NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 KA 0135

STATE OF LOUISIANA

VERSUS

OTIS L. BEDWELL

Judgment Rendered: JUN 21 2018

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Docket Number 32686

Honorable Charlotte Hughes Foster, Judge Presiding

* * * * * *

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* * * * * *

BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

Crain, J. concurs

GUIDRY, J.

The defendant, Otis L. Bedwell, was charged by bill of information with three counts of indecent behavior with juveniles, violations of La. R.S. 14:81. He pled not guilty and, following a jury trial, was found guilty as charged on all counts. The defendant filed a motion for new trial, which was denied. For each count, the defendant was sentenced to seven years imprisonment at hard labor. The sentences were ordered to run consecutively. The defendant now appeals, designating two counseled assignments of error and fifteen pro se assignments of error. We affirm the convictions and sentences.

FACTS

In 2015, fifteen-year-old A.D.[1] lived with his family in a rented mobile home in Satsuma in Livingston Parish. The mobile home was on the property of the defendant, who was their landlord. In the summer of 2015, the defendant offered to pay A.D. ten dollars an hour for A.D.'s help with various chores and projects on the defendant's property.

A.D. testified at trial that on three separate occasions while A.D. was working with the defendant, the defendant had inappropriate physical contact with him. On July 20, 2015, according to A.D., he and the defendant were in the defendant's shed (an old trailer) to get some tools. The defendant approached A.D. from behind, grabbed his penis, and asked him for sex. A.D. walked away, but continued to work that day. The defendant gave A.D. twenty dollars and told A.D. not to tell anyone. Then on July 24, 2015, A.D. and the defendant were, again, in the shed, getting tools. According to A.D., the defendant put his hand down A.D.'s shorts, touched his penis, and asked A.D. to have sex with him. A.D. walked away, but continued to work. The defendant gave A.D. twenty dollars and, again, told him not to tell anyone. Then on July 28, 2015, A.D. was again in the shed with the

[1] The victim is referred to by his initials. See La. R.S. 46:1844(W).

defendant, getting tools. According to A.D., the defendant pulled down A.D.'s shorts and placed A.D.'s penis in his mouth. A.D. pushed the defendant off and walked out of the shed. The defendant again gave A.D. twenty dollars to keep quiet. A.D. pretended that he was sick and went home shortly thereafter. A few days later, the victim informed his stepmother (in writing) about what had occurred when he was with the defendant. His stepmother told A.D.'s father, and they took A.D. to the police to report the incidents.

The defendant did not testify at trial.

COUNSELED ASSIGNMENTS OF ERROR NOS. 1 and 2

In these related counseled assignments of error, the defendant argues, respectively, the trial court erred in overruling his objections to the State's improper rebuttal closing argument, and the trial court erred in denying his motion for new trial.

The defendant argues in brief that the prosecutor made improper statements on two occasions during his rebuttal closing argument. During his rebuttal, the prosecutor noted that, after the accusations about the defendant came to light, the defendant evicted A.D. and his family from the mobile home they were renting from the defendant. Specifically, the prosecutor stated: "They wanted to get out but they didn't have a choice because they were evicted by him. And not only that, but he took them to court and sued them over the money." Defense counsel objected to this, arguing he did not mention anything about the eviction in his closing argument. The trial court overruled the objection, finding no issue with the prosecutor's statements because defense counsel, in his closing argument, had "called out" the credibility of A.D. and, as such, it was proper rebuttal to defense counsel's "motive argument."

The other allegedly improper argument by the prosecutor was his mention of Nathan James:

> But out of all the people that you've heard about over the last couple of days, two, three days, out of all the people that were over there playing, [A.D.]'s friends, people that came by to work, various people. Is it curious at all that the one person that Otis Bedwell would decide to call up here as a character witness would be Nathan James?

Defense counsel objected, arguing that, in his closing argument, he had not mentioned anything Nathan James had testified about. The trial court overruled the objection. The prosecutor continued his discussion of Nathan James by pointing out that, while James had been called as a character witness for the defendant, James had known the defendant for only two months, at most.

Prior to sentencing, defense counsel filed a motion for new trial and, at the hearing, argued that some of the statements made by the prosecutor in his rebuttal closing argument were prejudicial. Defense counsel averred they "were beyond the course of the closing made and basically made by the final statements; that those were prejudicial to the defendant and made an influence on the verdict." The trial court denied the motion for new trial.

Closing arguments in criminal cases should be restricted to the evidence admitted, to the lack of evidence, to conclusions of fact that may be drawn therefrom, and to the law applicable to the case. Further, the State's rebuttal shall be confined to answering the argument of the defendant. See La. C. Cr. P. art. 774. Prosecutors are allowed wide latitude in choosing closing argument tactics. See State v. Draughn, 05-1825, p. 44 (La. 1/17/07), 950 So. 2d 583, 614, cert. denied, 552 U.S. 1012, 128 S. Ct. 537, 169 L.Ed.2d 377 (2007). The trial judge has broad discretion in controlling the scope of closing arguments, and this court will not reverse a conviction on the basis of improper closing argument unless thoroughly convinced that the remarks influenced the jury and contributed to the verdict. State v. Vansant, 14-1705, p. 6 (La. App. 1st Cir. 4/24/15), 170 So. 3d 1059, 1063. See also State v. Prestridge, 399 So. 2d 564, 580 (La. 1981).

We see no reason to disturb the trial court's denial of the motion for new trial. In his closing argument, defense counsel sought to impugn A.D.'s credibility by pointing out that A.D. had lied in the past. Defense counsel challenged the plausibility of A.D.'s allegations against the defendant by questioning both the "mechanics" of how the defendant could have sexually assaulted A.D. and of A.D.'s description of the shed as the place where the alleged sexual assaults occurred. Accordingly, defense counsel sought to establish that the defendant was innocent because A.D. had fabricated, for motives not clearly known, the allegations he had made against the defendant.

By pointing out in his rebuttal closing argument that the defendant had evicted A.D. and his family from their rented mobile home, the prosecutor was seeking to establish that no one had any motive to lie about what the defendant had done to A.D. That is, both A.D.'s stepmother and father testified that the defendant was good to them and had helped them out in the past when they were having money problems. The prosecutor, thus, was suggesting that rather than having any ulterior motive, A.D. made these allegations against the defendant because they were true. Similarly, in response to defense counsel suggesting in closing argument that the defendant was innocent, the prosecutor pointed out that for a witness called to testify on the defendant's behalf, Eric Nathan James, Jr. was an odd choice for a character witness, because he was only eighteen years old and had known the defendant for only a couple of months.

The trial court in the instant matter instructed the jury following closing arguments that the defendant was presumed innocent, and he was not required to prove his innocence. The trial court further instructed that opening statements and closing arguments were not to be considered as evidence. Much credit should be accorded to the good sense and fairmindedness of jurors who have seen the evidence and heard the argument, and have been instructed by the trial judge that

arguments of counsel are not evidence. Vansant, 14-1705 at p. 8, 170 So. 3d at 1065. See also State v. Mitchell, 94-2078, p. 11 (La. 5/21/96), 674 So. 2d 250, 258, cert. denied, 519 U.S. 1043, 117 S. Ct. 614, 136 L.Ed.2d 538 (1996).

We find nothing improper in these comments by the prosecutor that were in response to defense counsel's tactic in closing argument to suggest that the defendant was innocent and that A.D. was lying. Moreover, even if improper, the prosecutor's remarks in rebuttal clearly did not contribute to the verdict nor make it impossible for the defendant to obtain a fair trial. See La. C. Cr. P. art. 775; Vansant, 14-1705 at p. 8, 170 So. 3d at 1064. See also State v. Jones, 15-0123 pp. 45-46 (La. App. 4th Cir. 12/2/15), 182 So. 3d 251, 280-81, writ denied, 16-0027 (La. 12/5/16), 210 So. 3d 810. We find, therefore, that the trial court properly overruled defense counsel's objections and did not err in denying the defendant's motion for new trial on that basis. See State v. Greenup, 12-881, pp. 12-13 (La. App. 5th Cir. 8/27/13), 123 So. 3d 768, 775-76, writ denied, 13-2300 (La. 3/21/14), 135 So. 3d 617.

These counseled assignments of error are without merit.

PRO SE ASSIGNMENT OF ERROR NO. 1

In his first pro se assignment of error, the defendant argues that the presence of a motorcycle gang in the courtroom created an unacceptable risk of prejudice, in violation of the 6th and 14th Amendments to the United States Constitution.

According to the defendant, there was a "motorcycle gang" in the courtroom (presumedly during trial) that was "wearing political and emotion evoking badges and insignia." The jury, avers the defendant, "articulated that fear," but the trial court failed to address same. The defendant attached two affidavits to his pro se brief; the alleged attestor of each affidavit was in the courtroom during the defendant's trial and attests to there being a motorcycle gang in the courtroom.

We note initially that this court can neither supplement the record with nor

consider on appeal documents that were not introduced or filed into the record during the proceedings below. See State v. Daspit, 16-1522, p. 4 (La. App. 1st Cir. 11/1/17), 233 So. 3d 70, 73. As an appellate court, we have no jurisdiction to review evidence that is not in the record on appeal, and we cannot receive new evidence. Daspit, 16-1522 at p. 4, 233 So. 3d at 73. Accordingly, we have no authority to consider these affidavits as they were not filed into the record below as evidence. See Daspit, 16-1522 at p. 4, 233 So. 3d at 73.

Moreover, there is nothing in the trial record regarding the presence of a "motorcycle gang" in the courtroom. The pages the defendant references in brief about the "fear" of the jurors was their concern with their addresses being known. According to the trial court, just after the jury began deliberations, they asked the bailiff about their addresses being known because "they're concerned about any kind of retaliation." The bailiff told the trial court: "The issue they're having is because they overheard -- heard y'all speaking, and one of them heard their name, is what they told me. Heard y'all say one of their names, and that's the only thing they were concerned about." The trial court had the jurors brought back to the courtroom and instructed them to be concerned only with the evidence from the witness stand and the law they had been charged with.

There is nothing in the trial record about the presence of a motorcycle gang or the "fear" in the jurors this may have engendered. The defendant has made no showing of how his right to a fair trial was prejudiced in any way.

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 2

In his second pro se assignment of error, the defendant argues it was "contrary to law to choose 14 persons to constitute the first jury pool panel," depriving him of due process and a fair trial.

The defendant cites La. C. Cr. P. art. 409.3(D), which provides:

> A panel of the central jury pool shall be selected at random from persons in the central jury pool. The number of persons selected to comprise the panel shall be determined pursuant to local court rules but the number shall be no less than three times the number of persons needed to complete the jury and in no event less than ten.

There were no objections by defense counsel during voir dire regarding the number of prospective jurors picked for each panel. Accordingly, the issue is not properly before this court for review. See La. C. Cr. P. art. 841(A).

Moreover, a general venire, grand jury venire, or petit jury venire shall not be set aside for any reason unless fraud has been practiced or some great wrong committed that would work irreparable injury to the defendant. See La. C. Cr. P. art. 419(A). The defendant has the burden of establishing fraud or irreparable injury in the jury selection process. The defendant herein has not met that burden. There is no evidence that any individual or group was arbitrarily excluded from the jury panel. The defendant was allowed proper voir dire and exhausted the challenges provided by law. See State v. Brown, 414 So. 2d 726, 728 (La. 1982). See also State v. Jordan, 31,568, p. 19 (La. App. 2nd Cir. 2/24/99), 728 So. 2d 954, 965, writ denied, 99-0893 (La. 10/8/99), 750 So. 2d 177 (finding the defendant failed to show that procedure for drawing venire that did not comply with new criminal procedure article worked any injustice).

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 3

In his third pro se assignment of error, the defendant argues that a non-qualified juror was allowed to serve on the jury, which denied the defendant a fair trial.

According to the defendant, juror Christopher Christensen had a relationship with the lead investigator in the case, and he was president of a group who "hired the investigator."

During voir dire, Christensen indicated that he knew Detective Trevor

Sterling. When asked by the trial court if the detective was a friend or acquaintance, Christensen stated that he was an acquaintance, that he (the detective) ran the patrols at Christensen's "homeowners," and that since Christensen was the "president," he has to "deal with" the detective. The trial court asked Christensen if knowing Detective Sterling would affect his ability to be fair and impartial in the case. Christensen replied, "No, ma'am." See La. C. Cr. P. art. 797.

Moreover, both the State and defense counsel wanted Christensen to serve on the jury. Defense counsel did not challenge him for cause, used his six peremptory strikes on other prospective jurors, and lodged no objection regarding Christensen sitting as a juror. To preserve the right to seek appellate review, a party must state an objection contemporaneously with the occurrence of the alleged error as well as the grounds for that objection. See La. C. Cr. P. art. 841(A). The defendant's failure here to object to or articulate any reservation regarding Christensen's serving on the jury precludes an objection from being raised for the first time on appeal. See State v. Florant, 12-736, p. 23 (La. App. 5th Cir. 5/23/13), 119 So. 3d 635, 648, writ denied, 13-1451 (La. 1/10/14), 130 So. 3d 319. Accordingly, the defendant's argument is not properly before this court for review.

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 4

In his fourth pro se assignment of error, the defendant argues the "District Attorney" waited eleven months to answer the request for a bill of particulars.

The defendant avers that the prosecutor's answer to the request for a bill of particulars did not set forth the elements of the crime; further, the police report did not fully and expressly set forth the elements of the offense.

There is no requirement that a police report set forth with any particularity the elements of the offense. Further, the "report" that was introduced into evidence

at trial was a joint exhibit, filed during Detective Sterling's redirect examination, which contained a police narrative of the events leading to the defendant's arrest. A short time later, the prosecutor and defense counsel entered a stipulation on record to change the date of investigation in the narrative report from July 5, 2015 to August 5, 2015.

The bill of information charged the defendant with three counts of indecent behavior with a juvenile upon A.D., in violation of La. R.S. 14:81. The dates of each offense are set out in the bill. The information contained in the bill of information was sufficient.

The Louisiana Constitution of 1974 provides that an accused shall be informed of the nature and cause of the accusation against him. La. Const. 1974, art. I, § 13. That requirement is implemented by La. C. Cr. P. art. 464, which provides:

> The indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall state for each count the official or customary citation of the statute which the defendant is alleged to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

Article 465, however, authorizes the use of specific short-form indictments in charging certain offenses. The constitutionality of the short forms has been consistently upheld by the Louisiana Supreme Court. See State v. Campbell, 06-0286, p. 95 (La. 5/21/08), 983 So. 2d 810, 870. When those forms are used, it is intended that a defendant may procure details as to the statutory method by which he committed the offense through a bill of particulars. La. C. Cr. P. art. 465, comment (a); Campbell, 06-0286 at p. 95, 983 So. 2d at 870. See also State v. Noil, 01-521, p. 19 (La. App. 5th Cir. 12/26/01), 807 So. 2d 295, 309, writ denied, 02-0276 (La. 10/25/02), 827 So. 2d 1177.

In any event, the time for testing the sufficiency of a bill of information is

before trial with a motion to quash. See La. C. Cr. P. arts. 532 & 535; State v. Draughn, 05-1825, p. 60 (La. 1/17/07), 950 So. 2d 583, 623. The defendant did not file a motion to quash the bill of information charging him with indecent behavior with juveniles.[2] Moreover, there were no objections lodged by defense counsel regarding the bill of particulars, including any timeliness issue. To preserve the right to seek appellate review, a party must state an objection contemporaneously with the occurrence of the alleged error, as well as the grounds for that objection. See La. C. Cr. P. art. 841(A).

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 5

In his fifth pro se assignment of error, the defendant argues he was denied a fair trial because the trial court and prosecutor made direct and indirect statements about his failure to testify.

The defendant's assertion is groundless. The defendant refers to remarks the trial court made during jury charges, wherein it informed the jurors that the defendant was presumed innocent, that the defendant was not required to testify, and that no presumption of guilt could be raised and no inference of any kind could be drawn from the fact the defendant did not testify. These were standard jury charges, and there was nothing improper about them. The defendant also suggests the "DA," using the police report, made an indirect reference to the defendant's failure to testify by stating that "Mr. Bedwell advised that he would not be providing an official statement without his attorney being present." There is nothing in the foregoing statement referencing the defendant's failure to testify at trial.

[2] The defendant did file a motion to quash the bill of information before the bill was amended. Prior to being amended, the bill of information charged the defendant with two counts of sexual battery and one count of oral sexual battery. The defendant argued in his motion to quash that nothing in the bill of information suggested the alleged victim did not consent.

Moreover, the statement was part of the police narrative, introduced as a joint exhibit at trial, already addressed in the fourth pro se assignment of error.

Finally, there was no objection by the defendant to any of the foregoing statements; nor was there any motion for mistrial by the defendant. See La. C. Cr. P. art. 841(A); La. C. Cr. P. art. 770(3); State v. Mitchell, 00-1399 (La. 2/21/01), 779 So. 2d 698.

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 6

In his sixth pro se assignment of error, the defendant argues the trial court failed to rule on his motion to quash.

This argument is baseless. The defendant notes in brief that the hearing on the motion to quash the bill of information was held on March 17, 2016. There is no transcript of the hearing in the appellate record. A minute entry, however, for March 17, 2016 indicates the parties argued the motion to quash, and the trial court denied the motion. The defendant suggests in brief the trial court did not rule on the motion, and that the minute entry regarding the denial of the motion is erroneous.

In any event, the issue is moot. The motion to quash was prior to the amendment of the bill of information; that is, when the defendant was charged with three counts of sexual battery. The State did not amend the bill of information to reflect the current charges (indecent behavior with juveniles) until August 29, 2016, and the defendant never filed a motion to quash this amended bill of information.

Accordingly, this pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 7

In his seventh pro se assignment of error, the defendant argues that four related procedural errors denied him a fair trial.

According to the defendant, the trial court committed all four procedural errors; that is, it improperly swore in the jury, improperly questioned the jury, did not properly sequester the jurors, and rushed voir dire.

There were no contemporaneous objections to any of these alleged errors and, as such, none of these issues are properly before us for appellate review. See La. C. Cr. P. art. 841(A). Moreover, a review of the record reveals that the trial court did nothing that prejudiced the defendant or would require a reversal.

The defendant in brief suggests it was improper for the trial court to swear the jury in as a group, rather than individually; further, according to the defendant, the trial court erred in not swearing in a prospective juror "immediately" after he was selected by the prosecutor and defense counsel. These averments are baseless.

Louisiana Code of Criminal Procedure art. 788 states, in pertinent part, that when a prospective juror is accepted by the State and the defendant, he or she shall be sworn immediately as a juror. During voir dire, four jurors were picked (for a six-person jury). The trial court allowed these four jurors to go to lunch, but admonished them that it was "really, really, really, really important that no one discuss anything about this case or anything that has occurred in this courtroom." The four jurors returned to the courtroom after lunch. Two more jurors and two alternate jurors were picked from the second panel, and the entire jury was sworn in as a group.

Thus, while there was arguably a technical non-compliance by the trial court with La. C. Cr. P. art. 788, the defendant has made no showing that he was prejudiced in any way by the jurors not being immediately sworn in after they were selected to serve. Any variation from the strict letter of the law does not permit the composition of a petit jury to be set aside because of insignificant technicalities or irregularities unless there is a showing that some fraud has been practiced or great wrong committed which would work irreparable injury to the accused. See La. C.

Cr. P. art. 419; State v. Perry, 420 So. 2d 139, 150 (La. 1982). The defendant has not demonstrated that his constitutional right to an impartial jury was violated merely as a result of inconsequential noncompliance with the selection of the venire. State v. Gallow, 452 So. 2d 1288, 1290 (La. App. 3rd Cir. 1984). The defendant herein has made no showing that there was any activity which was incompatible with a juror's duties. See Id. Accordingly, he has failed to show some great wrong committed which would work irreparable injury to the accused. Id.

Also, the defendant's contention notwithstanding, not only is the swearing of the jurors as a group permissible, it is statutorily authorized. See La. C. Cr. P. art. 790. Further, despite the defendant's contention, the trial court was under no obligation to sequester the jurors. La C. Cr. P. art. 791 provides for sequestration of jurors as follows:

> A. A jury is sequestered by being kept together in the charge of an officer of the court so as to be secluded from outside communication, except as permitted by R.S. 18:1307.2.
>
> B. In capital cases, after each juror is sworn he shall be sequestered, unless the state and the defense have jointly moved that the jury not be sequestered.
>
> C. In noncapital cases, the jury shall be sequestered after the court's charge and may be sequestered at any time upon order of the court.

In a noncapital case, the trial judge has discretion to decide whether or not to sequester a jury. The purpose of sequestering jurors is to protect them from outside influence and from basing their verdict upon anything other than the evidence developed at trial. State v. Williams, 445 So. 2d 1171, 1176 (La. 1984).

In the present case, during and after voir dire, the court advised those jurors selected not to discuss the case amongst themselves or with other persons, including parties, their attorneys, or witnesses. There was no showing that the jury disregarded these instructions or that the defendant was prejudiced by the trial court's failure to sequester this noncapital jury. See State v. Kinsel, 00-1610, pp.

13-14 (La. App. 5th Cir. 3/28/01), 783 So. 2d 532, 540, writ denied, 01-1230 (La. 3/28/02), 812 So. 2d 641. Moreover, any sequestration requirement was impliedly waived by the parties. See State v. Taylor, 93-2201, pp. 32-33 (La. 2/28/96), 669 So. 2d 364, 380-81, cert. denied, 519 U.S. 860, 117 S. Ct. 162, 136 L.Ed.2d 106 (1996).

Regarding the alleged rushing by the trial court during voir dire, the defendant quotes several statements by the trial court, including:

"Now, you-all think, because this last jury selection took two hours. You-all think you can narrow it down and get smaller?"; "It shouldn't take nearly as long."; and "We're hoping to maybe finish with the jury selection with this panel." The statement by the trial court that the defendant refers to as the trial court limiting questioning was: ". . . because I wouldn't spend a lot of time because mathematically [the prosecutor's] right."

We find nothing improper with the trial court's directing and handling of the voir dire. The trial court was simply pointing out that the picking of jurors from the second panel should go faster because there were fewer jurors to pick, and also explaining to defense counsel that while the trial court would not refuse to allow defense counsel to question a particular potential juror, it was nearly mathematically impossible for that potential juror to be chosen. The defendant has made no showing that his right to fair trial was prejudiced in any way.

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 8

In his eighth pro se assignment of error, the defendant argues the trial court erred in allowing the State to introduce other crimes evidence.

Prior to trial, the State filed notice of intent to use similar crimes, wrongs, or acts. Specifically, the State sought to introduce evidence of similar acts between the defendant and other male juveniles, pursuant to La. C. E. Art. 412.2. In the

appellate record before us, we have found no response by the defendant to the State's notice of intent. There is no record of a Prieur hearing or of any objections lodged by the defendant, including before or after trial, or during the testimony of the other victims of the defendant. See State v. Taylor, 16-1124 (La. 12/1/16), 217 So. 3d 283; State v. Prieur, 277 So. 2d 126 (La. 1973). Accordingly, the defendant has failed to preserve the right to seek appellate review of other crimes evidence introduced at trial. See La. C. E. art. 103(A)(1); La. C. Cr. P. art. 841(A); State v. Dilosa, 01-0024, p. 16 (La. App. 1st Cir. 5/9/03), 849 So. 2d 657, 670-71, writ denied, 03-1601 (La. 12/12/03), 860 So. 2d 1153.

Moreover, we find no error in the admission of the other crimes evidence. A trial court's ruling on the admissibility of evidence pursuant to La. C. E. art. 412.2 is reviewed for an abuse of discretion. State v. Wright, 11-0141, pp. 10-11 (La. 12/6/11), 79 So. 3d 309, 316. See also State v. Cosey, 97-2020, p. 13 (La. 11/28/00), 779 So. 2d 675, 684, cert. denied, 533 U.S. 907, 121 S. Ct. 2252, 150 L.Ed.2d 239 (2001).

At trial, several witnesses testified about their encounters with the defendant when they were younger. One man testified that when he was fifteen years old, in the late 1970s, the defendant grabbed his legs and told him he wanted to suck his penis. Another man testified that in the late 1980s when he was fourteen years old, the defendant showed him pictures of males and asked him if it excited him to look at male parts, and he told the defendant "no." He testified that the defendant tried to grab his penis, and he told the defendant he was not that type of person. The defendant then got on his knees and told the fourteen-year-old he wanted to suck his penis. The boy told his father, who reported it to the authorities. Finally, a woman testified that when she was sixteen years old, in the mid-1990s, she was in a trailer with several people, including her fifteen-year-old brother and the defendant. According to this witness, she walked past the bathroom and saw the

defendant and her brother in there. The defendant grabbed her brother in the groin area and offered him twenty dollars to suck his penis. She and her brother went home and told their mother. They filed a police report. According to the witness, the defendant ultimately pled guilty to pandering.

Louisiana Code of Evidence article 404(B)(1) provides:

> Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Generally, evidence of criminal offenses other than the offense being tried is inadmissible as substantive evidence because of the substantial risk of grave prejudice to the defendant. In order to avoid the unfair inference that a defendant committed a particular crime simply because he is a person of criminal character, other crimes evidence is inadmissible unless it has an independent relevancy besides simply showing a criminal disposition. State v. Lockett, 99-0917, p. 3 (La. App. 1st Cir. 2/18/00), 754 So. 2d 1128, 1130, writ denied, 00-1261 (La. 3/9/01), 786 So. 2d 115.

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C. E. art. 401. All relevant evidence is admissible except as otherwise provided by positive law. Evidence which is not relevant is not admissible. La. C. E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, or waste of time. La. C. E. art. 403.

Louisiana Code of Evidence art. 412.2 provides:

> A. When an accused is charged with a crime involving sexually assaultive behavior, or with acts that constitute a sex offense involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of another crime, wrong, or act involving sexually assaultive behavior or acts which indicate a lustful disposition toward children may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403.
>
> B. In a case in which the state intends to offer evidence under the provisions of this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.
>
> C. This Article shall not be construed to limit the admission or consideration of evidence under any other rule.

Louisiana Code of Evidence art. 412.2 was a legislative response to earlier decisions from the Louisiana Supreme Court refusing to recognize a "lustful disposition" exception to the prohibition of other crimes evidence under La. C. E. art. 404. State v. Buckenberger, 07-1422, p. 9 (La. App. 1st Cir. 2/8/08), 984 So. 2d 751, 757, writ denied, 08-0877 (La. 11/21/08), 996 So. 2d 1104. Ultimately, questions of relevancy and admissibility of evidence are discretion calls for the trial court. Such determinations regarding relevancy and admissibility should not be overturned absent a clear abuse of discretion. See State v. Martin, 17-1100, p. 6 (La. App. 1 Cir. 2/27/18), ___ So. 3d ___, ___.; State v. Olivieri, 03-563, p. 19 (La. App. 5th Cir. 10/28/03), 860 So. 2d 207, 218.

Relevancy and the balancing test provided in Article 403 are the prerequisites for the admissibility of evidence under Article 412.2. Thus, evidence of a prior sexual offense indicating that the defendant has a lustful disposition toward young males is admissible if it is relevant and if the probative value of the evidence outweighs its prejudicial effect. See State v. Williams, 09-48, pp. 10-11 (La. App. 5th Cir. 10/27/09), 28 So. 3d 357, 364, writ denied, 09-2565 (La. 5/7/10), 34 So. 3d 860. See also State v. Fisher, 09-1187, p. 10 (La. App. 4th Cir. 5/18/10),

40 So. 3d 1020, 1026-27. In each of the three cases of prior sexual crimes, the defendant molested his male teenaged victim and/or attempted to have oral intercourse with him. Also in all of the cases, the defendant knew, or was friendly with his male victims, and used that familiarity to take advantage of them. It is clear that for many years the defendant has exhibited a clear pattern of behavior made manifest by the continuity and consistency with which the other crimes were committed. His predilection to pedophilic activities appears long standing and firmly entrenched. See State v. Driggers, 554 So. 2d 720, 727 (La. App. 2nd Cir. 1989).

Accordingly, we find no abuse of discretion in the trial court's finding that the other crimes evidence involving these victims was clearly admissible under La. C. E. art. 412.2 to prove the defendant's lustful disposition toward young males. Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice under La. C. E. art. 403. See State v. Verret, 06-1337, pp. 19-21 (La. App. 1st Cir. 3/23/07), 960 So. 2d 208, 220-22, writ denied, 07-0830 (La. 11/16/07), 967 So. 2d 520. See also State v. Johnson, 43,843, pp. 13-17 (La. App. 2nd Cir. 1/28/09), 2 So. 3d 606, 614-16, writ denied, 09-0464 (La. 11/6/09), 21 So. 3d 300; State v. E.J.F., 08-674, pp. 7-9 (La. App. 3rd Cir. 12/10/08), 999 So. 2d 224, 230-31.

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 9

In his ninth pro se assignment of error, the defendant argues the trial court abused its discretion in not recognizing "catastrophic conditions" and by not cautioning jurors, which denied him the right to a fair trial.

The defendant notes the mass flooding in Livingston Parish during the second week of August in 2016. According to the defendant, defense counsel informed the trial court his home and office flooded, causing records to be ruined

or scattered. Defense counsel asked for an "extension" and was granted only forty-five days. The defendant also avers there was an emotional outburst by a witness near the beginning of trial, and another outburst by a witness, both of which the trial court failed to caution the jury about.

None of these claims have merit. There were no objections raised regarding these issues. See La. C. Cr. P. art. 841(A). Moreover, when it flooded in August of 2016, defense counsel was granted a continuance by the trial court. Trial did not begin until October 18, 2016. There was no "outburst" near the beginning of trial. The page numbers listed by the defendant actually reference the sentencing hearing, wherein the trial court noted that one of the defendant's victims from years ago had left the courtroom crying. The other incidents were when A.D.'s father was non-responsive to questioning by defense counsel and was instructed by the trial court to answer the questions. Shortly thereafter, A.D.'s father wanted some water, so the trial court took a break.

The defendant has made no showing of how any of these issues denied his right to a fair trial. Accordingly, this pro se assignment is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 10

In his tenth pro se assignment of error, the defendant argues the trial court erred in not informing the jury of sentencing guidelines. Specifically, the defendant avers he had a right to be tried by a jury who knew the sentencing implications of its decisions.

When the penalty imposed by the statute is a mandatory one, the trial judge must inform the jury of the penalty on the request of the defendant and must permit the defense to argue the penalty to the jury. State v. Hooks, 421 So. 2d 880, 886 (La. 1982). In instances other than when a mandatory legislative penalty with no judicial discretion as to its imposition is required following verdict, the decision to permit or deny an instruction or argument on an offense's penalty is within the

discretion of the trial judge. See State v. Jackson, 450 So. 2d 621, 633-34 (La. 1984).

The record before us does not indicate defense counsel ever requested that the trial court inform the jury of the penalty range or that he be permitted to argue the penalty to the jury. Moreover, in this case, the seven-year sentence the defendant received for indecent behavior with juveniles (for each count) was not mandatory. See La. R.S. 14:81(H)(1). Thus, it would have been within the trial court's discretion to deny the argument and instruction.

The defendant also argues that at a sentencing hearing on November 28, 2016, the trial court allowed a motorcycle gang member "beyond the rail" to "serve as a comfort person." No need for this person had been expressed, according to the defendant.

There is no record of a motorcycle gang member, and defense counsel made no objection regarding the alleged issue. See La. C. Cr. P. art. 841(A). Moreover, sentencing was on January 26, 2017, not November 28, 2016.

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 11

In his eleventh pro se assignment of error, the defendant argues the trial court erred in failing to sequester A.D.'s stepmother, who testified at trial.

Just before A.D. testified, the prosecutor argued that A.D.'s father and stepmother were allowed to stay in the courtroom because they were registered as victims under Title 46; further, they were exempt from sequestration under La. C. E. Art. 615. Defense counsel objected (but did not move for a mistrial), arguing that "stepmother" did not fall under the definition of "family." The trial court disagreed, and allowed A.D.'s father and stepmother to remain.

Louisiana Code of Evidence art. 615 provides in pertinent part:

> **A. As a matter of right.** On its own motion the court may, and

> on request of a party the court shall, order that the witnesses be excluded from the courtroom or from a place where they can see or hear the proceedings, and refrain from discussing the facts of the case with anyone other than counsel in the case. In the interests of justice, the court may exempt any witness from its order of exclusion.
>
> **B. Exceptions.** This Article does not authorize exclusion of any of the following:
>
> * * * * *
>
> (4) The victim of the offense or the family of the victim.

The purpose of sequestration is to assure that a witness will testify as to his own knowledge of the events, to prevent the testimony of one witness from influencing the testimony of others, and to strengthen the role of cross-examination in developing facts. State v. Nevers, 621 So. 2d 1108, 1112 (La. App. 1st Cir.), writ denied, 617 So. 2d 906 (La. 1993). The resolution of sequestration problems is within the sound discretion of the trial court. Id. On appeal, the reviewing court will look at the facts of each case to determine whether a sequestration violation resulted in prejudice to the accused. State v. Cooper, 12-0227, p. 2 (La. App. 1st Cir. 9/21/12), 2012 WL 4335453 (unpublished), writ denied, 12-2308 (La. 4/5/13), 110 So. 3d 1073.

We see no reason to disturb the trial court's ruling. Moreover, even if there were a sequestration violation, there was no prejudice to the defendant. A.D.'s stepmother testified after A.D. testified. A.D. established the defendant's guilt. A.D.'s stepmother's testimony was merely cumulative and corroborative of A.D.'s testimony. Accordingly, sequestration error, if any, was harmless. See State v. Barber, 30,019, pp. 29-30 (La. App 2nd Cir. 1/21/98), 706 So. 2d 563, 578, writ denied, 98-1353 (La. 10/9/98), 726 So. 2d 24; State v. Jasper, 14-0125, pp. 17-19 (La. App. 4th Cir. 9/17/14), 149 So. 3d 1239, 1251, writ denied, 14-2170 (La. 6/1/15), 171 So. 3d 267; State v. Warren, 437 So. 2d 836, 839-40 (La. 1983). Cf. State v. Lopez, 562 So. 2d 1064, 1065-67 (La. App. 1st Cir. 1990).

This pro se assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NO. 12

In his twelfth pro se assignment of error, the defendant argues his seven-years sentences imposed (for each count) are excessive and cruel and unusual.

The record does not contain an oral or written motion to reconsider sentence. Louisiana Code of Criminal Procedure article 881.1(E) provides that the failure to file or make a motion to reconsider sentence precludes the defendant from raising an excessive sentence argument on appeal. Under the clear language of La. C. Cr. P. art. 881.1(E), failure to make or file a motion to reconsider sentence precludes a defendant from raising an objection to the sentence on appeal, including a claim of excessiveness. As noted by the defendant, a motion to reconsider sentence was not filed in this case. Accordingly, the defendant is procedurally barred from having his challenge to the sentences reviewed by this court on appeal. State v. Felder, 00-2887, p. 10 (La. App. 1st Cir. 9/28/01), 809 So. 2d 360, 369, writ denied, 01-3027 (La. 10/25/02), 827 So. 2d 1173. See State v. Collins, 09-1617, p. 4 (La. App. 1st Cir. 2/12/10), 35 So. 3d 1103, 1106-07, writ denied, 10-0606 (La. 10/8/10), 46 So. 3d 1265; State v. Duncan, 94-1563, p. 2 (La. App. 1st Cir. 12/15/95), 667 So. 2d 1141, 1143 (en banc per curiam).

PRO SE ASSIGNMENTS OF ERROR NOS. 13 and 14

In these related pro se assignments of error, the defendant argues the evidence was insufficient to support the convictions. Specifically, the defendant contends, respectively, the State failed to prove specific intent, and A.D.'s inconsistent statements were "reversible error."

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See La. C. Cr. P. art. 821(B); State v. Ordodi, 06-0207, p. 10 (La. 11/29/06), 946 So. 2d 654, 660; State v. Mussall, 523 So. 2d 1305, 1308-09 (La. 1988). The Jackson standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See State v. Patorno, 01-2585, p. 5 (La. App. 1st Cir. 6/21/02), 822 So. 2d 141, 144.

Louisiana Revised Statutes 14:81 provides in pertinent part:

> A. Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:
>
> (1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. Lack of knowledge of the child's age shall not be a defense[.]

Indecent behavior with juveniles is a specific intent crime where the State must prove the defendant's intent to arouse or gratify his sexual desires by his actions with a child. State v. Wallace, 41,720, p. 5 (La. App. 2nd Cir. 1/24/07), 949 So. 2d 556, 559. Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1).

The word "lewd" means lustful or indecent, and signifies that form of immorality which relates to sexual impurity carried on in a wanton manner. It is identified with obscenity and measured by community norms for morality. The word "lascivious" means tending to incite lust, indecent, obscene, and tending to deprave the morals in respect to sexual relations. State v. Holstead, 354 So. 2d 493, 497-98 (La. 1977). Finding that an act is lewd or lascivious depends upon the

time, the place, and all of the circumstances surrounding its commission, including the actual or implied intention of the actor. State v. Sturdivant, 27,680, p. 6 (La. App. 2nd Cir. 2/28/96), 669 So. 2d 654, 659.

Thus, to convict a defendant of this offense, the State must prove that (1) there was an age difference of greater than two years between the accused and the victim, who was not yet 17; (2) the accused committed a lewd or lascivious act upon the person or in the presence of the child; and (3) that the accused had the specific intent to arouse or gratify either his own or the victim's sexual desires. State v. Bugbee, 34,524, p. 7 (La. App. 2nd Cir. 2/28/01), 781 So. 2d 748, 755.

The defendant asserts in brief that in criminal cases, the jury has no right to infer intent. This assertion is patently erroneous. Specific intent to commit indecent behavior with juveniles need not be proven as fact, but may be inferred from the circumstances and actions of the defendant. State v. Anderson, 09-934, pp. 6-7 (La. App. 5th Cir. 3/23/10), 38 So. 3d 953, 958, writ denied, 10-0908 (La. 11/12/10), 49 So. 3d 887.

A.D.'s testimony clearly established the crime of indecent behavior with a juvenile. The defendant committed lewd or lascivious acts upon A.D., who was under seventeen years of age at the time. The defendant was sixty-seven years old at the time. A.D. testified that on three different occasions, the defendant grabbed A.D.'s penis and asked for sex. On one occasion, the defendant actually placed A.D.'s penis in his mouth. Any juror could have rationally concluded that the defendant, by his actions, had the specific intent to arouse or gratify his sexual desires with a child. See State v. Teague, 04-1132, p. 10 (La. App. 3rd Cir. 2/2/05) 893 So. 2d 198, 205; State v. Darbonne, 01-39, pp. 7-8 (La. App. 3rd Cir. 6/6/01), 787 So. 2d 576, 581, writ denied, 02-0533 (La. 1/31/03), 836 So. 2d 64.

The defendant in brief also attacks the credibility of A.D. The defendant notes that A.D. could not remember exactly when he went on vacation to Florida.

The defendant avers that A.D. stated eight times at trial that the defendant said nothing about the incidents after they left the shed. The defendant points out, however, that in the Children's Advocate Center (CAC) interview, A.D. said that after they left the shed, the defendant offered him twenty dollars. A.D. also stated in the CAC interview that the first time the defendant molested him in the shed, he and the defendant were still in the shed when the defendant gave A.D. twenty dollars and told A.D. not to tell anyone. At trial, however, when A.D. was asked about the first incident, A.D. testified that when he (A.D.) first walked out of the shed, the defendant came up behind him and gave him twenty dollars to be quiet. Thus, according to the defendant, A.D. was inconsistent with whether he was given money inside or outside of the shed.

These arguments raised by the defendant concern credibility issues. The jury heard all of the testimony and chose to believe the accounts of A.D. The defendant did not testify. In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. State v. Higgins, 03-1980, p. 6 (La. 4/1/05), 898 So. 2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S. Ct. 182, 163 L.Ed.2d 187 (2005). The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. State v. Taylor, 97-2261, pp. 5-6 (La. App. 1st Cir. 9/25/98), 721 So. 2d 929, 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See State v. Mitchell, 99-3342, p. 8 (La. 10/17/00), 772 So. 2d 78,

83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. State v. Quinn, 479 So. 2d 592, 596 (La. App. 1st Cir. 1985).

When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. See State v. Moten, 510 So. 2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So. 2d 126 (La. 1987). The jury's verdicts reflected the reasonable conclusion that, based on the testimony of A.D., he was sexually abused by the defendant. The testimony of the victim alone is sufficient to prove the elements of the offense. See State v. Orgeron, 512 So. 2d 467, 469 (La. App. 1st Cir. 1987), writ denied, 519 So. 2d 113 (La. 1988). In finding the defendant guilty, the jury clearly rejected the defendant's theory of innocence. See Moten, 510 So. 2d at 61-62.

After a thorough review of the record, we find the evidence supports the jury's verdicts. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of indecent behavior with juveniles. See State v. Calloway, 07-2306, pp. 1-2 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam).

These pro se assignments of error are without merit.

PRO SE ASSIGNMENT OF ERROR NO. 15

In his fifteenth pro se assignment of error, the defendant argues that he received ineffective assistance of counsel.

According to the defendant, defense counsel was ineffective for the following reasons:

- Defense counsel refused defendant's request to file writ of supervisory

control with this court when the trial court granted only a 45-day extension for attorney;

- Defense attorney failed to investigate or be familiar with the law and local court rules for selecting jurors;

- Defense counsel refused defendant's instructions to strike for cause, if possible, or peremptorily, Christopher Christensen, who testified to a relationship with a detective in the case and Ms. Hall, who testified to being raped as a child;

- Defense counsel refused defendant's express desire to attack the bill of particulars;

- Defense counsel refused to file an appeal and did not inform defendant of his intention not to file until the deadlines passed;

- Defense counsel refused defendant's request to pursue theories of defense, including an alibi;

- Defense counsel failed to properly prepare his witnesses;

- Defense counsel was either uninformed or ignored the law by not objecting to the presence of a motor cycle gang in the courtroom.

In Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), the United States Supreme Court enunciated the test for evaluating the competence of trial counsel:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

In evaluating the performance of counsel, the "inquiry must be whether counsel's assistance was reasonable considering all the circumstances." Strickland, 466 U.S. at 688, 104 S. Ct. at 2065. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694,

104 S. Ct. at 2068. It is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. State v. Serigny, 610 So. 2d 857, 859-60 (La. App. 1st Cir. 1992), writ denied, 614 So. 2d 1263 (La. 1993).

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. Carter, 96-0337, p. 10 (La. App. 1st Cir. 11/8/96), 684 So. 2d 432, 438.

Claims of ineffective assistance of counsel, by their very nature, are highly fact-sensitive. State v. Henry, 00-2250, p. 6 (La. App. 1st Cir. 5/11/01), 788 So. 2d 535, 540, writ denied, 01-2299 (La. 6/21/02), 818 So. 2d 791. A defendant who asserts a claim of ineffective counsel based upon a failure to investigate must allege with specificity what the investigation would have revealed and how it would have altered the outcome of a trial or sentencing. General statements and conclusory charges will not suffice. See State v. Castaneda, 94-1118, p. 14 (La. App. 1st Cir. 6/23/95), 658 So. 2d 297, 306. See also State v. Jordan, 35,643, pp. 15-16 (La. App. 2nd Cir. 4/3/02), 813 So. 2d 1123, 1134, writ denied, 02-1570 (La. 5/30/03), 845 So. 2d 1067. Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. Strickland, 466 U.S. at 690-91, 104 S. Ct. at 2066. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Id. In any

ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. Id.

The filing and pursuit of pretrial motions are squarely within the ambit of the attorney's trial strategy, and counsel is not required to engage in efforts of futility. See State v. Shed, 36,321, p. 13 (La. App. 2nd Cir. 9/18/02), 828 So. 2d 124, 132, writ denied, 02-3123 (La. 12/19/03), 861 So. 2d 561. Moreover, once a defendant has the assistance of counsel, the vast array of trial decisions, strategic and tactical, which must be made before and during trial rest with an accused and his attorney, and the fact that a particular strategy is unsuccessful does not establish ineffective assistance of counsel. State v. Folse, 623 So. 2d 59, 71 (La. App. 1st Cir. 1993).

Regarding these claims of ineffective assistance of counsel, the defendant has made no showing of deficient performance by defense counsel; and even had he shown deficient performance, the defendant has failed to demonstrate how such deficiency would have prejudiced him. In simply setting out a list of unsubstantiated assertions, the defendant has failed to offer sufficient facts to establish deficient performance by counsel. In support of his claims, the defendant has provided only general statements and conclusory assertions, failing to set forth his arguments with any specificity to support his assertions regarding counsel's deficiencies. The defendant's claim of ineffective assistance of counsel, therefore, must fall. See State v. Robinson, 471 So. 2d 1035, 1038-39 (La. App. 1st Cir.), writ denied, 476 So. 2d 350 (La. 1985).

If the defendant feels there is evidence to present beyond what is contained in the instant record, such evidence must be adduced in an evidentiary hearing in the district court. The defendant would have to satisfy the requirements of La. C. Cr. P. art. 924, et seq., in order to receive such a hearing. See State v. Albert, 96-1991, p. 11 (La. App. 1st Cir. 6/20/97), 697 So. 2d 1355, 1363-64. See also State v.

Johnson, 06-1235, p. 15 (La. App. 1 Cir. 12/28/06), 951 So. 2d 294, 304.

This pro se assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.