NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 2199

STATE OF LOUISIANA

VERSUS

SPIKE J. GONZALES

*Judgment Rendered: June 8, 2007*

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Appealed from the
22nd Judicial District Court
In and for the Parish of Washington, Louisiana
Case No. 05 CR3 92027

The Honorable Raymond Childress, Judge Presiding

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* * * * * * * *

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Welch J. concurs without reasons.

**GAIDRY, J.**

The defendant, Spike J. Gonzales, was charged by bill of information with two counts of second degree battery, violations of La. R.S. 14:34.1.[1] He pleaded not guilty to each count. Following a jury trial, he was found guilty as charged on both counts. Defendant moved for a new trial and for a post-verdict judgment of acquittal, but both motions were denied. He was sentenced to three years at hard labor on each count, the sentences to run consecutively. He moved for reconsideration of sentence, but the motion was denied. Thereafter, the state filed a habitual-offender bill of information against defendant, alleging he should be adjudged and sentenced as a fourth-felony habitual offender. Following a hearing, defendant was adjudged a second-felony habitual offender with regard to Count I. The sentence previously imposed on Count I was vacated, and defendant was sentenced on Count I to six years at hard labor to run concurrently with the sentence imposed on Count II.

Defendant now appeals, designating three assignments of error. For the following reasons, we affirm the conviction, habitual-offender adjudication, and sentence on Count I, and the conviction and sentence on Count II.

## ASSIGNMENTS OF ERROR

Defendant assigns the flowing error on the part of the trial court:

1. The trial court erred in admitting the hearsay testimony of Officer Tyson, Toni Barber, and Tom Jones, and the hearsay taped statement of the victim.

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[1] The bill of information charged that Count I occurred on September 28, 2004, and that Count II occurred on January 22, 2005.

2. The trial court erred in failing to make an inquiry, outside the hearing of the jury, as to the claim of police coercion made by the victim sufficient to satisfy itself that there was nothing to the claim or to substantiate it.

3. The trial court erred in not granting a new trial or continuance, based upon the *Brady* and timely disclosure failures of the state.

**FACTS**

The victim, Stacie Creel, testified at trial concerning the offenses. In March or April of 2004, she began a romantic relationship with defendant and commenced living with him. According to the victim, during the relationship, defendant began to strike the victim with his hands and fists. In August of 2004, defendant intentionally struck the victim in her mouth, breaking some of her teeth.

According to the victim, on or around September 28, 2004, she and defendant argued because she wanted to leave him. While the victim was standing in the front doorway of the house they shared, defendant pushed her backwards, causing her arm to hit a railing. The victim's arm was broken in several places. She had summoned the police shortly before the attack. She spoke to the police officer who arrived at the scene, and she was transported to a Bogalusa hospital. The victim testified that she told the officer that defendant had caused the injury to her arm, but conceded she made no formal complaint against defendant. Following emergency surgery, four screws and a rod were installed in the victim's arm.

According to the victim, defendant again attacked her on or around January 22, 2005. The victim was again trying to leave defendant. She testified that defendant told her that if he "couldn't have [her,] nobody else would," and punched her in the face. According to the victim, the blow

caused blood to fly from her nose and an eye. She telephoned Toni Barber, her cousin, and asked her to come to see her. The victim did not leave the house to seek medical attention, however, until after defendant was arrested. A subsequent CAT scan indicated that her face and skull were fractured.

The victim testified that she avoided talking to the police between the two attacks because she "knew [defendant] was going to get in trouble." According to the victim, she lied to the police when they arrested defendant, telling them that defendant had not caused her injuries. She instead told the police she had fallen and had hit a doorknob. At trial, she explained that she lied because she was scared and did not want defendant to get into trouble.

Following defendant's arrest, his brother "asked [the victim] to come sign stating [defendant] didn't do it," and the victim accompanied defendant's brother to the district attorney's office. There, she wrote on a form, "[s]econd party assumed he [defendant] did it. [N]otified the police without my consent." At trial, she claimed she lied on the form because she loved defendant at the time and was trying to protect him.

The victim denied telling Ronnie Parker, Eric Cooper, or Travis Gonzales (three witnesses who testified at trial) that her arm was accidentally broken. She also denied telling Parker, Cooper, or Gonzales that she was injured after she lost her balance trying to kick defendant and he blocked the kick. Finally, she denied telling Parker, Cooper, or Gonzales that someone other than defendant had hit her in the eye.

James Ronald "Ronnie" Parker, II testified at trial. With regard to the September 28, 2004 incident, he claimed the victim told him that while she and defendant were arguing, she tried to kick him, but fell and broke her arm after defendant blocked the kick.

Eric Benton Cooper also testified at trial. With regard to the January 2005 incident, he claimed the victim initially told him that she fell and hit her eye on a doorknob, and later told him that "she was tricking for dope" and that "one of her tricks beat her."

Travis Gonzales, defendant's brother, testified at trial as to the January 2005 incident. He claimed that the victim had told him that she and defendant had argued that day, and she had fallen and hit her eye on a door.

Defendant testified at trial in his own defense. He claimed the victim was not his girlfriend, but would often stay at his house for two or three days and then disappear for a week. He denied breaking the victim's arm in September 2004. According to defendant, when he returned home from work on the day of the victim's arm injury, the victim was belligerent and demanded money from him for "more dope." Defendant stated that he told the victim to leave the house and called her mother to come to the house and get the victim. Defendant claimed that the victim only called the police because he had called her mother. He also claimed that when the victim saw her mother, the victim threw a vacuum cleaner and damaged a hardwood floor. According to defendant, the victim then tried to kick him in the groin, but he grabbed her foot. Defendant claimed the victim then fell backwards through the doorway and landed on her arm. Defendant closed the door and left through the back door of the house.

With regard to the January 2005 incident, defendant testified that at approximately 6:00 a.m. on the day of that incident, he was awakened by the victim beating on his door. He claimed the victim's face was already injured when he went to the door, and that the victim would not tell him what had happened to her. He claimed he tended to her injuries, called her mother, and left to pawn his welding tools to obtain money to buy the victim an

"Oxcy." He also claimed that when he returned, the victim was already "cooking" an "Oxcy" and preparing to use it. The victim purportedly told him that Tom Jones had given her the drug. Defendant explained that the victim did not have any money, so he asked her how she had managed to obtain the drug from Jones. According to defendant, the victim replied that she had told "them" that he had injured her face.

Defendant further testified that he saw the victim after he was released from jail following his arrest. He claimed the victim told him then that she had "given [the police] a videotape" after she had "gotten busted" at the LaFloridian Inn with "some dope." Defendant claimed the victim stated that the police "were holding that over her head," and that if she did not testify against him, the police were going to take away the victim's children and bring charges against her. Defendant specifically denied ever hitting the victim. He claimed the victim was a prostitute and "[d]oes whatever she has to do to get her drugs."

**HEARSAY**

In his first assignment of error, defendant argues the trial court erred in permitting Officer Stephon Tyson, Toni Barber, and Tom Jones to testify, and erred in allowing into evidence the victim's March 25, 2005 taped statement, over the hearsay objection of the defense as to the victim's statement, because the victim was available, and, in fact, did testify.

Hearsay is an oral or written assertion, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted. La. C.E. art. 801(A)(1), (C). Hearsay evidence is not admissible except as otherwise provided by the code of evidence or other legislation. La. C.E. art. 802. Hearsay is excluded because the value of the statement rests on the credibility of the out-of-court

asserter, who is not subject to cross-examination and other safeguards of reliability. *State v. Maise*, 00-1158, p. 16 (La. 1/15/02), 805 So.2d 1141, 1152.

The testimony of a police officer may encompass information provided by another individual without constituting hearsay, if it is offered to explain the course of the police investigation and the steps leading to the defendant's arrest. However, this exception does not allow the state carte blanche authority to bring before the jury the substance of the out-of-court information that would otherwise be barred by the hearsay rule. *Maise*, 00-1158 at p. 17, 805 So.2d at 1152-53.

In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him. U.S. Const. amend. VI. The confrontation clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S.Ct. 1354, 1365, 158 L.Ed.2d 177 (2004). Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. *Davis v. Washington*, ___ U.S. ___, ___, 126 S.Ct. 2266, 2273-74, 165 L.Ed.2d 224 (2006).

In opening argument, the defense conceded that the victim had suffered injuries, but argued the issue was whether or not defendant had inflicted those injuries. The defense claimed the victim had given three

different statements, and only in the third statement had she alleged that defendant had inflicted her injuries. The defense further claimed that the victim had previously been arrested and jailed and was being forced to testify at trial. Defense counsel opined, "I'm sure she's going to tell you exactly what the DA and police want you to hear today."

Officer Tyson testified that on September 28, 2004, he responded to a telephone call from the victim. Officer Tyson indicated the victim "advised us that [defendant] had committed a battery on her." The defense did not object to that testimony at trial. The defense did, however, raise a hearsay objection when the state subsequently asked Officer Tyson about the nature of his conversation with the victim. In response, the state argued the testimony was not offered for its truth, but rather was in the nature of a 911 call, "where [the victim] [is] telling the officers in the course of the investigation what happened to her." The court ruled it would allow the testimony because the victim would be testifying and would be available for cross-examination. Thereafter, Officer Tyson testified that the victim told him that defendant had committed a battery on her.

Prior to the testimony of Tom Jones, the defense objected to the state asking Jones what the victim had told him. The state in turn argued that the testimony would not be offered for its truth and was "*Crawford*-type" information. The defense asked that the court note a continuing objection to Jones's testimony, and the court noted that objection.

Jones testified that on January 22 or 23, 2005, he was dating Toni Thomas Barber, and went with her to visit the victim, Ms. Barber's cousin. The victim had repeatedly telephoned Ms. Barber, stating she needed to talk to her "really bad." Jones confirmed that when he saw the victim on that occasion, she had the injuries depicted in five photographs of the victim

introduced as evidence. The victim told Jones that defendant had beat her. The victim asked Ms. Barber for assistance with the lacerations and "knots" the victim had suffered to her head.

Ms. Barber also testified at trial. She verified that on or around January 24, 2005, the victim telephoned her, requesting her to come over to talk to her because the victim had been in a fight with defendant. Ms. Barber and Jones went to visit the victim. When Ms. Barber saw the victim, the victim had a black eye that was swollen shut, and a "really bad" cut. The victim also had "knots" on the back of her head and a "busted" lip. The victim told Ms. Barber that she had wanted to leave defendant and go to her mother's house, but defendant became angry and began hitting her.

Bogalusa Police Department Officer Tommie Sorrell testified that on March 17, 2005, he conducted a videotaped interview with the victim. The state introduced the videotape into evidence over the hearsay objection of the defense. The record reveals, however, that the videotape was not shown to the jury.

Initially, we note the defense failed to contemporaneously object to the initial alleged hearsay testimony of Officer Tyson and to the alleged hearsay testimony of Ms. Barber. An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the objecting party made known to the court the action which he desired the court to take, or his objections to the court's action and the grounds therefor. *See* La. C.Cr.P. art. 841; La. C.E. art. 103(A)(1).

Moreover, the alleged hearsay testimony of Officer Tyson, Ms. Barber, and Jones was admissible as non-hearsay pursuant to La. C.E. art. 801(D)(1)(b), as the victim-declarant testified at trial, subject to cross-examination concerning those statements, which were consistent with the

victim's trial testimony and were offered to rebut the defense claims of recent fabrication and improper influence. We need not categorize which, if any, of the challenged statements were "testimonial" because defendant's confrontation rights were preserved by the availability of the victim at trial for cross-examination concerning the statements.

This assignment of error is without merit.

**FAILURE TO CONDUCT HEARING**

In his second assignment of error, defendant argues that the trial court failed in its duty under *LaFrance v. Bohlinger*, 499 F.2d 29 (1st Cir.), *cert. denied*, 419 U.S. 1080, 95 S.Ct. 669, 42 L.Ed.2d 674 (1974), to conduct an inquiry into whether or not the March 2005 statement of the victim was unconstitutionally coerced.

*LaFrance* involved a manslaughter conviction for the victim's hit-and-run death. The vehicle that struck the victim was neither identified at the crime scene nor subsequently located. The vehicle occupants were also not identified at the crime scene. At trial, the state presented evidence that the defendant was aware of the accident suspiciously soon after it had occurred, that he attempted to obtain a false alibi, and that he admitted guilt in a telephone conversation. The defendant claimed he never left his apartment on the night of the crime. A companion of the defendant confirmed at trial that he and the defendant remained at the apartment on the evening in question. Over the defendant's objection and motion to strike an earlier statement by the companion, the trial judge ruled that statement could be used to impeach the companion's trial testimony. Thereafter, the state impeached the companion's testimony with the earlier typed, signed statement, indicating that he and the defendant left the apartment, entered a stolen car, and, while the defendant was driving, struck something. At trial,

the companion claimed his earlier statement was a police fabrication, which he signed while "strung out" on drugs, frightened, and willing to say anything to get back to his cell. *LaFrance*, 499 F.2d at 31.

The *LaFrance* court, in pertinent part, held:

> We conclude that although there is no absolute parallel between the exclusionary rule relative to confessions and that relative to impeaching statements of witnesses, there is a point at which the same considerations apply to both. That point has been reached here because there is a substantial claim by the defendant that the impeaching statement offered by the government was obtained by police threats and other blatant forms of physical and mental duress. Where such a claim is made, and supported by sworn testimony, the court has a duty to conduct its own inquiry and to exclude the statement if found to have been unconstitutionally coerced. Its duty stems from 'the concept of due process, which now protects the accused against pretrial illegality by denying to the government the fruits of its exploitation of any deliberate and unnecessary lawlessness on its part.' We emphasize that our holding goes no further than this; it is not to be interpreted as making applicable the Miranda or even pre-Miranda rules inferring involuntariness from circumstances falling short of the grave misconduct here mentioned. Since our decision is premised upon the rationale that use of coerced testimony entails a violation of the defendant's due process right to a fair trial, there is no standing problem. LaFrance is not complaining of the purported denial of [his companion's] constitutional rights, but only of his own.
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> As assistance in interpreting this decision, we add the following: In any except the most glaring case, we will not look with favor on claims of coercion not timely and expressly raised during trial. Unless a serious factual dispute can be shown to exist, and one in which, if successful, the defense would be entitled to exclusion, no hearing at all is necessary. Finally, when need for a hearing is established, the government's burden to prove an absence of physical or mental coercion is by a preponderance of the evidence. In all except the most unusual case, we should anticipate that the court's duty of inquiry would require minimal interruption of proceedings.

*LaFrance*, 499 F.2d at 35-36. (Citations and footnotes omitted).

Here, on cross-examination, the victim testified she gave a taped statement to the police on March 17, 2005, after being brought in to the

police station by Officer Joe Culpepper for questioning. The victim stated she was with Tori Roa, "getting high" on crack cocaine when the police entered the room they were in. After the police discovered two pieces of crack cocaine on her person, they took her to the police station. According to the victim, she provided the police a statement regarding defendant's battery of her because they told her she would be released if she gave a statement, but jailed and have her children taken away if she refused.

On re-direct examination, the victim verified that she never told any officer that anyone other than defendant had committed the two offenses against her. The victim also confirmed that in her videotaped statement, she told the police the same thing she had told the jury at trial: the truth.

Initially, we note the defense failed to request a *LaFrance* hearing concerning the voluntariness of the victim's videotaped statement. Nor did the defense move to suppress the challenged statement as unconstitutionally obtained. Again, an irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the objecting party made known to the court the action which he desired the court to take, or his objections to the court's action and the grounds therefor. La. C.Cr.P. arts. 703(F), 841; La. C.E. art. 103(A)(1). *See also LaFrance*, 499 F.2d at 36. Accordingly, defendant's challenge to the admissibility of the victim's statement was not preserved for appeal.

Moreover, there was no basis for a *LaFrance* hearing in this case. The challenged videotaped statement was not even played for the jury at trial, much less used to "impeach" any witness. Further, unlike the situation in *LaFrance*, there was no issue in the instant case concerning the substance of the challenged statement being the product of coercion.

This assignment of error is without merit.

## BRADY VIOLATION

In his third assignment of error, defendant argues the state suppressed evidence favorable to the defense by failing to timely disclose the existence of a domestic-violence report prepared by Officer Stephon Tyson until he had left town and was unavailable to testify; failing to timely disclose the victim's execution of a medical authorization allowing the hospital to release its records concerning the incidents at issue; and by failing to disclose the existence of police reports relating to the LaFloridian Inn arrest of Victoria Roa Williams for possession of cocaine and the "obtaining" of the victim at that time.

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215 (1963). Favorable evidence includes both exculpatory evidence and evidence impeaching the testimony of a witness when the reliability or credibility of that witness may be determinative of defendant's guilt or innocence, or when it may have a direct bearing on the sentencing determination of the jury. *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985); *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). Regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles v. Whitley*, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1565, 131 L.Ed.2d 490 (1995) (citing *Bagley*, 473 U.S. at 682, 105 S.Ct. at 3383). *Bagley*'s touchstone of materiality is a "reasonable probability" of a different result, and the adjective "reasonable" is important. The question is not whether the defendant would more likely than

not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial." *Kyles*, 514 U.S. at 434, 115 S.Ct. at 1566; *Bagley*, 473 U.S. at 678, 105 S.Ct. at 3381.

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

In regard to the alleged failure to timely disclose the domestic-violence report, the record indicates that following the direct examination of the victim, defense counsel and counsel for the State approached the bench. Defense counsel advised the trial court that he had just been provided certain reports, including a domestic-violence report signed by Officer Tyson, and that Officer Tyson would be leaving town. Defense counsel advised the court that Officer Tyson needed to be called and asked to return to court. Defense counsel stated that Officer Tyson's report stated that the victim had called the police and advised officers that defendant had "body slammed" her to the floor, thereby breaking her arm. The state suggested that defense counsel should "[p]ut the report in, and if you want to stipulate to what he said in the report." Defense

counsel replied, "[w]e might could do that," and subsequently stated, "I think [Officer Tyson is] going to Florida or something. We'll figure it out."

On cross-examination of the victim, the defense questioned her concerning whether she had informed Officer Tyson that defendant had picked her up and "body slammed" her to the floor, breaking her arm. The victim explained that defendant had "body slammed" her inside the house, but that that action did not break her arm. When questioned again concerning whether she had told Officer Tyson that the "body slam" broke her arm, the victim stated that she did not recall making that assertion. The defense then commenced another line of questioning.

In connection with posttrial motions, the defense argued the state's late disclosure of Officer Tyson's report had placed the defense in the "predicament" of trying to get Officer Tyson back on the stand for purposes of impeaching the victim's testimony. In response to questioning by the trial court, the defense conceded that it was provided Officer Tyson's report prior to the victim testifying[2] and had in fact questioned the victim about any difference between her testimony and what she had told Officer Tyson.

The state pointed out that the domestic-violence reports were located during the middle of the trial, and emphasized that the reports were not police investigative reports resulting in arrests, but instead were contact reports consisting of approximately two sentences. The state further indicated that in connection with the first attack by defendant, the victim declined to make a formal complaint or statement, and thus, other than Officer Tyson's contact report, there was no report concerning that incident.

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[2] As noted previously, the record shows that Officer Tyson's report was provided to the defense following the victim's direct examination.

Initially, we note the defense failed to contemporaneously object to the alleged late disclosure of Officer Tyson's report. Accordingly, defendant's argument asserting a *Brady* violation based upon the alleged failure to timely disclose this evidence was not preserved for appeal. *See* La. C.Cr.P. art. 841.

Moreover, there was no *Brady* violation concerning the contact report of Officer Tyson. The report was disclosed to the defense during trial, and the defense in fact used the report to attempt to impeach the testimony of the victim that the defendant broke her arm.

With regard to the alleged failure to timely disclose the execution by the victim of an authorization allowing the hospital to release its medical records concerning the incidents in this matter, the record indicates that following the completion of *voir dire*, the state provided the defense "well over a hundred pages" of the victim's medical records. The state explained that the medical records were produced late because the victim had been hesitant to come to court due to her fear of defendant. The trial court observed that the state had to issue a material witness warrant to guarantee the victim's presence for trial because she had not been a cooperative witness for the state. The court found that the state did not have a chance to obtain a medical authorization from the victim until she was located on the material-witness warrant, and the state had provided the defense with copies of the medical records "probably as quickly as they could have obtained them."

At trial, the defense cross-examined the victim as to whether she was intoxicated or on drugs at the time of the alleged first battery by defendant. The victim denied being intoxicated or on drugs at that time, with the exception of medications prescribed by her doctor. In response to defense questioning, the victim stated that she had been prescribed Loricet for her back

and Soma for her muscle spasms. The defense asked the victim if she was taking any other medications at that time, and the victim answered negatively, but explained that other drugs could have been in her system from "the day before or the day before." The defense asked the victim, "[s]o if the medical reports from the hospital stated you had other things in your system, that would not be true?" The victim claimed any such drugs could have been from the "day before or the day before." The defense then asked, "If the hospital report said that you were intoxicated, that would not be true either?" The victim responded that she was not "drinking" at the time of the alleged first battery. The defense asked the victim if she had been prescribed cocaine, to which the victim answered negatively. The defense then asked the victim if she had been prescribed marijuana, and the victim again answered negatively. The defense then asked the victim if she had been prescribed amphetamines, and the victim again answered negatively. The defense asked the victim if she had been prescribed opiates, and the victim replied that Loricet was an opiate.

Initially, we note the defense failed to object to the alleged failure to timely disclose the victim's execution of the authorization to release the hospital's records concerning the incidents in this matter. Accordingly, defendant's argument as to a *Brady* violation based on the alleged failure to timely disclose this evidence was not preserved for appeal. *See* La. C.Cr.P. art. 841.

Moreover, there was no *Brady* violation concerning the alleged failure to timely disclose the victim's execution of the hospital records authorization. The victim's medical records were provided to the defense during trial, and the defense used those records to attempt to impeach the victim's testimony.

In regard to the alleged failure to disclose the existence of police reports related to the LaFloridian Inn arrest of Victoria Roa Williams, the record

indicates that following the victim's testimony concerning the circumstances surrounding her March 17, 2005 videotaped statement,[3] the defense moved for a mistrial. The defense argued that the state had failed to provide the defense with the Bogalusa Police Department records concerning the LaFloridian Inn incident. The state responded that there was no report documenting the victim's arrest, because she had not been arrested. The state explained that the victim had instead been taken "into the possession" or custody of Officer Tommie Sorrell at Duval's, next door to the LaFloridian Inn. The trial court denied the motion for mistrial, noting that the victim's testimony showed she had been taken to the police station but not arrested, and thus, the court did not know what, if any, report the police department would have had concerning the victim. The defense objected to the court's ruling.

In connection with its posttrial motions, the defense argued it had subpoenaed information pertaining to the victim's arrest for possession of cocaine, but neither the state nor the Bogalusa Police Department had provided such information. The state responded, with regard to the subpoena *duces tecum* issued by the court, that the defense had been provided with every report in the possession of the Bogalusa Police Department containing the victim's name. The state indicated there was no report for the victim's arrest at the LaFloridian Inn for the possession of cocaine that was allegedly used to coerce her videotaped statement, because the victim was not arrested. The trial court denied the posttrial motions, reasoning as follows:

> As to whether or not [the victim] was or was not arrested, the testimony indicates that she wasn't. [The defense] issued a subpoena; [the court] signed it; [the Bogalusa Police Department] sent everything with her name on it, including, as [the state] pointed out, complaints that [the victim] had made; arrests that she'd had. They didn't show anything about her having been arrested. You got her to admit from the witness stand she

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[3] See our prior discussion of defendant's second assignment of error, *supra*.

> thought, in her own mind, that she was arrested. She was apprehended at the hotel and brought to the police station. And at that time she gave a statement. Even though it was admitted into evidence, it was never played before the jury. Her testimony, live during the course of the trial, was in fact her testimony. [The defense] had the opportunity to impeach [the victim]; [the defense] did the best [it] could in that regard. The jury had the opportunity to listen to [the victim] and consider all the facts involved. And, based upon that, they believed her testimony despite some inconsistencies; they believed her testimony relative to the fact that the defendant had committed the batteries that he was charged with and being prosecuted for.

The trial court did not abuse its discretion in denying the motion for mistrial. Defendant did not suffer such substantial prejudice that he was deprived of any reasonable expectation of a fair trial. And the state did not suppress evidence favorable to defendant in connection with the LaFloridian Inn arrest of Victoria Roa Williams.

This assignment of error is without merit.

**CONVICTION, HABITUAL-OFFENDER ADJUDICATION, AND SENTENCE ON COUNT I AFFIRMED; CONVICTION AND SENTENCE ON COUNT II AFFIRMED.**