly contradictory. Deputy Estes testified that defendant consented to a search of his vehicle. Defendant testified that he gave no such consent. Obviously, the trial court made a credibility determination and chose to believe Deputy Estes's testimony over that given by defendant. This credibility determination might have been informed by the state's cross-examination of defendant regarding his extensive criminal history. Thus, this credibility determination was clearly supported by reliable evidence and is entitled to great deference. See **Jones**, 835 So.2d at 706; **Green**, 655 So.2d at 281.

Beyond the credibility determination, defendant makes a legal argument that the lack of **Miranda** warnings vitiated any consent that he gave. However, defendant's consent to search was not a statement against which **Miranda** was intended to protect. See **State v. Ealy**, 530 So.2d 1309, 1315 (La. App. 2nd Cir. 1988), writ denied, 536 So.2d 1234 (La. 1989). Moreover, a voluntary consent to search is not rendered invalid solely on the basis that a suspect has not been given his **Miranda** warnings. See **State v. Williams**, 353 So.2d 1299, 1304 (La. 1977), cert. denied, 437 U.S. 907, 98 S.Ct. 3098, 57 L.Ed.2d 1138 (1978); **State v. Overton**, 596 So.2d 1344, 1353 (La. App. 1st Cir.), writ denied, 599 So.2d 315 (La. 1992). Therefore, the lack of **Miranda** warnings alone does not support defendant's

argument that his motion to suppress the evidence should have been denied. Finally, while defendant seems to argue that Williams was threatened to give up the location of the handguns within the vehicle, this argument was not presented to the trial court at defendant's suppression hearing. Moreover, this interaction occurred following defendant's consent to search the vehicle.

Based on the totality of the circumstances, the state proved that defendant and his vehicle were lawfully detained. According to uncontroverted testimony, Williams consented to a search of her purse. In addition, the trial court determined that Deputy Estes's testimony regarding defendant's consent to search was entitled to more weight than defendant's own self-serving testimony. Finally, defendant's legal arguments regarding **Miranda** are not sufficient to vitiate his consent to the search.

The trial court properly denied defendant's motion to suppress the evidence.

Motion to Suppress Identification

An identification procedure is suggestive if it unduly focuses a witness's attention on the suspect. **State v. Neslo**, 433 So.2d 73, 78 (La. 1983); **State v. Robinson**, 386 So.2d 1374, 1377 (La. 1980). In **Manson v. Brathwaite**, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977), the Supreme Court allowed evidence of a suggestive pretrial identification from a single photograph by an undercover police agent after determining that it was reliable. In that decision, the court concluded that "reliability is the linchpin in determining the admissibility of identification testimony [.]" **Brathwaite**, 432 U.S. at 114, 97 S.Ct. at 2253.

Thus, a defendant attempting to suppress an identification must prove the identification was suggestive and that there was a substantial likelihood of misidentification by the eyewitness. Even should the identification be considered suggestive, that alone does not indicate a violation of the defendant's right to due process. It is the likelihood of misidentification that violates due process, not merely

the suggestive identification procedure. **State v. Reed**, 97-0812 (La. App. 1st Cir. 4/8/98), 712 So.2d 572, 576, writ denied, 98-1266 (La. 11/25/98), 729 So.2d 572.

If the identification procedure is determined to be suggestive, courts look to several factors to determine, from the totality of the circumstances, if the suggestive identification presents a substantial likelihood of misidentification. These factors include: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of his prior description of the criminal; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the confrontation. **State v. Martin**, 595 So.2d 592, 595 (La. 1992) (citing **Neil v. Biggers**, 409 U.S. 188, 199-200, 93 S.Ct. 375, 382, 34 L.Ed.2d 401 (1972)). Against these factors is to be weighed the corrupting effect of the suggestive identification itself. **Martin**, 595 So.2d at 595. A trial court's determination of the admissibility of identification evidence is entitled to great weight and will not be disturbed on appeal in the absence of an abuse of discretion. **Reed**, 712 So.2d at 576.

One-on-one confrontations between a suspect and victim are not favored by the law, but they are permissible when justified by the overall circumstances. This procedure is generally permitted when the accused is apprehended within a short time after the commission of the offense and is returned to the crime scene for an on-the-spot identification. Such a prompt in-the-field identification, under appropriate circumstances, promotes accuracy and expedites the release of innocent suspects. See **State v. Thomas**, 589 So.2d 555, 563 (La. App. 1st Cir. 1991).

At the suppression hearing, the victim acknowledged that he was transported to the scene of the apprehension in order to view the prospective perpetrators. He stated that during the robbery, he got a good view of all of the individuals involved. He also knew one of the perpetrators (Williams) before the robbery. The victim stated that when he arrived at the scene, no one told him that he had to identify

anyone; however, there was no doubt in his mind that the individuals at the scene (the defendant, Williams and Branch) were the three individuals involved in the robbery.

The victim clearly had an ample opportunity to view all of the perpetrators at the time of the offense. Further, his degree of attention and his level of certainty were both high. The victim also gave detailed, accurate descriptions of the perpetrators' clothing and of the make, model, and year of vehicle in which they fled. Finally, the time between the crime and the confrontation was minimal. Taken together, these factors mitigate strongly against any suggestive effect of the show-up procedure used to identify the perpetrators. On these facts, we determine that the trial court was correct in determining that the show-up procedure was reliable. Accordingly, the trial court appropriately denied the motion to suppress the identification.

This assignment of error is without merit.

INEFFECTIVE ASSISTANCE OF COUNSEL

In his second pro se assignment of error, defendant alleges that his appellate counsel was ineffective. He contends that his appellate counsel was ineffective for doing an incomplete appeal on the record and for not filing a motion to suspend briefing and to have this court order the transcription of all sidebar conferences. He also contends that appellate counsel should have attacked the trial court's rulings on his motions to suppress.

A claim of ineffective assistance of counsel is more properly raised by an application for postconviction relief in the district court, where a full evidentiary hearing may be conducted. However, where the record discloses sufficient evidence to decide the issue of ineffective assistance of counsel when raised by assignment of error on appeal, it may be addressed in the interest of judicial economy. **State v. Carter**, 96–0337 (La. App. 1st Cir. 11/8/96), 684 So.2d 432, 438.

A defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution. In assessing a claim of ineffectiveness, a two-pronged test is employed. The defendant must show that: (1) his attorney's performance was deficient, and (2) the deficiency prejudiced him. The error is prejudicial if it was so serious as to deprive the defendant of a fair trial, or "a trial whose result is reliable." **Strickland v. Washington**, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). In order to show prejudice, the defendant must demonstrate a reasonable probability that, but for counsel's unprofessional conduct the result of the proceeding would have been different. **Strickland**, 466 U.S. at 694, 104 S.Ct. at 2068; **State v. Felder**, 2000-2887 (La. App. 1st Cir. 9/28/01), 809 So.2d 360, 369-70, writ denied, 2001-3027 (La. 10/25/02), 827 So.2d 1173. 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, 860 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1263 (La. 1993).

Having determined above that the trial court ruled correctly on defendant's motions to suppress, we conclude that defendant's claim of ineffective assistance of appellate counsel is without merit. See **State ex rel. Roper v. Cain**, 99-2173 (La. App. 1st Cir. 10/26/99), 763 So.2d 1, 5 (*per curiam*), writ denied, 2000-0975 (La. 11/17/00), 773 So.2d 733 ("If the substantive issue an attorney failed to raise has no merit, then the claim the attorney was ineffective for failing to raise the issue also has no merit."). Moreover, even if defendant could show that appellate counsel's performance was somehow deficient in failing to raise the suppression issues (a view to which we do not necessarily subscribe), this claim would necessarily fail because defendant can show no prejudice. As detailed in the previous section, those suppression arguments were properly denied by the trial court. Similarly, we have previously found no merit in defendant's incomplete record arguments, and thus, we

find that defendant failed to show a reasonable probability of prejudice with respect to all other grounds on which the ineffective assistance of counsel challenge is based. Therefore, the record discloses evidence sufficient to dispose of defendant's ineffective assistance of counsel claim in this appeal.

This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, the defendant's conviction, habitual offender adjudication, and sentence are affirmed.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.