

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 1468

STATE OF LOUISIANA

VERSUS

DONALD WAYNE HOLTON

DATE OF JUDGMENT: March 23, 2007

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
(NUMBER 17,863 DIV. "A"), PARISH OF ASCENSION
STATE OF LOUISIANA

HONORABLE RALPH TUREAU, JUDGE

* * * * *

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Donald Wayne Holton

* * * * *

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

The defendant, Donald Wayne Holton, originally was charged by grand jury indictment with one count of first degree murder, a violation of La. R.S. 14:30. The indictment subsequently was amended to charge the defendant with one count of second degree murder, a violation of La. R.S. 14:30.1. The defendant pled not guilty. On September 10, 2004, counsel for the defendant moved for a speedy trial. The trial court granted the motion. On July 12, 2005, a jury trial commenced. At the conclusion of the trial, the defendant was convicted as charged. The trial court sentenced the defendant to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.

The defendant now appeals, raising the following:

1. The ruling of the trial court is erroneous and contrary to law and causes severe prejudice to the defendant in that:
 - a. the trial court disregarded the significance of the defendant's Motion for Speedy Trial at the March 14, 2005 trial date and ignored the mandate of a finding of no probable cause and releasing the defendant from incarceration;
 - b. the trial court granted the State's last minute oral Motion to Continue the March 14, 2005 trial date when the State could demonstrate no compelling reason to continue the trial;
 - c. the trial court disregarded the significance of the State's abuse of the discovery rules in denying the defendant's Motion to Suppress;
 - d. the trial court allowed the State to bombard the defendant with exculpatory evidence, as well as other evidence the State intended to use, on July 8, 2005, (three days prior to trial) even though that very evidence had been requested in the defendant's timely filed Motions of September 12, 2004;
 - e. the court denied the defendant's Motion to Continue and request to charge it to the State for the State's failure to honor the discovery rules mandated by the Louisiana Code of Criminal Procedure;
2. The ruling of the trial court is erroneous and contrary to law causing severe prejudice to the defendant in that:

- a. the trial court disregarded the significance of the defendant's 33 objections and 5 Motions for Mistrial in that they all related to the State's abuse of the discovery rules as provided in the Louisiana Code of Criminal Procedure;
 - b. the trial court allowed the ambush of the defendant in springing last minute evidence on the defendant that should have been produced 8 months prior, all in an attempt to taint the jury;
3. The ruling of the trial court is erroneous and contrary to law causing severe prejudice to the defendant in that:
 - a. the trial court disregarded the significance of the defendant's objection to the introduction of the report of the gunshot residue on the defendant's hands in that it was confusing, inconclusive, irrelevant, and could serve no other purpose than to confuse and prejudice the jury in the manner in which the State was allowed to present it;
 - b. the trial court disregarded the significance of the State's expert's presenting the gunshot residue report (that had been provided to the defendant on January 23, 2006, demonstrating that the analysis only found gun residue on the alleged victim's truck) the very report that at least one of the jurors had questioned when asking to re-review it;
 - c. the trial court further disregarded the significance of the defendant's objection to allowing the State to present new evidence on rebuttal with regard to the gunshot residue report when the defendant never raised anything in connection to the gunshot residue in the presentation of his case;
4. The ruling of the trial court is erroneous and contrary to the law causing severe prejudice to the defendant in that the trial court disregarded the significance of the defendant's objection to the introduction of the evidence of the glass shards and the related report thereon in that the glass evidence was randomly collected and the State had withheld the legible evidence sheets until July 8, 2005, thereby making the evidence and report confusing, inconclusive, irrelevant, and serve no other purpose than to confuse and prejudice the jury in the manner in which the State was allowed to present it.
5. The ruling of the trial court is erroneous and contrary to law in not allowing the defendant to cross-examine Juror Darlene Taillon as to her knowledge of the defendant after it was pointed out to the State and the court that the defendant discovered she was untruthful in answering her questions on voir dire. The court further disregarded witness testimony of Benita Lambert who stated that she was well acquainted with Darlene Taillon and that Darlene Taillon well knew the defendant.

6. The failure of the clerk of this honorable court to timely file stamp and present this honorable court with defendant's Motion to Remand for the trial court's failure to order the record lodged as provided by law, and clerk's certificate on January 2, 2006, when there had been no request for extension of time by the Ascension Parish Clerk of Court or the court reporter who failed to timely transcribe the proceedings causes severe prejudice to the defendant and his counsel. This honorable court denied the Motion to Remand on August 31, 2006, stating that the transcripts were in the record and ordered this brief filed by September 18, 2006, when, as of September 10, 2006, all the transcripts were not filed with this honorable court or the defendant.

Finding no merit in the assigned errors, we affirm the defendant's conviction and sentence.

FACTS

On August 31, 2004, at approximately 10:30 p.m., Ronald Hawkins and his wife, Cheryl Hawkins, were inside their Ascension Parish residence when they heard a gunshot.¹ Mr. Hawkins ran to his yard to investigate the source of the disturbance. In the cane field adjacent to his home, Mr. Hawkins observed a white Chevrolet pickup truck that appeared to have run off of the road. Upon closer inspection, Mr. Hawkins observed that the windows of the vehicle were shattered and the driver, who was slumped over in his seat, had bullet holes to the left side of his body. Mrs. Hawkins called for help. In response to the call, the Ascension Parish Sheriff's Office was dispatched to the scene at the corner of Joe Sevario and Moody Dixon roads. Deputy Joey Mayeux was the first to arrive in the area. Inside the vehicle, Deputy Mayeaux discovered the lifeless body of the victim, subsequently identified as Jessie Bonds. The victim was pronounced dead at the scene.

An autopsy revealed that the victim suffered gunshot wounds to the left shoulder, left anaxilla and scapula region, and the left side of the face. There were a total of eight gunshot entry wounds. The gunshot wounds resulted in numerous

¹ In its brief, the State refers to these individuals as Mr. and Mrs. "Hapkins." But in the record, these witnesses are referred to as "Hawkins."

internal injuries, primarily in the chest cavity. The victim's pulmonary and carotid arteries were both severed. These injuries were fatal. The cause of the victim's death was listed as "exsanguinations" or "lack of circulating blood." The manner of death was homicide.

There were no eyewitnesses to the murder. Investigation of the crime scene revealed that the victim appeared to have been shot through the driver's side of the vehicle as he drove in the intersection. Further police investigation led to the development of the defendant, the ex-boyfriend of the victim's girlfriend (Toni Everett), as the prime suspect in the murder.

The following day, Detective Mike Toney went to the defendant's residence to speak with him. The defendant was not home. From here, based upon personal knowledge that the defendant was a friend of Ronnie Burratt, Sheriff's Officers approached Burratt at his residence and asked if he knew where the defendant could be found. Burratt advised that he did not have any information on the defendant's whereabouts. Later in the investigation, Burratt advised that he had allowed the defendant to borrow his blue GMC pickup truck on the night in question.² Burratt further advised that he contacted Gill and requested that Gill report the vehicle stolen. Gill complied. According to Burratt, the defendant drove the truck to Livingston Parish and left it there. The defendant's brother-in-law, Roger Holden, followed the defendant to Livingston Parish and transported him back to Ascension Parish. Based upon this information, Burratt and Holden were arrested and charged with accessory after the fact to first degree murder. Joey Farmer, another of the defendant's friends who assisted him in discarding shotgun shells, was also charged as an accessory after the fact. Gill was arrested and charged with filing a false police report.

² Evidence presented at the defendant's trial established that Burratt had purchased the blue GMC truck from his cousin, Randall Gill. However, the truck was still registered to Gill.

ASSIGNMENTS OF ERROR 1 & 2

Speedy Trial

In the first two issues of his first assignment of error, the defendant contends the trial court violated his right to a speedy trial when it granted the State's March 14, 2005, oral motion to continue and denied the defendant's motion to relieve his bail obligation. The defendant contends the State failed to demonstrate a "just cause" to justify further delay of his trial and thus, La. C.Cr.P. art. 701 mandated that his bail obligation be discharged. The defendant asserts the trial court, in granting the State's motion to continue and denying his motion to relieve bail obligation, ignored the mandate of Article 701. In response, the State notes that the sole remedy for a violation of the statutory speedy trial rights set forth in La. C.Cr.P. art. 701 is pretrial release from bail obligation. Thus, the State argues that since the defendant has already been tried and convicted, his allegation of a violation of Article 701 is moot.

La. C.Cr.P. art. 701, provides, in pertinent part:

D. (1) ...After the filing of a motion for a speedy trial by the defendant and his counsel the time period for commencement of trial shall be as follows:

(a) The trial of a defendant charged with a felony shall commence within one hundred twenty days if he is continued in custody and within one hundred eighty days if he is not continued in custody.

* * *

(2) Failure to commence trial within the time periods provided above shall result in the release of the defendant without bail or in the discharge of the bail obligation, if after a contradictory hearing with the district attorney, just cause for the delay is not shown.

E. "Just cause" as used in this Article shall include any grounds beyond the control of the State or the Court.

In the instant case, the record reflects that the defendant was indicted on October 22, 2004. On September 10, 2004, along with a host of other pretrial

motions, counsel for the defendant moved for a speedy trial. Thereafter, on March 14, 2005, when the matter came for trial, the State moved for a continuance based upon allegations of docket overcrowdedness and lack of documentation necessary to proceed to trial. The defendant, who remained incarcerated, objected to the continuance and urged the trial court to proceed with his trial or discharge him from his bail obligation. The trial court granted the State a continuance and declined to discharge the defendant's bail obligation. Based upon these adverse rulings, the defendant contends the trial court violated his statutory right to a speedy trial.

We find it unnecessary, at this juncture, to determine whether the State demonstrated "just cause" for the delay of the defendant's trial. As the State correctly asserts, Article 701 merely authorizes pretrial relief. The remedy for a speedy trial violation under Article 701 is limited to release from incarceration without bail or release of the bail obligation for one not incarcerated. Once a defendant has been tried and convicted, any allegation of speedy trial violation is moot. *State v. Odom*, 03-1772, p. 14 (La. App. 1st Cir. 4/2/04), 878 So.2d 582, 593, *writ denied*, 04-1105 (La. 10/8/04), 883 So.2d 1026. Because the defendant has been tried and convicted, these issues are now moot.³

Discovery Violations

Next, in several different arguments in these assignments of error, the defendant asserts the trial court erred in denying his motion to suppress the evidence and/or motion to continue the trial based upon the State's failure to timely comply with the rules of discovery. Throughout his brief, the defendant repeatedly asserts that the State intentionally failed to comply with the trial court's discovery rulings and intentionally withheld pertinent information from the defense. Consequently, the defendant argues that, as a result of the trial court's rulings, the

³ The defendant does not raise the issue of constitutional speedy trial rights.

State was allowed to "bombard" him with "exculpatory" and other evidence not provided during discovery. To illustrate the nature and effect of the alleged discovery violations, the defendant notes that during the trial he urged 33 objections and moved for a mistrial on at least five occasions.⁴

The purpose of pretrial discovery procedures is to eliminate unwarranted prejudice to a defendant that could arise from surprise testimony. *State v. Mitchell*, 412 So.2d 1042, 1044 (La. 1982). Discovery procedures enable a defendant to properly assess the strength of the State's case against him in order to prepare his defense. *State v. Roy*, 496 So.2d 583, 590 (La. App. 1st Cir. 1986), *writ denied*, 501 So.2d 228 (La. 1987). If a defendant is lulled into a misapprehension of the strength of the State's case by the failure to fully disclose, such a prejudice may constitute reversible error. *State v. Ray*, 423 So.2d 1116, 1118 (La. 1982).

In the instant case, we find no error by the trial court in its rulings on the various discovery requests and motions. The record reflects that, in response to the defendant's initial discovery motion, the State agreed to provide open-file discovery. Thus, the defendant was provided access to any and all evidence in the State's file. While the record does contain several additional discovery motions and motions to compel filed by the defense, and several instances wherein the trial court instructed the State to provide the defense with the requested information, it is worth noting that the crux of the defendant's rather extensive discovery argument on appeal is not that the evidence he complains of was not produced. Instead, he asserts only that evidence was produced late (approximately three days before trial). The defendant contends the late disclosure of the evidence, particularly the audiotaped telephone conversations from several inmates with whom he was

⁴ The defendant does not appear to challenge the trial court's rulings on his objections and/or mistrial motions. Instead, he merely cites them in support of his argument that the alleged discovery violations by the state warranted suppression of the evidence or continuation of the trial.

incarcerated at the Ascension Parish Jail and legible copies of evidence logs, prejudiced his defense. The defendant claims the trial court erred in denying his motion to continue after the State produced the evidence in question only three days before his trial.

Our review of the record reveals that when the issue of the timeliness of the State's disclosure of this particular evidence was brought before the trial court, the defendant moved for a continuance and specifically requested that it be charged to the State and that he be released from his bail obligation based upon the alleged untimely disclosure of the evidence. The defendant never moved for a continuance without the added condition that it be charged to the State. We find no error in the trial court's denial of the defendant's conditioned motion to continue. We find that any prejudice caused by the "late" disclosure of the evidence in question is charged to the defendant who appears to have been more concerned with being released from jail than assuring that he was prepared to adequately present a defense at his trial.

As previously noted, even if a discovery violation occurred, it would not constitute reversible error without actual prejudice to the defendant's case. See *State v. Francis*, 00-2800, pp. 5-6 (La. App. 1st Cir. 9/28/01), 809 So.2d 1029, 1033. Even if the State did violate the rules of discovery, we note that the defendant has failed to demonstrate any prejudice to his case caused by the State. According to the State, the evidence in question was not discoverable. Thus, the State argues, the defendant is not entitled to have his conviction overturned based upon evidence to which he was not entitled. Of course, if any of the taped conversations in question contained exculpatory evidence, this evidence would have been discoverable. We are unable to review the nature of the evidence in question because it was not proffered by the defense. Without that evidence, this court is unable to determine if it was relevant and/or discoverable. Moreover, the

record does not reflect that the manner in which the defendant was lulled into a misapprehension of the strength of the State's case.

These assignments of error lack merit.

ASSIGNMENT OF ERROR 3

In his third assignment of error, the defendant contends the trial court erred in allowing the State, on rebuttal, to introduce an amended gunshot residue report indicating that residue was found on the truck allegedly driven by the defendant. The defendant argues that because no evidence regarding the gunshot residue was presented by the defense in its case in chief, the State should not have been allowed to introduce such evidence on rebuttal.

During the trial of this matter, Elana Foster, an expert in gunshot residue analysis, testified that she received a gunshot residue kit from the Ascension Parish Sheriff's Office in connection with this case. Foster further testified that the samples contained in the kit tested positive for particles unique to gunshot residue. Foster did not provide any testimony regarding the area from which the samples were taken. Detective Gerald Whealton of the Ascension Parish Sheriff's Office, however, testified that gunshot residue samples were taken from the blue GMC truck driven by the defendant.

At the conclusion of the second day of the defendant's trial, as the State published the admitted evidence to the jury, one of the jury members indicated that he/she had a question. In response to the court's inquiry regarding the nature of his/her concern, the juror replied, "We were unclear the GSR kit was run on which people." The court promptly advised the juror that the court was not allowed to comment on the evidence and stated, "but maybe it'll be clearer as we go along." Thereafter, Detective Melvin Boudreaux was called by the State. Like Detective Whealton, Detective Boudreaux also testified that the samples submitted for gunshot residue testing were taken from the blue truck allegedly driven by the

defendant. Detective Boudreaux further explained that there was no need to test the victim's vehicle because the fact that the victim was shot while seated inside the vehicle made it obvious that gunshot residue would be present. The samples were collected from the blue GMC in an effort to connect it with the instant offense.

Thereafter, on rebuttal, the State recalled Detective Gerald Whealton. Detective Whealton testified that review of the gunshot residue report prepared by Elana Foster, the gun shot residue analysis expert, revealed that it contained a typographical error. He explained that although the tested samples were taken from the vehicle allegedly driven by the defendant, the written report indicated that the samples were from "BONDS passenger Door Frame and Molding." The State offered an amended report for introduction into evidence. The defense objected and argued that Detective Whealton should not be allowed to provide such testimony on rebuttal because the defense did not raise the issue of the gunshot residue samples in its case in chief. The defense also argued that the amended report should not be allowed since Foster was not available to authenticate the document. In overruling the defense's objection, the trial court noted that Foster only testified that she performed analysis on the samples provided to her. She did not indicate from where the samples were taken. The court further noted that the testimony of Detective Whealton, the individual who actually collected the samples, established that they were taken from the blue GMC truck. The court noted that the defense would not be prejudiced by the introduction of such "corrective" evidence, as it is consistent with all of the testimony presented at the trial.

Upon review of the record before us, we find no error in the trial court's allowing the "corrective" evidence in question. As the trial court noted, while it is disturbing that this typographical error went unnoticed, correcting the error was

necessary to avoid confusion and in no way prejudiced the defense as there was clear testimonial evidence of the origin of the samples on the record. Moreover, if there was any error by the trial court in allowing the "corrective" testimony and amended report, the error was clearly harmless and does not necessitate reversal of the defendant's conviction. The defendant admitted to several individuals that he killed the victim and explained the circumstances surrounding the shooting in detail. Ronnie Burratt (the defendant's friend), Joey Farmer (an individual with whom the defendant was incarcerated), and Shane Richey, (another inmate) all testified that the defendant told them he murdered the victim because the victim was dating Everett. The defendant stated that he borrowed the blue GMC from Ronnie Burratt and waited for the victim on Joe Sevario Road. When the victim arrived in the area, the defendant flagged him down, waited for him to pull over, pulled up next to him and "blew his head off." The defendant also told several other individuals that if he could not be with Toni Everett, no one would. Considering the evidence presented herein, it is clear that the guilty verdict was surely unattributable to any such error. See *State v. Code*, 627 So.2d 1373, 1384 (La. 1993), *cert. denied*, 511 U.S. 1100, 114 S.Ct. 1870, 128 L.Ed.2d. 490 (1994). This assignment of error lacks merit.

ASSIGNMENT OF ERROR 4

In his fourth assignment of error, the defendant argues the trial court erred in allowing the State to present evidence regarding glass shards collected from the scene. Specifically, the defendant challenges the admission of the "glass report" into evidence. The defendant argues that this evidence simply "did not make sense."

At the trial, Detective Whealton testified that he collected glass shards from the intersection where the crime occurred and submitted them to the crime lab for analysis. Glass was also collected from the victim's vehicle and from the blue

GMC truck. Maureen Bottrell, a forensic examiner with the Federal Bureau of Investigation, was accepted as an expert in Forensic Geology with expertise in the analysis of glass. Bottrell testified that in connection with this case, she received samples of glass that were identified as having been collected from the crime scene and the involved vehicles. Bottrell testified, without objection, that the glass collected from the intersection was indistinguishable from the glass from the passenger side window of the victim's vehicle. There was also glass obtained from the intersection that was indistinguishable from the glass from the passenger side window of the suspect's vehicle. When the State sought to introduce a copy of Bottrell's written report, counsel for the defendant objected and stated, "Your honor, I would object just to the entirety of the report. I think the portions that are relevant that she testifies from, but subject to that objection, no." The trial court overruled the objection.

On appeal, with practically no elaboration, the defendant argues that the glass report and expert testimony regarding the analysis of the glass should not have been allowed. Insofar as the testimonial evidence is concerned, the record reflects that the defendant did not lodge a contemporaneous objection to the testimony in question. Under La. C.Cr.P. art. 841, a contemporaneous objection is required to preserve an error for appellate review. The purpose of the contemporaneous objection rule is to allow the trial judge the opportunity to rule on the objection and thereby prevent or cure an error. *State v. Hilton*, 99-1239, p. 12 (La. App. 1st Cir. 3/31/00), 764 So.2d 1027, 1035, *writ denied*, 00-0958 (La. 3/9/01), 786 So.2d 113. The defendant did not make a contemporaneous objection following Bottrell's testimony regarding the glass evidence. It is well settled that irregularities or errors cannot be availed of on appeal if they are not objected to at the time of the occurrence. *State v. Walker*, 94-0587, p. 4 (La. App. 1st Cir. 4/7/95), 654 So.2d 451, 453, *writs denied*, 95-1124 & 1125 (La. 9/22/95), 660

So.2d 470. Since the defendant failed to lodge a contemporaneous objection on this ground during trial as required by La. C.Cr.P. art. 841, he is precluded from raising the issue on appeal. See also La. C.E. art. 103(A)(1). Furthermore, we find no error in the trial court's allowing the written report, which was cumulative of the testimonial evidence. This assignment of error lack merit.

ASSIGNMENT OF ERROR 5

In his fifth assignment of error, the defendant contends the trial court erred in failing to allow him to cross-examine juror Darlene Taillon as to her knowledge of the defendant. Specifically, the defendant asserts it was pointed out to him after the trial that three of the jurors who decided the case knew the defendant and may have been aware that he was previously convicted of manslaughter in an unrelated case.

The record reflects that the defendant filed a motion for post-verdict judgment of acquittal wherein he asserted, among other things, that Darlene Taillon, "was a former classmate of his, and in fact graduated with his brother." He further asserted that Taillon would have known of his prior conviction and may have tainted the jury with this information. The defendant also argues that two other jurors (Greg Swanson and Cyd Sonnier) "may have known" him and been aware of his prior conviction. Although the defendant includes Swanson and Sonnier in his argument on appeal, the record reflects that the defendant did not include an allegation of prejudice regarding these jurors in his motion before the trial court. A new issue cannot be raised for the first time on appeal. See *State v. Bennett*, 591 So.2d 1193, 1197 (La. App. 1st Cir. 1991), *writ denied*, 594 So.2d 1315 (La. 1992). Therefore, as the portion of the defendant's assignment of error relating to Swanson and Sonnier was not preserved for appeal, we decline to consider it. We will review the trial court's ruling regarding juror Taillon.

At a hearing on the motion, counsel for the defendant noted that the motion, although styled as a motion for post-verdict judgment of acquittal, was actually a motion for a new trial. Counsel requested that the motion be considered under La. C.Cr.P. art. 821 and not Article 851. The trial court agreed to consider the motion under both articles. The defense argued that there was no way Taillon, whose sister he claimed was married to the defendant's second cousin, could not have known the defendant or been unaware of his prior conviction. Thus, he argued, he should be allowed examination under C.E. art. 606(B) to determine whether extraneous, prejudicial information was improperly brought to the jury's attention. The defense called Benita Lambert, the defendant's neighbor and first cousin.⁵ Lambert testified that she had been well acquainted with Taillon approximately thirty years ago, as she was a family friend who visited regularly. Lambert further testified she lived next door to the defendant. Although she testified that Taillon should have known the defendant from her house, Lambert further testified that Taillon had not been to her house since 1975.

In response to the allegations in the defendant's motion, the trial court questioned juror Taillon. When asked if she knew the defendant, Taillon replied, "Never in my life do I have a memory of seeing or knowing him." Taillon further testified that she had been honest in each of her voir dire responses. The trial court denied the defendant's request to examine Taillon. The defendant argues the trial court erred in denying his counsel's request to examine juror Taillon regarding her knowledge of the defendant and/or his prior conviction.

La. C.E. art. 606(B) provides, in pertinent part:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental

⁵ Lambert testified that her mother and the defendant's mother are sisters.

processes in connection therewith, except that a juror may testify on the question whether any outside influence was improperly brought to bear upon any juror, and, in criminal cases only, whether extraneous prejudicial information was improperly brought to the jury's attention....

The prohibition in this article is intended to preserve the finality of jury verdicts and the confidentiality of discussions among jurors. See *State v. Duncan*, 563 So.2d 1269, 1272 (La. App. 1st Cir. 1990). However, the jurisprudence has established that the prohibition against juror testimony is not absolute and must yield to a substantial showing that the defendant was deprived of his constitutional rights. Well-pleaded allegations of prejudicial juror misconduct violating a defendant's constitutional rights will require an evidentiary hearing at which jurors shall testify. *State v. Duncan*, 563 So.2d at 1272.

Upon our review of the record, we find no error or abuse of discretion in the trial court's decision to deny the defendant's request to examine juror Taillon. The trial court obviously accepted Taillon's testimony that she did not know the defendant and rejected the defendant's cousin's claim that Taillon had to have known the defendant from an alleged relationship over thirty years ago. Under these circumstances, we find that the trial court correctly applied the jury-shield law and limited the testimony at the new trial hearing. This assignment of error lacks merit.

ASSIGNMENT OF ERROR 6

In his final assignment of error, the defendant asserts the trial court erred in failing to have the record prepared timely and this court erred in failing to accept his motion to remand. The defendant argues that his conviction should be overturned and he should be granted a new trial based on the fact that certain transcripts were not included in the record on appeal.

A party moving for the appeal must request the transcription of that portion of the proceedings necessary for review in light of the assignments of error to be

urged. La. C.Cr.P. art. 914.1. *State v. Washington*, 533 So.2d 989, 993 (La. App. 1st Cir. 1988); *State v. Vampran*, 491 So.2d 1356, 1364 (La. App. 1st Cir.), *writ denied*, 496 So.2d 347 (La. 1986). Any inadequacy of the record is imputable to the appellant. *Hurt v. Western American Trucking Company*, 26,918, p. 3 (La. App. 2d Cir. 5/10/95), 655 So.2d 558, 560; *West Consolidated Co., Inc. v. Creole Fisheries*, 616 So.2d 268, 271 (La. App. 2d Cir. 1993).

Initially, we note that the defendant has failed to specifically indicate which transcripts he complains were missing. Instead, he only generally argues that he was denied "proper access to the courts under the Louisiana Constitution and the Constitution of the United States of America." Furthermore, although the defendant claims he "put the court reporter on notice that the entire transcript of this matter would be needed for this appeal," our review of the record reflects that the defendant did not make a designation as to any portion of the record in connection with his motion to appeal. Absent a specific designation of the record for appeal purposes, the defendant has no grounds to complain of missing transcripts. See La. C.Cr.P. art. 914.1. This assignment of error lacks merit.

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

CONVICTION AND SENTENCE AFFIRMED.