NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 0296

STATE OF LOUISIANA

VERSUS

RAYMOND DECKELMAN

DATE OF JUDGMENT: SEP 14 2011

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 475289, DIVISION I, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE REGINALD T. BADEAUX, III, JUDGE

* * * * * *

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* * * * * *

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

Guidry, J. concurs.

KUHN, J.

The defendant, Raymond Deckelman, was charged by bill of information with manslaughter, a violation of La. R.S. 14:31. He pled not guilty and, following a jury trial, the defendant was found guilty as charged. The State subsequently filed a multiple offender bill, and the defendant was adjudicated a fourth-felony habitual offender. The trial court sentenced the defendant to forty years at hard labor without benefit of probation or suspension of sentence. We affirm the conviction, habitual offender adjudication, and sentence.

On appeal, the defendant has designated the following counseled assignments of error:

> 1. The improper jury charges on self-defense violated fundamental requirements of due process and requires that the verdict be reversed.
>
> 2. In the alternative, due to the ineffective assistance of trial counsel, the verdict should be reversed.

The defendant has further designated the following *pro se* assignments of error:

> 1. Defense counsel was ineffective for allowing the prosecutor to suppress Brady information.
>
> 2. Defense counsel was ineffective for failing to object to perjured statements of State witnesses.
>
> 3. Defense counsel was ineffective for failing to move for a mistrial when the prosecutor, during closing argument, vouched for the veracity of State witnesses and called the defendant a liar.
>
> 4. The prosecutor failed to correct testimony she knew to be false.
>
> 5. The prosecutor violated the defendant's due process when she expressed her personal opinion about the credibility of witnesses and the defendant's guilt during closing argument.

FACTS

In 2009, Kenneth Beeson and his girlfriend, Christy Ferman, lived together in an apartment on City Drive, off of Old Spanish Trail in Slidell. The defendant lived in a trailer across the street from Kenneth and Christy. The defendant's girlfriend, Amy, had previously lived with him, but she had recently broken up with him and moved out of the trailer. The defendant was allegedly angry with Kenneth because the defendant thought Amy was cheating on him with both Kenneth and Christy while he and Amy were still together. Christy insisted that nothing was going on with them and Amy. Over the course of weeks, the defendant would yell at and taunt Kenneth when the defendant saw him.

On May 30, 2009, residents of the apartment complex met at the pool to celebrate Christy's birthday. There was food and alcohol at the party. Kenneth drank beer, and Christy drank wine. Christy invited the defendant to the party. The defendant declined. When the party ended around 8:30 p.m., Christy went back to her apartment to get ready to go out. Kenneth began gathering other girls to go out with Christy. At some point while Kenneth was doing this, Kenneth walked across the street to the defendant's yard.

Chassidy Adkison, who lived in the same apartment complex as Kenneth and Christy, testified at trial that she was outside her apartment and observed what occurred. She stated the defendant was sitting in his yard, angry and screaming at Kenneth, while he was gathering up people to go out. Kenneth had "had enough" and walked across the street toward the defendant. The defendant and Kenneth walked toward each other in the defendant's yard and began arguing. No strikes were thrown. Christy came from her apartment and got in between Kenneth and

the defendant. Christy turned toward Kenneth and directed him away from the defendant. Kenneth was walking backward, still arguing with his hands in the air. The defendant then came up behind Christy, grabbed Kenneth by the shoulder, and stabbed Kenneth in the middle of the chest. Chassidy did not see the weapon and was not sure if Kenneth was stabbed or shot. Kenneth took a step or two and fell backward on the ground. Chassidy stated that she saw everything and not once did she see Kenneth put his hands on the defendant.

Christy testified at trial to essentially the same facts as Chassidy. According to Christy, while she was getting ready to go out, she heard the defendant yelling from across the street. Shortly thereafter, she heard Kenneth's voice respond to the defendant. As Christy walked outside, she saw Kenneth walking across the street toward the defendant. The defendant was near the front of a small boat. As Christy approached them, she heard the defendant tell Kenneth that if he came in his yard, he was going to kill him. Kenneth approached the defendant and bumped him with his chest. Kenneth asked the defendant if he realized he weighed 100 pounds, that his "old lady" could "f--- him up," and that he needed to shut up and leave him (Kenneth) alone.[1] Kenneth did not put his hands on the defendant. Neither Kenneth nor the defendant had a weapon in his hand. Christy put her arm between the two men and told Kenneth that he could not be in the defendant's yard. Kenneth put up a hand and starting walking backward, while Christy was facing Kenneth with her arm on his chest. Christy testified that she did not see Kenneth get stabbed. She did not see or hear the defendant approach. She only remembered talking to Kenneth as they were walking and then hearing a very loud

[1] Kenneth was 5'10'' and weighed 226 pounds. The defendant is smaller in stature.

noise, followed by Kenneth falling to the ground on his back. Christy thought Kenneth had been shot. According to Christy, Kenneth did not put his arms around the defendant, grab him, or lay a hand on him.

Kenneth suffered a fatal stab wound to the middle chest. Dr. Michael DeFatta testified at trial that the wound was just less than an inch in length. The knife penetrated Kenneth's chest plate, or sternum, and went through the pericardial sac and perforated the aorta. Kenneth probably lived only seconds after being stabbed by the defendant. Dr. DeFatta explained that the loud sound witnesses may have heard when Kenneth was stabbed was the knife impacting the half-inch thick portion of bone over the chest. He opined it was also possible that air could have escaped from the right chest cavity.

The defendant stabbed Kenneth with a kitchen knife and fled the scene on foot. Several hours later, the police apprehended the defendant at his father's house, which was about one mile from the defendant's trailer. The defendant was taken to the Slidell Police Department, where he provided an audio statement. The defendant did not testify at trial. However, his statement was played for the jury. According to his statement, the defendant was working inside a small boat next to his trailer. He was cutting carpet with a kitchen knife. Kenneth walked from across the street and pulled the defendant out of the boat. Christy arrived and separated the two men. Kenneth backed up. Kenneth then grabbed the defendant a second time, and the defendant did not have a chance to get away. The defendant had the knife in his right hand. While facing each other, Kenneth squeezed the defendant by the arms under his ribcage. The defendant's right arm was trapped, so he switched the knife to his left hand and stabbed Kenneth in the

chest. Kenneth fell face-forward on the sidewalk. The defendant panicked and ran, jumping fences, running through bushes, and finally sitting by a tree. He thought he brought the knife with him, but realized he dropped it when he was going over a fence. The defendant explained that he was a four-time convicted felon, so he was scared to turn himself in to the police. When the defendant was asked during the interview if he and Kenneth had any problems in the past to make him be in fear of Kenneth wanting to cause bodily harm to him, the defendant responded, "We've never had words."

ASSIGNMENTS OF ERROR NOS. 1 and 2

In these related assignments of error, the defendant argues that the improper jury charges on self-defense violated fundamental requirements of due process. Specifically, the defendant contends that the trial court's erroneous jury charge on retreat was based on law that was in effect prior to the date of the alleged offense. Further, he argues that the trial court should have included in its jury instructions the 2006 change in the law on justifiable homicide as set out in La. R.S. 14:20(C) and (D). In the alternative, the defendant asserts ineffective assistance of counsel for defense counsel's failure to object to the jury charge on retreat, as well as for his failure to request that the jury be properly charged with the law under La. R.S. 14:20(C) and (D) as it read at the time of the alleged offense.

As the defendant has pointed out, defense counsel did not object to the proposed jury charges. Normally, such failure to object would preclude consideration on appeal of arguments challenging the giving or failure to give a jury charge. See La. Code Crim. P. arts. 801(C) & 841(A). However, in order to address the claim of ineffective assistance of counsel, we will address the arguments

concerning the jury charges. See **State v. Cooper**, 2005-2070 (La. App. 1st Cir. 5/5/06), 935 So.2d 194, 199, writ denied, 2006-1314 (La. 11/22/06), 942 So.2d 554.

A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the United States Supreme Court in **Strickland v. Washington**, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). In order to establish that his trial attorney was ineffective, the defendant must first show that the attorney's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. Secondly, the defendant must prove that the deficient performance prejudiced the defense. This element requires a showing that the errors were so serious that the defendant was deprived of a fair trial; the defendant must prove actual prejudice before relief will be granted. It is not sufficient for defendant to show that the error had some conceivable effect on the outcome of the proceeding. Rather, he must show that but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. **State v. Serigny**, 610 So.2d 857, 859-60 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1263 (La. 1993). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. **State v. Robinson**, 471 So.2d 1035, 1038-39 (La. App. 1st Cir.), writ denied, 476 So.2d 350 (La. 1985).

Louisiana Code of Criminal Procedure article 807 provides:

> The state and the defendant shall have the right before argument to submit to the court special written charges for the jury. Such charges may be received by the court in its discretion after argument has begun. The party submitting the charges shall furnish a copy of the charges to the other party when the charges are submitted to the court.

> A requested special charge shall be given by the court if it does not require qualification, limitation, or explanation, and if it is wholly correct and pertinent. It need not be given if it is included in the general charge or in another special charge to be given.

A homicide is justifiable when committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger. La. R.S. 14:20(A)(1). Louisiana Revised Statutes 14:20(A)(2) provides:

> When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

The defendant argues defense counsel should have objected to the following jury charge:

> Some factors that you should consider in determining whether the defendant had a reasonable belief that the killing was necessary are:
>
> (1) The possibility of avoiding the necessity of taking human life by retreat[.]

The defendant further contends defense counsel failed to request that the jury be properly charged with La. R.S. 14:20(C) and 14:20(D), which had been the law for nearly three years before the killing took place.

Louisiana Revised Statutes 14:20(C) and 14:20(D) were added to the statute as part of a revision that deleted the language, "[T]he homicide shall be justifiable even though the person does not retreat from the encounter" from La. R.S. 14:20(A)(3) (justifiable homicide committed by a person in a dwelling, place of business, or motor vehicle during burglary or robbery); as well as deleting the

language "[T]he homicide shall be justifiable even though the person committing the homicide does not retreat from the encounter" from La. R.S. 14:20(A)(4)(a) (justifiable homicide committed by a person in a dwelling, place of business, or motor vehicle to prevent entry or to compel the intruder to leave); and adding La. R.S. 14:20(B), (C), and (D). See 2006 La. Acts No. 141, §1. See **State v. Morris**, 2009-0422 (La. App. 1st Cir. 9/11/09), 22 So.3d 1002, 1012-13.

Louisiana Revised Statutes 14:20(B), (C), and (D) provide:

> B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the premises or motor vehicle, if both of the following occur:
>
> (1) The person against whom deadly force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.
>
> (2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.
>
> C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.
>
> D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.

See **Morris**, 22 So.3d at 1013.

We note that arguably the first prong of the **Strickland** analysis is met. As pointed out by the defendant, the change in the law on retreat, specifically the

addition of paragraph (D), was not new. By the time of the defendant's trial, during which the jury charge conference was held, the change in the law had been in effect for about four years. We also do not see how the failure to object to the old law or request the new law, which appears to be more favorable to a defendant asserting self-defense, could have constituted trial strategy by defense counsel. Cf. **State v. Albert**, 96-1991 (La. App. 1st Cir. 6/20/97), 697 So.2d 1355, 1363-64.

In any event, it is unnecessary to determine if defense counsel performed deficiently. Even assuming deficient performance, we do not find the defendant proved that such performance prejudiced the defense. A conviction will not be overturned on the grounds of an erroneous jury charge unless the disputed portion, when considered in connection with the remainder of the charge, is erroneous and prejudicial. An erroneous instruction is subject to harmless error review or in the case of an ineffective assistance of counsel claim, an analysis of whether the defendant was prejudiced by the error. The question becomes whether it appears beyond a reasonable doubt that the erroneous instruction did not contribute to the jury's finding of guilt or whether the error is unimportant in relation to everything else the jury considered, as revealed in the record. Stated another way, the appropriate standard for determining harmless error is whether the guilty verdict was surely unattributable to the jury charge error. See **Cooper**, 935 So.2d at 199-200.

Assuming defense counsel erred in failing to object to the charge referencing retreat, considering the law and the evidence presented at trial, as well as the jury charge on self-defense as a whole, the verdict was surely unattributable to any such error. While the possibility of retreat is no longer to be considered, many of the

requisite elements to establish whether a homicide is justifiable remain. For example, as we noted in **Morris**, 22 So.3d at 1013, paragraph (A) of the statute sets forth situations when a homicide may be justifiable depending on the reasonable belief of the person committing the homicide, the danger presented to that person or others, and the need for the use of deadly force. Under La. R.S. 14:20(A)(1), for a homicide to be justifiable, it must be committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger. Paragraph (D), while prohibiting consideration of the possibility of retreat, tracks the language of La. R.S. 14:20(A)(2) in requiring the factfinder to determine whether or not the person who used deadly force, not involving unlawful entry, had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving danger to life or great bodily harm. While La. R.S. 14:20(C) provides that there is "no duty to retreat before using deadly force," that statement is limited by the language "as provided for in this Section." See **Morris**, 22 So.3d at 1013. The three places afforded added protection under La. R.S. 14:20 are inside a dwelling, place of business, or motor vehicle. See La. R.S. 14:20(A)(3), 14:20(A)(4)(a), 14:20(B).

The defendant was not in his dwelling, business, or motor vehicle when he stabbed and killed Kenneth. While it appeared he was in a place he had a right to be, to constitute justifiable homicide, the defendant, in killing Kenneth, must have had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving danger to life or great bodily harm. The version of events as described at trial by Chassidy and Christy indicated that the

extent of physical contact between the defendant and Kenneth was a brief bumping of the chests and that, while Christy was backing Kenneth away from the altercation, the defendant approached Kenneth and stabbed him.

The defense version of events, as indicated by the defendant's statement played at trial, suggested that Kenneth grabbed the defendant and then released him when Christy intervened. Kenneth then grabbed the defendant again, who was "bear hugged," as described by Sergeant Fred Ohler, with the Slidell Police Department, who took the defendant's recorded statement. While Kenneth was holding the defendant, the defendant, with his free arm, stabbed Kenneth in the chest, killing him.

Under either version of events, we do not find Kenneth's actions in any way constituted a violent or forcible felony upon the person of the defendant. Moreover, any physical contact with the defendant by Kenneth, who at all times was unarmed, clearly did not involve danger to life or great bodily harm.

The defendant's conduct in stabbing Kenneth was disproportionate to any perceived threat. In **State ex rel. D.P.B.** 2002-1742 (5/20/03), 846 So.2d 753, 756, our supreme court quoted from **State v. Plumlee**, 177 La. 687, 699, 149 So. 425, 428-29 (1933), which discussed proportionate use of deadly force:

> Two things must concur in order to justify us in killing another to prevent him from committing some act; first, it must reasonably appear necessary in order to prevent him from committing a crime; and second, the crime to be prevented must be a great crime, and not a petty offense from which no great injury would result to us or others, in body or property. Therefore, if it reasonably appears that the crime can be prevented by any other available means, as by a warning, by a show of force, or by the use of any force short of killing, the killing would not be justified. And if the crime to be prevented was a petty offense, not likely to result in great injury in body or property to us or others, we would not be justified in killing to prevent it, even if it could not be prevented by any other means.

Accordingly, the defendant's use of deadly force was neither reasonable nor apparently necessary. See La. R.S. 14:20(D); **State v. Johnson**, 2006-1263 (La. App. 3d Cir. 2/7/07), 948 So.2d 1229, writs denied, 2007-0467 & 0509 (La. 10/12/07), 965 So.2d 398 & 399. Moreover, the defendant's actions after he left the scene of failing to report the stabbing and running to hide are inconsistent with a theory of self-defense. See **State v. Emanuel-Dunn**, 2003-0550 (La. App. 1st Cir. 11/7/03), 868 So.2d 75, 80, writ denied, 2004-0339 (La. 6/25/04), 876 So.2d 829; **State v. Wallace**, 612 So.2d 183, 191 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1253 (La. 1993). Flight following an offense reasonably raises the inference of a "guilty mind." **State v. Captville**, 448 So.2d 676, 680 n.4 (La. 1984).

We find that the jury charge referencing retreat, even if erroneous, did not prejudice the defendant. Moreover, on the evidence presented, the jury could not have reasonably believed the defendant acted in self-defense.

Accordingly, these assignments of error are without merit.

***PRO SE* ASSIGNMENT OF ERROR NO. 1**

In his first *pro se* assignment of error, the defendant argues he received ineffective assistance of counsel because defense counsel failed to object to the prosecutor giving the defendant notice of her intent on the day of trial to use statements made by the defendant to Christy Ferman.

The defendant references in his brief only the colloquy among the trial court, prosecutor, and defense counsel shortly before opening statements. In this discussion, the prosecutor informs the trial court that she is giving notice that

Christy Ferman gave a recorded statement about what the defendant stated in his front yard. The prosecutor makes no mention in this discussion of the defendant's statement to the police. The defendant argues that Christy's statement had exculpatory value and that defense counsel should have objected to Christy's statement not being played at trial.

The defendant alleges that Christy gave a recorded deposition that may have, according to the prosecutor, "exculpatory" or "impeaching" evidence. However, based on our review of the colloquy in the record among the trial court, prosecutor, and defense counsel, we find no such reference by the prosecutor that Christy's statement contained exculpatory or impeaching evidence. The relevant portion of the colloquy, wherein the prosecutor informs the trial court that she is giving defense counsel notice of a statement made by Christy, is as follows:

> Ms. Knight [prosecutor]: I did file one other notice. In talking with one of the witnesses, she gives a video statement. It's hard to understand so I decided to go ahead and give defense notice. I'll have to refile it. I can't find my original. Christy Ferman, after meeting with her, she is a witness on the scene, there was a statement or two that she told me about the defendant telling her, I don't know if it is in the video or not. I wanted to give notice under Code Article 716. If there is any statement about the defendant to a lay witness, I have to give notice that there was a statement. I will tell what it is. I don't know if it is a -- a statement or not. It's hard to hear.
>
> * * * * *
>
> Mr. Oriol [defense counsel]: Your Honor, this particular video was the one we had problems with when my disc didn't work, and I had to go over to your office and look at it. The disc is not of the highest quality.
>
> The Court: Are you even sure you're going to use it?
>
> Ms. Knight: I'm not going to use the disc of the statement. The statement, it may come up.
>
> The Court: Did you know about the statement, Mr. Oriol?
>
> Mr. Oriol: I knew what was in the police report, and I knew what was on her video statement.

* * * * *

The Court: What is the gist of the alleged statement?

Ms. Knight: She went over to invite him [defendant] to come over that day. They were having a party, and he said some rude statements to her.

The Court: Were they incriminating statements?

Ms. Knight: He didn't say I'm going to come over and kill someone. He was just angry at her or at the group. He didn't want anything to do with them.

It is clear from the foregoing that defense counsel had notice of Cheryl's statement and, in fact, possessed a copy of the statement prior to trial. It is also clear that the prosecutor did not suggest that Cheryl's statement contained exculpatory or impeaching evidence. The defendant suggests in his brief that Cheryl's statement should have been played at trial because Kenneth, the victim, was intoxicated at the time of the incident, and Cheryl admitted to being intoxicated at that time.[2] According to the defendant, Cheryl's statement needed to be played so the jury could have received "the full scope of what the defendant was [facing] the night of the incident, and to help the jury determine whether [Cheryl] was in any condition to remember the detail[s] that she [described] at trial."

It is not clear from the record if defense counsel had Christy's recorded statement at the time of trial, what condition the statement was in, or why defense counsel chose not to play it. 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 sufficient evidence to decide the issue of ineffective assistance of

counsel when raised by assignment of error on appeal, it may be addressed in the interest of judicial economy. **State v. Carter**, 96-0337 (La. App. 1st Cir. 11/8/96), 684 So.2d 432, 438.

In this case, the allegation of ineffective assistance of counsel cannot be sufficiently investigated from an inspection of the record alone. Whether to play Cheryl's statement could have involved matters of trial strategy by defense counsel.[3] In any event, decisions relating to investigation, preparation, and strategy cannot possibly be reviewed on appeal. Only in an evidentiary hearing in the district court, where the defendant could present evidence beyond what is contained in the instant record, could these allegations be sufficiently investigated.[4] Accordingly, these allegations are not subject to appellate review. See **State v. Albert**, 96-1991 (La. App. 1st Cir. 6/20/97), 697 So.2d 1355, 1363-64. See also **State v. Johnson**, 2006-1235 (La. App. 1st Cir. 12/28/06), 951 So.2d 294, 304.

Any available post-conviction relief notwithstanding, this *pro se* assignment of error is without merit.

***PRO SE* ASSIGNMENTS OF ERROR NOS. 2 and 4**

In these related *pro se* assignments of error numbers two and four, the defendant argues, respectively, that defense counsel provided ineffective assistance

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(Continued . . .)

[2] Dr. DeFatta testified at trial that Kenneth's BAC at the time of the autopsy was .142. Cheryl testified at trial that she drank several glasses of wine throughout the day, but she was not belligerent or "sloppy drunk."

[3] For example, defense counsel may have planned to play the statement after Cheryl testified at trial to impeach her testimony. However, if Cheryl's trial testimony was simply an iteration of her recorded police statement, defense counsel may have had no strategic reason to play the statement.

[4] The defendant would have to satisfy the requirements of La. Code Crim. P. art. 924, *et seq.*, in order to receive such a hearing.

because he failed to object to perjured statements made by Christy Ferman and Chassidy Adkison, and the prosecutor failed to correct the testimony of Christy and Chassidy that the prosecutor knew to be false.

When the defendant was apprehended, he was brought back to the scene of the stabbing to explain to the police what had transpired. Subsequently, the defendant was placed in the back of a vehicle with the windows rolled down. Chassidy testified at trial that she was standing in the street at this time. The defendant then said, "peace, have a good life," and the vehicle drove away. Regarding this same incident, Christy testified at trial, "I don't know why the police put [the defendant] in a vehicle with the windows rolled down, but he said peace, have a nice life." The defendant points out in his brief that Sergeant Ohler, who brought the defendant back to the crime scene, was asked on direct examination, "Upon leaving the area, was he allowed to make contact to your knowledge with anybody in the apartment complex"? Sergeant Ohler responded, "No, he was not." According to the defendant, Sergeant Ohler's testimony that the defendant was not allowed to make contact with anyone at the apartment complex suggests that Christy and Chassidy perjured themselves.

This contention is meritless. Sergeant Ohler stated that, to his knowledge, no one had contact with the defendant at the scene. Furthermore, we do not find, based on this testimony of Christy and Chassidy, that the defendant made contact with witnesses at the scene, at least not contact in any meaningful way as suggested by the prosecutor's question. There is simply no inconsistency between Sergeant Ohler's testimony that, to his knowledge, the defendant was not allowed to make contact with anyone and Christy's and Chassidy's testimony that indicated they were

standing at the scene, among other bystanders, when they heard the defendant utter some brief parting remark.

We find no support from the record that Christy and Chassidy perjured themselves with this testimony. As such, there was no testimony the prosecutor would have known to be false and nothing for her to correct.

These *pro se* assignments of error are without merit.

***PRO SE* ASSIGNMENTS OF ERROR NOS. 3 and 5**

In related *pro se* assignments of error numbers three and five, the defendant argues, respectively, that defense counsel provided ineffective assistance of counsel because he failed to move for a mistrial when the prosecutor, during closing argument, vouched for the credibility of State witnesses, Christy and Chassidy, and called the defendant a liar, and the prosecutor violated the defendant's right to due process when she expressed her personal opinion about the credibility of witnesses and the defendant's guilt during closing argument.

In the challenged portion of the closing argument that referenced Christy, the prosecutor stated, "One thing I would give you is that she is credible, because you hear it all. She's not going to candy coat it. She's not going to change anything."
In the challenged portion of the closing argument that referenced Chassidy, the prosecutor stated, "Yeah, she is not hiding anything. She came here with the truth."
In the challenged portion of the closing argument regarding the defendant, the prosecutor stated, "I wanted you to hear that so you knew not only did he do this by all the witnesses, he is lying to you. When he talked to the police, he is lying about his self-defense that he has made up."

The credibility of the witnesses in this case was clearly an important issue. Since the defense theory was self-defense, and the testimony of Christy and Chassidy contradicted such a theory, the prosecutor focused on the credibility of the witnesses and of the defendant during closing argument. Commenting on the credibility of the witnesses is proper and within the scope of closing argument where the credibility of the witness is in question and the facts bearing on the witness's credibility appear in the record. **State v. Davenport**, 43,101 (La. App. 2d Cir. 3/19/08), 978 So.2d 1189, 1194, writ denied, 2008-1211 (La. 1/30/09), 999 So.2d 748. See La. Code Crim. P. art. 774; **State v. Martin**, 539 So.2d 1235, 1240 (La. 1989); **State v. Motton**, 395 So.2d 1337, 1346 (La.), cert. denied, 454 U.S. 850, 102 S.Ct. 289, 70 L.Ed.2d 139 (1981); **State v. Sayles**, 395 So.2d 695, 697-98 (La. 1981). See also **State v. Palmer**, 2000-0216 (La. App. 1st Cir. 12/22/00), 775 So.2d 1231, 1235-36, writs denied, 2001-0211 & 1043 (La. 1/11/02), 807 So.2d 224 & 229. The facts bearing on the credibility of Christy, Chassidy, and the defendant were explored at length during the trial and the prosecutor's arguments properly focused on those facts and were not an appeal to prejudice or otherwise improper. See **Davenport**, 978 So.2d at 1194.

Moreover, even if we were to assume deficient performance by defense counsel for failing to object to the prosecutor's comments about credibility, we do not find the defendant proved that such performance prejudiced the defense. Accordingly, his claim of ineffective assistance of counsel must fall.

These *pro se* assignments of error are without merit.

DECREE

For these reasons, we affirm defendant's conviction, habitual offender adjudication, and sentence.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.