NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 1864

STATE OF LOUISIANA

VERSUS

RAY A. BROOKS

Judgment Rendered: May 6, 2011

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 412111

The Honorable Richard A. Swartz, Judge Presiding

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Walter P. Reed **District Attorney** **Covington, Louisiana** **Kathryn W. Landry** **Baton Rouge, Louisiana**	**Counsel for Appellee** **State of Louisiana**
James W. Williams **Roger W. Jordan, Jr.** **Gretna, Louisiana**	**Counsel for Defendant/Appellant** **Ray A. Brooks**

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

GAIDRY, J.

The defendant, Ray A. Brooks, was indicted for first degree murder, a violation of La. R.S. 14:30. He pleaded not guilty. At the beginning of trial, the state gave notice that it would not seek the death penalty. Defendant was found guilty as charged by a unanimous vote of the jury. The trial court subsequently sentenced defendant to life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. Defendant now appeals, raising five assignments of error. For the following reasons, we affirm defendant's conviction and sentence.

ASSIGNMENTS OF ERROR

Defendant contends that his conviction should be reversed based upon the following errors in the trial court:

1. The trial court erred in failing to grant the defendant's motion for mistrial based on the state's playing for the jury a videotaped statement given by defendant that included references to other crimes.

2. The trial court erred in failing to grant the defendant's motion for mistrial based on the state's closing argument referring to the trial court's ruling on a pretrial motion to suppress the identification of the defendant, which had the same effect as the trial court commenting on the evidence.

3. The trial court erred in refusing to allow into evidence testimony regarding a statement made by Freddie Bedford, thereby impairing the defendant's due process right to present a defense.

4. The trial court erred in ruling that the state could offer as rebuttal or impeachment evidence an alleged confession the defendant made to Robin Allen, since the defendant only received notice of the alleged confession four days before trial.

5. The state's failure to provide discovery consisting of criminal history and impeachment information regarding state witnesses until the day of trial, as well as the late notice given four days before trial of an alleged confession by the defendant, prevented the defendant from properly preparing for trial, rendering defense counsel ineffective at trial.

FACTS

In the early morning hours of February 22, 2006, police discovered the body of Scott Ramsey lying in front of a residence at 1021 North Polk Street in Covington, Louisiana. The victim died of multiple gunshot wounds to the back, chest, and buttocks. According to Melissa Hull, a friend of the victim present at the time of his murder, the victim made his living by selling crack cocaine. She testified that she saw the victim on the evening before he was shot counting his cash, which totaled approximately $750.00, and then placing it in his sock. Later, she and the victim were sitting on the screened porch of the house on Polk Street when a man she subsequently identified as defendant approached them, pointed a gun at the victim, and demanded that the victim "empty his pockets." After the victim responded by jumping off the porch through a hole in its screen, defendant shot him. As the victim unsuccessfully attempted to escape and begged for his life, defendant demanded that the victim surrender his property. The victim then gave his cash and crack cocaine to defendant. Defendant shot the victim again and then walked away.

There was evidence that earlier in the evening the victim had gone to a neighborhood convenience store and had openly displayed a large amount of cash. Defendant was present during that incident. In fact, one witness testified that the victim teased defendant about having more money than defendant.

FIRST ASSIGNMENT OF ERROR

In his first assignment of error, defendant contends that the trial court erred in denying his motion for mistrial based on the state's introduction of inadmissible evidence of other crimes. Specifically, defendant complains that the state played for the jury his videotaped statement to the police without first redacting those portions of the statement wherein he indicated that he had previously been in a lot of trouble and that the police on a prior occasion "had [him] for a stabbing."[1]

The record reveals that immediately after the videotape was played at trial, defense counsel moved for a mistrial on the grounds that it contained the two stated references to other crimes evidence that the state should have redacted. The prosecutor responded that defense counsel had been given a copy of the videotape "perhaps as long as two years ago," and had made no request for redactions of the two references in question. The prosecutor further stated that he would have redacted the videotape if defendant had made such a request and the trial court had ruled the state should do so. The trial court denied the motion for mistrial, without reasons.

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. Moreover, determination of whether a mistrial should be granted is within the sound discretion of the trial court, and the denial of a motion for mistrial will not be disturbed on appeal absent an abuse of that discretion. *State v. Berry*, 95-1610, p. 7 (La. App. 1st Cir.

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[1] With regard to the first reference objected to, defendant did not clarify the nature of the "trouble" in which he had been involved previously. As to the second reference, defendant did not indicate whether he had been arrested or merely questioned by the police in connection with the stabbing. However, he did state that he was cleared of any involvement in that incident.

11/8/96), 684 So.2d 439, 449, *writ denied*, 97-0278 (La. 10/10/97), 703 So.2d 603.

Generally, evidence of crimes other than the offense being tried is inadmissible as substantive evidence because of the substantial risk of grave prejudice to the defendant. *State v. Millien*, 02-1006, p. 10 (La. App. 1st Cir. 2/14/03), 845 So.2d 506, 513. Under certain circumstances, the admission of inadmissible other crimes evidence can warrant the granting of a mistrial. *See* La. C.Cr.P. arts. 770, 771, & 775. However, La. R.S. 15:450 is also applicable to the situation at issue. Pursuant to the latter statute, "[e]very 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." That provision contains no exception for excluding portions of a confession or admission that refer to other crimes.

The jurisprudence has resolved the conflict between the rules precluding the admission of other crimes evidence and the requirement of La. R.S. 15:450 that the entirety of an inculpatory statement be admitted by giving the defendant the option to waive the right of having the whole statement introduced. *See State v. Blank*, 04-0204, pp. 50-51 (La. 4/11/07), 955 So.2d 90, 131-32, *cert. denied*, 552 U.S. 994, 128 S.Ct. 494, 169 L.Ed.2d 346 (2007); *State v. Snedecor*, 294 So.2d 207, 210 (La. 1974). In *State v. Morris*, 429 So.2d 111, 121 (La. 1983), the supreme court explained a defendant's options under La. R.S. 15:450 in the context of the issue of other crimes evidence as follows:

> [W]hen the state seeks to introduce a confession, admission or declaration against a defendant which contains other crimes evidence, but which 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 is not admissible.

In advocating his position on appeal, defendant seeks to add a fourth option, which is to allow the entire confession or admission to be presented without objection, and then to move for a mistrial on the grounds that it contains other crimes evidence. This alternative is not one of the two permissible options available to defendant, even assuming for the sake of argument that the references in question were inadmissible other crimes evidence. *See Morris*, 429 So.2d at 121.

We find no merit in defendant's contention that the state had a duty to redact any other crimes evidence contained on the videotape, even in the absence of a waiver by the defendant of his right under La. R.S. 15:450 to have the entire statement heard. Under the jurisprudence, it is clear that La. R.S. 15:450 imposes a statutory duty upon the state for the benefit of the defendant, and that the defendant has the option of waiving that right. *See Morris*, 429 So.2d at 121; *Snedecor*, 294 So.2d at 210. In the event a defendant chooses to have those portions of a statement referring to other crimes redacted, he must make the waiver of his right under La. R.S. 15:450 known. It is the defendant's choice to make. *See Snedecor*, 294 So.2d at 210.

In the instant case, defendant did not dispute the prosecutor's assertion at trial that defense counsel received a copy of the videotaped statement well in advance of trial. Therefore, defense counsel was charged with knowledge of what the statement contained, and had the option at that point either of having the entire statement played or of waiving that right and

having the allegedly objectionable portions of the videotape redacted. Since defense counsel did not request redaction of the alleged other crimes evidence, the state was obligated under La. R.S. 15:450 to present defendant's entire statement to the jury. *See Morris*, 429 So.2d at 121; *State v. Glynn*, 94-0332, p. 14 (La. App. 1st Cir. 4/7/95), 653 So.2d 1288, 1301, *writ denied*, 95-1153 (La. 10/6/95), 661 So.2d 464. Accordingly, the trial court did not err in denying defendant's motion for mistrial.

This assignment of error lacks merit.

SECOND ASSIGNMENT OF ERROR

In his second assignment of error, defendant asserts the trial court erred in failing to grant a mistrial based on the prosecutor's reference during rebuttal closing arguments to the trial court's pretrial ruling on the admissibility of identification evidence by Ms. Hull. Defendant contends that the prosecutor, by stating that the trial court previously had ruled the identification procedures were acceptable, interjected the trial court's opinion into the proceedings. He maintains the prosecutor's remarks had the same effect as if the trial court had commented on the evidence.

During the state's rebuttal argument, the following remarks at issue were made:

> [Defense counsel] said they can't show pictures like this. (Indicating.) Well, ladies and gentlemen, there were pretrial motions. There were motions to suppress the identification, which is filed in every case. And the Judge said: "Yes, you can."

At this point, defense counsel interrupted the prosecutor's argument to state that he had an objection he would make at the conclusion of the argument. The prosecutor then continued his argument on a different issue. Upon completion of the prosecutor's rebuttal, the trial court gave jury instructions, including an instruction that if the court had given any

impression that it had an opinion concerning a fact or defendant's guilt or innocence, the jury should disregard that impression. The jury was retired to begin its deliberations. Defense counsel then moved for a mistrial on the grounds that the prosecutor's remarks that the trial judge found the identification testimony to be admissible were equivalent to the trial court commenting on the evidence. The trial court denied the motion.

Under La. C.Cr.P. art. 772, the judge is prohibited, in the presence of the jury, from commenting upon the facts of the case, either by commenting upon or recapitulating the evidence, repeating the testimony of any witness, or giving an opinion as to what has been proved, not proved, or refuted. However, a trial court's ruling on the admissibility of evidence and its reasons for its ruling do not constitute prohibited comments under this article, provided the remarks are not unfair or prejudicial to the defendant. *See State v. Knighton*, 436 So.2d 1141, 1148 (La. 1983), *cert. denied*, 465 U.S. 1051, 104 S.Ct. 1330, 79 L.Ed.2d 725 (1984). Moreover, a trial court's comments on the evidence have been held to be harmless error if those remarks do not imply an opinion as to the defendant's guilt or innocence. *State v. Bennett*, 00-0282, p. 5 (La. App. 1st Cir. 11/8/00), 771 So.2d 296, 299, *writ denied*, 2000-3246 (La. 10/12/01), 799 So.2d 495.

Closing arguments shall be confined to the evidence admitted, to the lack of evidence, to conclusions of fact to be drawn from the evidence, and to the law applicable to the case. The argument shall not appeal to prejudice, and the state's rebuttal argument must be confined to answering the argument of the defendant. La. C.Cr.P. art. 774. However, a prosecutor retains wide latitude when making closing arguments. Moreover, even if the prosecutor exceeds the bounds of proper argument, a reviewing court will not reverse a conviction because of improper closing arguments unless it is

thoroughly convinced that the argument influenced the jury and contributed to the verdict. *State v. Legrand*, 02-1462, p. 16 (La. 12/3/03), 864 So.2d 89, 101, *cert. denied*, 544 U.S. 947, 125 S.Ct. 1692, 161 L.Ed.2d 523 (2005).

In the instant case, we find no merit in defendant's contention that the prosecutor's remarks constituted improper argument. Defense counsel made the following statements during his closing argument:

> Melissa Ann Hull didn't identify Ray Brooks [defendant] until they showed her a blowup photograph, one picture --- which they're not supposed to do . . . [T]hat's the whole point of a photographic lineup, ladies and gentlemen, is to show a group of pictures so as not to suggest who did it to see if the witness, on their own can differentiate between six or more people who have similar features.

The prosecutor's remarks conveying the trial court's affirmative ruling on the admissibility of the identification evidence were made in direct response to the defense's argument. The state had a right to answer defendant's argument attacking the identification procedures. *See* La. C.Cr.P. art. 774; *State v. Thomas*, 504 So.2d 907, 918 (La. App. 1st Cir.), *writ denied*, 507 So.2d 225 (La. 1987).

In any event, since La. C.Cr.P. art. 772 would not bar the trial court from making an evidentiary ruling in the jury's presence, the prosecutor was not barred from referring to the trial court's ruling in its rebuttal argument. *See State v. Schaller*, 08-522, p. 32 (La. App. 5th Cir. 5/26/09), 15 So.3d 1046, 1065, *writ denied*, 09-1406 (La. 2/26/10), 28 So.3d 268. Here, the prosecutor's remarks merely set forth the trial court's ruling on the admissibility of the identification evidence, which was neither unfair nor prejudicial to defendant. Nor did the remarks imply an opinion as to the defendant's guilt or innocence. Thus, even if we were to consider the remarks as though they were comments made by the trial court, they did not constitute impermissible comments under La. C.Cr.P. art. 772.

As previously noted, a mistrial is a drastic remedy that is only authorized when a defendant suffers substantial prejudice. Moreover, the denial of a motion for mistrial will not be disturbed absent an abuse of the trial court's sound discretion. *Berry*, 95-1610 at p. 7, 684 So.2d at 449. Under the circumstances present, we find no abuse of discretion in the denial of defendant's motion for mistrial herein.

This assignment of merit lacks merit.

THIRD ASSIGNMENT OF ERROR

In his third assignment of error, defendant argues the trial court erred in refusing to allow a defense witness to testify as to what she was told by a man she saw standing over the victim's body, going through the victim's pockets. Defendant contends the exclusion of this crucial evidence severely impaired his due process right to present a defense.

Chellander Harper, who knew both the victim and defendant, testified on behalf of the defense at trial. According to Ms. Harper, she was visiting friends in the neighborhood near where the victim was shot on February 22, 2006. As she was driving back to her hotel at approximately midnight to 1:00 a.m. that morning, she came upon Freddie Bedford leaning over the victim's body, digging through the victim's pockets. She testified that she began screaming and asked what was going on. When she began to relate what Mr. Bedford told her in response, the state objected on the grounds of hearsay, noting that Mr. Bedford was available and could have been called to testify by the defense. Defendant argued the testimony was not hearsay because it was not offered to prove the truth of the matter asserted. Defendant additionally argued the testimony was admissible under the excited utterance and *res gestae* exceptions to the hearsay rule.

Out of the presence of the jury, the trial court questioned Ms. Harper as to what Mr. Bedford told her. She said that when she told Mr. Bedford that she was going to call the police, his response was to this effect: "No, you're not. You're going to get out [*sic*] here. If you mention that you saw me, that --- that I [Ms. Harper] was going to be next." The state interjected that this testimony was not exactly the same as what Ms. Harper previously had provided in her two taped statements to the police. Thus, the state requested that, in the event the court allowed the testimony, the state be allowed to play the entirety of Ms. Harper's two taped statements, totaling approximately two hours in length. The trial court indicated it would permit the state to do so.

Thereafter, the following colloquy occurred between the trial court and defense counsel:

> THE COURT:
>
> > I think what we should do is she could just say that he said something to her that caused her to get out of there and not call the police.
>
> MR. JORDAN [defense counsel]:
>
> > Okay.
>
> THE COURT:
>
> > Okay.
>
> MR. JORDAN:
>
> > Can I respectfully object to the Court's ruling or is that --- or that the Court was trying to use that as a clean medium --- to mediate our differences.
>
> THE COURT:
>
> > --- without spending two hours over a statement I don't think is going to make that much difference.

MR. JORDAN:

I think the statement is fairly consistent. I don't know if the paraphrasing is right. It is what it is.

One moment, Judge.

Judge, we'll accept the Court's instructions.

THE COURT:

Thank you.

MR. JORDAN:

I'm going to instruct the witness as well. Is that all right, Judge?

THE COURT:

Yes, sir.

(Emphasis added.)

The jury was then returned to the courtroom and Ms. Harper's testimony continued. Defense counsel asked Ms. Harper if Mr. Bedford made any comments to her, but instructed her not to say what he told her. Ms. Harper answered that she was terrified, and fled screaming and hollering as a result of the comments Mr. Bedford made to her.

In reply to defendant's contention on appeal that the trial court erred in excluding the testimony as to what Mr. Bedford specifically told Ms. Harper, the state contends that: (1) the trial court never actually ruled on its hearsay objection; and (2) the defendant waived any alleged error when he accepted the trial court's proposal. We agree. The record reveals that when the state objected to Ms. Harper's testimony, the trial court initially stated to the witness, "You can't tell us what anybody said, ma'am." Both sides then presented their arguments on the objection. In an apparent attempt to avoid the jury having to listen to Ms. Harper's prior taped statements, totaling approximately two hours, as the state requested in the event the

objectionable testimony was allowed, the trial court made the proposal previously described. When defense counsel agreed to the court's proposal as to how the matter should be resolved, the necessity for the trial court to rule on the state's objection was eliminated. The state's contention that the trial court actually never ruled on its objection is correct.

Furthermore, we agree with the state's assertion that any alleged error that may have occurred was waived. Although the record reveals defense counsel initially intended to object to the trial court's proposal, defense counsel thereafter clearly acquiesced to the trial court's proposal when he stated, "we'll accept the Court's instructions." When the defense acquiesces to a ruling or proposal of the trial court, any alleged error in that ruling is waived. *See* La. C.Cr P. art. 841(A); *State v. Huizar*, 414 So.2d 741, 749 (La. 1982); and *State v. Hawkins*, 633 So.2d 301, 308 (La. App. 1st Cir. 1993). As noted, it was due to the defense's acquiescence that the trial court never actually ruled on the objection. Additionally, it is not clear to this court that the trial court would have excluded the testimony in question if it had been required to rule on the state's objection. For these reasons, this assignment of error presents no adverse ruling for us to review.

This assignment of error lacks merit.

FOURTH ASSIGNMENT OF ERROR

In his fourth assignment of error, defendant contends the trial court erred in ruling that a confession he allegedly gave to Robin Allen would be allowed into evidence as rebuttal or impeachment evidence at trial. He argues that since the state did not give him notice of this alleged confession until four days before trial, he did not have sufficient time to investigate the credibility of Ms. Allen's statement. Defendant further alleges that Ms. Allen previously had given a statement in which she denied that defendant

confessed to her. Based on the late notice of the alleged confession, defendant argues it should have been excluded from evidence. He claims that his decision not to testify at trial was based on the erroneous ruling by the trial court allowing the alleged confession to be used as rebuttal or impeachment evidence.

Initially, it appears from our review of the record that defendant never raised the issue of the admissibility of the purported confession in the trial court. Defendant filed a motion for continuance the day after receiving notice of this confession, raising the late notice as one of the grounds for the continuance. In denying the motion, the trial court stated it understood that the state would not present the confession in their case in chief, but "may" attempt to use it in rebuttal. However, the trial court merely ruled that the recent notice of the confession did not warrant a continuance, without ruling on its admissibility. In fact, the admissibility of the confession was not raised as an issue at the hearing. Moreover, the record contains no objection by the defendant to the alleged ruling by the trial court.

An alleged error cannot be considered on appeal unless an objection was made at the time of its occurrence. Accordingly, since defendant failed to raise the issue of the admissibility of the confession in the trial court, he cannot now do so for the first time on appeal. *See* La. C.Cr.P. art. 841(A); La. C.E. art. 103A(1); and *State v. Reese*, 34,275, pp. 11-12 (La. App. 2d Cir. 12/20/00), 774 So.2d 1164, 1172-73.

In any event, we disagree with defendant's contention that the confession was subject to exclusion due to the late notice he received of its existence. Under La. C.Cr.P. art. 716(B), upon motion of the defendant, the state is required to inform the defendant of the existence of any oral confessions the state intends to offer into evidence at trial. Further, the state

has a continuing obligation to promptly disclose to the defense additional evidence that may be discovered or that it decides to use as evidence at trial. La. C.Cr.P. art. 729.3. If a party to a criminal proceeding fails to comply with these provisions, "the court may order such party to permit the discovery or inspection, grant a continuance, order a mistrial on motion of the defendant, prohibit the party from introducing into evidence the subject matter not disclosed, or enter such other order, other than dismissal, as may be appropriate." La. C.Cr.P. art. 729.5(A).

However, the state has no duty to disclose information that it does not possess. Therefore, the exclusion of evidence is not an available sanction when the state promptly informs the defendant of the discovery of additional evidence, even when the new matter is uncovered at an inopportune time for the defense. *State v. Williams*, 448 So.2d 659, 664 (La. 1984).

The record reveals that the state chose to reinterview Ms. Allen the week before trial. It was at that time that she disclosed that defendant told her shortly after the murder that "he killed the victim." The state immediately gave the defense written notice of the confession and made an audiotape of Ms. Allen's statement available to defense counsel. The notice was dated March 4, 2010, four days before trial began.

Under such circumstances, the state's disclosure of the confession was timely. It is not disputed that the state gave notice of the confession promptly upon its discovery or that the state acted in good faith. As the state only became aware of the confession days before trial, it could not have given notice to defendant any earlier. Additionally, it was not until that point that it could be said that the state intended to offer the confession into evidence at trial. Therefore, no discovery violation occurred with regard to the confession, since the state complied with La. C.Cr. P. arts. 716(B) and

729.3. *See State v. Fisher*, 380 So.2d 1340, 1345 (La. 1980). Hence, defendant has established no basis for exclusion of the confession.

We note additionally that defendant makes the bare assertion in brief that, as an alternative to excluding the confession, the trial court should have granted his motion for continuance. Although defendant did not assign error to the denial of a continuance, to the extent that defendant's assertion could be construed as raising this issue, we find no abuse of discretion in the trial court's ruling.[2]

Whether to grant or refuse a motion for a continuance rests within the sound discretion of the trial court, and a reviewing court will not disturb such a determination absent a clear abuse of discretion. La. C.Cr.P. art. 712; *State v. Reeves*, 06-2419, p. 73 (La. 5/5/09), 11 So.3d 1031, 1078-79, *cert. denied*, ____ U.S. ____, 130 S.Ct. 637, 175 L.Ed.2d 490 (2009). Further, even when an abuse of discretion is shown, a conviction generally will not be reversed based on the denial of a continuance absent a showing of specific prejudice. *See Reeves*, 06-2419 at p. 74, 11 So.3d at 1079.

In the instant case, defendant was given notice of the confession four days before trial. Other than arguing generally that the defense needed more time to investigate the statement's credibility, defendant has failed to demonstrate any specific prejudice he suffered from the timing of this notice. Defendant now contends on appeal that his decision not to testify at trial was due to the trial court ruling the confession could be admitted into evidence. However, at the motion hearing, defendant never raised the argument that the admission of the confession would preclude him from testifying. Further, when defense counsel informed the trial court at the

[2] We additionally note that this court denied defendant's application for supervisory writs seeking review of the denial of his motion for continuance. *See State v. Brooks*, 10-0422 (La. App. 1st Cir. 3/9/10) (unpublished opinion).

conclusion of the defense's case that defendant would not testify, defense counsel merely stated that, after a discussion of the pros and cons, it was decided it was in defendant's best interest not to testify. Moreover, in denying the motion for continuance, the trial court noted that this matter previously had been continued at least twelve times at defendant's request. Given these circumstances, we cannot say that the trial court abused its sound discretion or that defendant was so prejudiced by the denial of a continuance as to warrant reversal of his conviction. *See State v. McPhate*, 393 So.2d 718, 720-21 (La. 1981); *Fisher*, 380 So.2d at 1345.

This assignment of error lacks merit.

FIFTH ASSIGNMENT OF ERROR

In his fifth assignment of error, defendant contends the state's failure to provide timely discovery severely impaired the defense's ability to properly prepare for trial, thereby rendering defense counsel ineffective. Specifically, he complains that the state did not provide criminal histories on its witnesses until the day of trial, which made it impossible for defense counsel to verify the information or to receive certified conviction records from out-of-state sources. Defendant also reiterates his complaint that he received notice of the alleged confession made to Ms. Allen only four days before trial, giving the defense inadequate time to investigate the credibility of Ms. Allen's statement.

A claim of ineffective assistance of counsel is more properly raised by an application for post-conviction relief in the district court where a full evidentiary hearing may be conducted. However, where the record discloses evidence needed to decide the issue of ineffective assistance of counsel and that issue is raised by assignment of error on appeal, the issue may be addressed in the interest of judicial economy. *State v. Moody*, 00-0886, p. 5

(La. App. 1st Cir. 12/22/00), 779 So.2d 4, 8, *writ denied*, 01-0213 (La. 12/7/01), 803 So.2d 40. In the instant case, the record is sufficient to resolve defendant's claim of ineffective assistance of counsel.

A claim of ineffective counsel is analyzed under a two-prong test developed by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). To be successful, the defendant urging such a claim must first show that his attorney's performance was deficient. This requires a showing that counsel made errors so serious that the defendant was effectively denied the right to counsel as guaranteed by the Sixth Amendment. Secondly, the defendant must prove that counsel's deficient performance actually prejudiced the defense, meaning that the errors were so serious that the defendant was deprived of a fair trial. It is not enough for the defendant to show that his counsel's errors or omissions had some conceivable effect on the outcome of the proceeding. Rather, he must show that, but for counsel's errors, a reasonable probability exists that 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 two components. *Moody*, 00-0886 at p. 6, 779 So.2d at 9.

In the instant case, defendant made no showing establishing either that the performance of his counsel was defective or that he was prejudiced by defense counsel's performance as a result of the allegedly late disclosure of discovery information by the state. Defense counsel timely requested by written motion discovery of information regarding the criminal histories of the state's witnesses. The defense received this information from the state during trial, but prior to defense counsel cross-examining the state's

witnesses. The record further reflects that defense counsel utilized the information in cross-examining those witnesses, including questioning Ms. Hull as to whether she had convictions in Florida, which she admitted. Additionally, defendant has not shown how the performance of defense counsel was deficient with respect to the confession made to Ms. Allen. Defense counsel promptly attempted to obtain a continuance the day after receiving notice of this motion. The fact that the trial court concluded the motion was not well-founded does not render defense counsel's performance defective. Further, while defendant makes broad allegations that his defense was severely disadvantaged because defense counsel had inadequate time to prepare for trial, he has failed to demonstrate any specific prejudice suffered.

This assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.