

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 KA 0725

STATE OF LOUISIANA

VERSUS

DONALD THOMPSON

Judgment Rendered: OCT 31 2016

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On Appeal from the  
20th Judicial District Court  
In and for the Parish of East Feliciana  
State of Louisiana  
Trial Court No. 13-CR-236

Honorable William G. Carmichael, Judge Presiding

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BEFORE: HIGGINBOTHAM, THERIOT, AND CHUTZ, JJ.

*CHUTZ*

*TMT*  
*MT*

## **HIGGINBOTHAM, J.**

The defendant, Donald Thompson, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. He pled not guilty and, following a jury trial, was found guilty of the responsive offense of manslaughter, a violation of La. R.S. 14:31. He was sentenced to twenty years imprisonment at hard labor. The defendant now appeals.

### **FACTS**

This case involves the death of 59-year-old Dee Earl Shoemaker, who lived on Clarence Street in Clinton, Louisiana. The defendant went to Dee Earl's house on November 1, 2011, to collect a \$130.00 debt for cocaine that the defendant had sold to him. Dee Earl did not have the money and the defendant beat him up. Dee Earl sustained serious injuries from the beating, including a fractured jaw in several places, a blood clot in the center of his brain, three fractured ribs, and the partial collapse of a lung. Dee Earl was brought to the hospital, where he stayed for several weeks. He died on December 19, 2011, due to complications of blunt force injuries to the body and head (traumatic brain injury).

The defendant did not testify at trial.

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, the defendant argues the trial court erred in allowing into evidence out-of-court statements of two witnesses who testified at trial, Angelia Simmons and Clarisha Martin.<sup>1</sup> Angelia Simmons testified at trial that she was standing outside, near Dee Earl's house. Angelia observed the defendant knock on Dee Earl's door. Dee Earl and the defendant (also known as "Treetta") spoke briefly in the doorway and then began arguing about money that Dee Earl owed the defendant. According to Angelia, Dee Earl tried to close the door, but the defendant

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<sup>1</sup> The record reflects that Clarisha Martin also goes by the names "Tranice Martin" and "Clarisha Dispenzo."

stuck his foot between the door and frame, preventing closure. Angelia stated that Dee Earl had a small, silver bat in his hand, but the defendant grabbed the bat from Dee Earl and threw it on the porch. The defendant entered Dee Earl's house, and they began fighting. Angelia went to the house and saw them struggling and rolling on the floor. She then persuaded the defendant to stop fighting and leave the house. Angelia testified that before leaving the house, she looked through the blinds and saw two people on the stairs near Dee Earl's house. She did not recognize one of them, but the other person was her brother. Angelia left the house with the defendant. They got in a car and the defendant dropped her off at her mother's house.

A few days later, on November 4, Angelia provided a recorded statement to Staff Sergeant James Cook, with the Clinton Police Department. The recorded statement was not introduced into evidence. The defendant states in brief that Angelia "admitted she gave an out of court statement to Sergeant Cook but denied at trial that the statement she gave was true." We do not agree with the defendant's interpretation of Angelia's testimony. Angelia never suggested that what she told Sergeant Cook was not true. Angelia maintained the veracity of what she told Sergeant Cook, while denying that certain things were ever said. When it was suggested by the prosecutor (on direct examination) that Angelia told Sergeant Cook that after the defendant and Dee Earl fought, the defendant returned to Dee Earl's house a few more times, Angelia testified, "No that's not true. That's not correct. I didn't, never, I never stated that." When Angelia was asked if she stated in her interview that she saw the defendant kicking and beating someone, Angelia testified, "No, sir, I did not. They asked me those questions and I told them, 'No.' I was asked those questions."

Later in the trial, the State called Sergeant Cook to testify. According to Sergeant Cook, Angelia told him during her interview with him that she was with the defendant at Dee Earl's house. She did not mention anything about seeing her

brother, Isaac; nor did she mention anything about a bat or being dropped off at her mother's house by the defendant. Angelia told Sergeant Cook that she and the defendant went to Dee Earl's house three times on the day the defendant beat up Dee Earl. Angelia advised Sergeant Cook that the defendant "stomped on him," and that Dee Earl had been beaten for collection of a drug debt.

The defendant argues in brief that Sergeant Cook's testimony of what Angelia told him in the interview should not have been allowed at trial because it constituted impermissible out-of-court hearsay. The defendant notes that, while generally out-of-court statements like the ones made by Angelia are inadmissible as hearsay, see La. Code Evid. art. 802, under La. Code Evid. art. 607(D)(2), prior inconsistent statements are admissible for the limited purpose of attacking the credibility of a witness. According to the defendant, Sergeant Cook's testimony of what Angelia told him was not used by the State to impeach Angelia, but was rather used as substantive evidence to establish the defendant's guilt. As such, the defendant suggests the trial court failed to apply the balancing test of Article 607(D)(2) and find that the evidence was inadmissible because it was substantially outweighed by unfair prejudice.

The defendant raises these issues for the first time on appeal. In order to preserve an issue for appellate review, a party must state an objection contemporaneously with the occurrence of the alleged error, as well as the grounds for the objection. La. Code Crim. P. art. 841(A). See La. Code Evid. art. 103(A)(1). It is well established that a defendant is limited to the grounds for objection articulated at trial and a new basis for an objection may not be raised for the first time on appeal. **State v. Cooks**, 97-0999 (La. 9/9/98), 720 So.2d 637, 644, cert. denied, 526 U.S. 1042, 119 S.Ct. 1342, 143 L.Ed.2d 505 (1999).

During the direct examination of Angelia, the only objections lodged by defense counsel were "Asked and answered" and "Speculation." Defense counsel

lodged no objections during the testimony of Sergeant Cook. Since no contemporaneous objection was raised while Sergeant Cook testified, and because the defendant is limited to the grounds for objection articulated at trial during Angelia's testimony, the defendant is precluded from raising new bases for objection on appeal, namely impermissible hearsay or impeachment evidence.

Similarly, the defendant made no objections on the grounds of hearsay or impeachment regarding the testimony of Clarisha. The defendant notes in brief that Clarisha testified at trial that she did not see the fight, but heard something next door. When she walked next door to Dee Earl's house and saw that Dee Earl had a swollen face and was bleeding, she called the ambulance. The prosecutor asked Clarisha to identify a written statement she had made and to read the first sentence of the statement. Clarisha identified the statement as hers and it was introduced into evidence. The exhibit, a voluntary, handwritten statement by Clarisha, dated November 1, 2011, and witnessed and signed by Officer Isaiah George of the Clinton Police Department, provided the following:

I was present when Treeta assaulted my elderly neighbor. I observed Treeta get out of a bergundy [sic] colored vehicle and enter his (my neighbors [sic]) home. I then heard the victim yell as he was being attacked by Treeta. The assault upon my neighbor was so intense that the windows of the home were trembling. Treeta than [sic] came out of the door and I told him to leave the situation alone instead of getting himself in trouble. He was very angry and another person tried to calm him, but he turned around, went back into the home and began beating him again. Treeta then left the home and I went in the home to see if my neighbor was okay. I observed him laying on the floor with his face in blood and I asked was he okay, he replied yes and I left the home. Around 10-15 minutes later Treeta was dropped off at the road and was returning to the home. I overheard him on the phone telling someone that he was gonna get his money. As he walked to the door, I called his name to try and talk him out of going back into the home. He put his finger over his lips, like he was telling me to be quite [sic], so I stopped talking. He entered the home and began to beat the victim again. He then left the home and another person went to check on the victim, then I went when the other person left. He said that he was okay, but he was then sitting on the couch with his face swollen and bleeding from the mouth. A few hours later he asked me to call an ambulance.

At trial, Clarisha refused to read her statement to the jury. She stated, "I'm sorry, but I disagree with the things that I wrote on this statement." She also testified, "I will not read anything on this statement because I did not see him commit the crime so, therefore, I cannot admit to anything that I wrote on this statement." The trial court judge confirmed that Clarisha refused to testify and dismissed her. The prosecutor then called Officer George to testify and had him read Clarisha's handwritten statement to the jury.

As with the testimony of Angelia, the defendant in brief suggests the reading of Clarisha's statement by Officer George constituted impermissible hearsay; and that as impeachment evidence pursuant to La. Code Evid. art. 607(D)(2), the statement was improperly admitted. According to the defendant, "The state introduced the statement as state exhibit 11 and called Officer George to read the statement to the jury over Mr. Thompson's objection."

Defense counsel did not lodge any objections on the grounds of impermissible hearsay or impeachment evidence. During the direct examination of Clarisha, the only objections lodged by defense counsel pertained to refreshing Clarisha's memory and letting Clarisha finish the question she was asked. See La. Code Evid. art. 612(B). When the prosecutor asked Clarisha to read her statement and sought to introduce the statement into evidence, the trial court judge asked if there was any objection to its introduction. Defense counsel stated, "Yes, Your Honor, I do object. If he's gonna ask her a question to refresh her memory, I ask, I ask him to ask her, ask the questions." In his next objection, which came when the prosecutor interrupted Clarisha trying to respond to a question, defense counsel stated, "Objection, Your Honor. She's trying to answer him and I would like --" Defense counsel's final objection was to the prosecutor reading Clarisha's statement instead of letting her read it. Following is the relevant exchange:

Q. Okay. Did you write the second sentence of the statement that says,

“I observed Treeta get out of a burgundy colored vehicle” –

[Defense Counsel]: Your Honor, --

Q. -- “and enter his, my neighbor’s home?”

A. I will not –

[Defense Counsel]: I will object. He’s testifying for the witness and he’s going through –

All three objections were overruled.

During the direct examination of Officer George, defense counsel lodged a single objection. The prosecutor asked Officer George to read Clarisha’s statement. As Officer George began to read the statement aloud, defense counsel stated, “Your Honor, just a continuing objection as to the reading.” Defense counsel made no objections on the grounds of impermissible hearsay or impeachment evidence.

Based on the foregoing, we find the defendant has asserted a new basis for his trial objections and, as such, has not properly preserved this issue for review. Given the settled rule that a new basis for an objection may not be urged for the first time on appeal, the defendant has waived any claim based on admission of this evidence. See State v. Holmes, 2006-2988 (La. 12/2/08), 5 So.3d 42, 87-88, cert. denied, 558 U.S. 932, 130 S.Ct. 70, 175 L.Ed.2d 233 (2009); State v. Stoltz, 358 So.2d 1249, 1250 (La. 1978). See also State v. Smith, 98-1417 (La. 6/29/01), 793 So.2d 1199, 1203-08, cert. denied, 535 U.S. 937, 122 S.Ct. 1317, 152 L.Ed.2d 226 (2002).

For the aforementioned reasons, we find no merit in the defendant’s sole assignment of error. Donald Thompson’s conviction and sentence are hereby affirmed.

**CONVICTION AND SENTENCE AFFIRMED.**