

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CARL JOHNSON

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 347 EDA 2012

Appeal from the Judgment of Sentence January 4, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0011742-2009

BEFORE: DONOHUE, OLSON and FITZGERALD,\* JJ.

MEMORANDUM BY OLSON, J.:

Filed: March 12, 2013

Appellant, Carl Johnson, appeals from the judgment of sentence entered on January 4, 2012 in the Criminal Division of the Court of Common Pleas of Philadelphia County. After careful review, we affirm.

At the conclusion of trial on November 15, 2011, a jury found Appellant guilty of first-degree murder and criminal conspiracy to commit murder.<sup>1</sup> Thereafter, on January 4, 2012, the trial court sentenced Appellant to serve life imprisonment without the possibility of parole for the murder conviction, together with a concurrent sentence of 20 to 40 years' imprisonment for conspiracy.

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<sup>1</sup> 18 Pa.C.S.A. §§ 2502(a) and 903(a)(1), respectively.

\*Former Justice assigned to the Superior Court.

The trial court summarized the relevant background facts introduced at trial as follows:

On September 14, 2008, at approximately 1:00 a.m., a car driven by [Appellant] pulled up in front of the steps of the house where the victim, Tyleigh Perkins ("Perkins") and his friend, Tyrone Edgefield ("Edgefield"), were sitting. [Appellant] lowered the driver's side window and leaned back in his seat at which time another person leaned across from the passenger's seat and shot Perkins multiple times. Edgefield was not hit. Perkins was transported to Temple Hospital and was pronounced dead at 6:30 a.m. that morning.

The shooting occurred after a fight between Shawn Jacobs ("Jacobs"), [Appellant's] brother, and Devon Edwards ("Edwards") over the cost of a haircut. Perkins broke up the fight and picked up Jacobs' cell phone from the ground. Perkins gave the cell phone to a neighbor to return to Jacobs later. As Jacobs was walking away from the fight, he threatened Perkins. Subsequent to the fight, [Appellant] drove around the neighborhood looking for Perkins and recovered Jacobs' cell phone from the neighbor.

The Medical Examiner testified that Perkins was hit by four gunshots, one of which penetrated Perkins' intestine, severed his aorta, and lodged in his spine, killing him.

Trial Court Opinion, 5/30/12, at 1-2.

As stated above, at the conclusion of trial on November 15, 2011, a jury found Appellant guilty of first-degree murder and criminal conspiracy to commit murder. Subsequently, the trial court imposed the above-described sentence on January 4, 2012. Appellant filed his notice of appeal on January 12, 2012. Pursuant to an order entered by the trial court under Pa.R.A.P.

1925(b), Appellant, on April 10, 2012, timely filed his concise statement of errors complained of on appeal.<sup>2</sup>

In his brief to this Court, Appellant raises the following question(s) for our consideration:

Did not the [trial] court deprive [A]ppellant of a fair trial by a series of erroneous evidentiary rulings that (a) introduced inadmissible hearsay before the jury; (b) allowed admission of uncharged conduct of a third party without linkage to [A]ppellant; and (c) and brought forth evidence that the person on whose behalf [A]ppellant allegedly committed the murder refused to speak with police after consulting with counsel, as the latter evidence conveyed guilt by association and implied through that person's exercise of the right to counsel the guilt of [A]ppellant?

Appellant's Brief at 5.

Appellant's multi-part claim objects to certain evidentiary rulings of the trial court. We review a trial court's evidentiary rulings through a deferential lens:

[t]he admissibility of evidence is solely within the discretion of the trial court and will be reversed only if the trial court has abused its discretion. An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly

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<sup>2</sup> The trial court issued its original Rule 1925(b) order on February 16, 2012. Thereafter, Appellant's privately retained trial counsel sought leave from this Court to withdraw from representation. This Court granted counsel's motion to withdraw by order dated February 29, 2012. Order, 2/29/12. The trial court then re-issued its Rule 1925(b) order on March 27, 2012. Court-appointed counsel entered his appearance on Appellant's behalf on April 10, 2012 and, on the same day, filed Appellant's concise statement of errors complained of on appeal.

unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.

***Commonwealth v. Hernandez***, 39 A.3d 406, 411 (Pa. Super. 2012) (citation omitted). "To constitute reversible error, an evidentiary ruling must not only be erroneous, but also harmful or prejudicial to the complaining party." ***Schuenemann v. Dreemz, LLC*** 34 A.3d 94, 101 (Pa. Super. 2011), quoting ***American Future Systems, Inc. v. BBB***, 872 A.2d 1202, 1212 (Pa. Super. 2005).

In his first claim, Appellant argues that the trial court erred in admitting hearsay testimony from two witnesses, Tyrone Edgefield and Detective Thomas Gaul. Appellant maintains that the trial court erred in allowing Edgefield to testify that he learned the names of the participants in Perkins' shooting (Appellant and his co-defendant) from people within the neighborhood. Appellant claims that Edgefield's testimony suggested to the jury that he gained incriminating information from extrajudicial sources and that this testimony unfairly bolstered the persuasive impact of his statements. Appellant also claims that the trial court erred in permitting Detective Gaul to testify that he placed Appellant's picture into a photographic array after "further investigation" lead him to consider Appellant as a suspect. Appellant asserts that Detective Gaul's testimony introduced "indirect" hearsay to the jury by implying that individuals who did not appear in court had identified Appellant as culpable in Perkins' shooting death. Appellant contends he was prejudiced because the hearsay

testimony from Edgefield and Detective Gaul improperly appeared to multiply the number of incriminating witnesses against him without a showing of reliability and without giving Appellant the opportunity to impeach or cross-examine the declarants.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Pa.R.Evid. 801. Hearsay is not admissible except as provided by the Pennsylvania Rules of Evidence, by other rules prescribed by the Pennsylvania Supreme Court, or by statute. Pa.R.Evid. 801. We have said, however, that “[w]hen a hearsay statement is offered for a purpose other than proving the truth of its contents, it is not hearsay and is not excludable under the hearsay rule.” *Commonwealth v. Dargan*, 897 A.2d 496, 500 (Pa. Super. 2006), *appeal denied*, 916 A.2d 1101 (Pa. 2007).

The trial court concluded that the challenged testimony offered by Edgefield and Detective Gaul did not include hearsay statements. During the course of his testimony, Edgefield identified Appellant as the driver based upon personal observations on the night Perkins was shot. Edgefield then testified that he learned Appellant’s name, as well as the name of the Appellant’s co-defendant, from “[t]he street, you know the streets talk[.]” N.T. Trial, 11/9/11, at 101. This line of inquiry drew a hearsay objection from counsel for Appellant’s co-defendant. After the trial court overruled the objection, Edgefield admitted that the names he heard could have been

inaccurate but he reaffirmed his personal identification of Appellant and Appellant's co-defendant as Perkins' killers. In its opinion, the trial court reviewed portions of the trial transcript that reflected the relevant portions of Edgefield's testimony. Based upon its review, the court reasoned that Edgefield's statements did not constitute hearsay since they were admitted to establish the source of his knowledge, not the truth of what was said. **See** Trial Court Opinion, 5/30/12, at 4-7 (*quoting* N.T. Trial, 11/9/11, at 94-101). Accordingly, the trial court concluded that it properly admitted Edgefield's testimony.

Appellant is not entitled to relief on his claim challenging the admission of Edgefield's testimony. We reach this conclusion on two grounds. First, Appellant waived any challenge to the admission of this evidence by failing to raise an objection at trial. Although counsel for Appellant's co-defendant made an objection before the trial court, counsel for Appellant did not join in this request for relief. Consequently, the claim is waived. **See** *Commonwealth v. Woods*, 418 A.2d 1346, 1352 (Pa. Super. 1980) (defendant cannot rely on co-defendant's objection to admission of evidence to preserve appellate review), *appeal dismissed*, 445 A.2d 106 (Pa. 1982). In the alternative, we hold that, although Appellant's hearsay claim has merit, the admission of Edgefield's hearsay testimony constituted harmless error.

As a preliminary matter, we are unconvinced that the trial court correctly concluded that Edgefield's statements did not constitute hearsay because the Commonwealth offered the challenged testimony to establish the source of the witness's knowledge. While it is true that "[a]n out-of-court statement is not hearsay when it has a purpose other than to convince the fact finder of the truth of the statement[,]" **Commonwealth v. Busanent**, 54 A.3d 35, 68 (Pa. 2012), this principle is applied in cases where the evidentiary value of the statement derives solely from the fact that the statement was made or heard, such as where the information establishes a motive or catalyst for subsequent action by the recipient. **See Id.** (concluding that statement made to defendant was not hearsay because it was not offered to prove the truth of the matter asserted, but rather to show that the defendant heard the utterance and that it served as the motive for the victim's murder). Here, the record makes clear that Edgefield lacked personal knowledge regarding the names of Perkins' killers and that the only information he possessed on this issue came from what he heard from individuals within the community. Edgefield's acquisition of the names of the perpetrators had little, if any, relevant impact upon his actions and, more importantly, no discernible probative significance to the jury. Hence, the obvious evidentiary value of Edgefield's challenged testimony was not that the extrajudicial statements were made, but that their content was true and that several individuals from Edgefield's community may have shared

the information that he conveyed to the jury. As Appellant suggests, the only relevance of the challenged testimony, and the only apparent reason the Commonwealth sought to introduce it, was because it buttressed Edgefield's eyewitness identification. We therefore conclude that Edgefield's testimony regarding the names of Appellant and his co-defendant constituted hearsay.<sup>3</sup>

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<sup>3</sup> One of the difficulties that confronted the trial court in correctly resolving this issue involves the manner in which this hearsay problem emerged during the course of Edgefield's testimony. Our review of the notes of testimony reveals that the names of Appellant and his co-defendant were first used in the exchange between counsel for the Commonwealth and Edgefield long before counsel inquired as to the source of Edgefield's knowledge. At the time of the initial exchange, the objectionable nature of Edgefield's testimony was not apparent and no one lodged an objection. Thereafter, counsel initiated several lines of inquiry before asking how Edgefield knew the defendants' names. At that moment, the potentially objectionable nature of Edgefield's testimony became clear and counsel for Appellant's co-defendant raised a hearsay objection.

Technically, the trial court was correct that the aim of the question that drew the hearsay objection was to elicit the source of Edgefield's knowledge. Moreover, Edgefield's response – that he learned the defendants' names through comments he heard "in the street" – did not include, in and of itself, a hearsay statement. Nevertheless, Edgefield's statement regarding the extrajudicial source of his knowledge confirmed the hearsay nature of his prior testimony regarding the defendants' names. In overruling counsel's objection, the trial court effectively permitted Edgefield to tell the jury that "people in the streets told him that the names of Perkins' killers were Carl-Carl and Rome." Given the very real hearsay problem presented in this case, it was error for the trial court to view the challenged question in isolation from related aspects of Edgefield's testimony. Once a valid hearsay challenge was raised with respect to Edgefield's testimony regarding the defendants' names, it was the trial court's responsibility to take corrective action regarding the admission of Edgefield's prior hearsay testimony, *(Footnote Continued Next Page)*



Notwithstanding this conclusion, we hold that Appellant is not entitled to relief because the admission of Edgefield's testimony was not prejudicial. The record establishes that Edgefield had ample opportunity to view the occupants of the vehicle and that he identified Appellant as the driver based upon his personal observations. Moreover, Edgefield explained that fear of retaliation initially made him reluctant to identify the killers and that the birth of Perkins' child prompted him to come forward to the police and disclose his observations. This testimony, coupled with Edgefield's proximity to the shooting, refutes Appellant's claim that Edgefield identified him based solely on rumors circulating within the neighborhood. We are also confident that Edgefield's eyewitness observations on the night of Perkins' killing were a far greater factor in producing a guilty verdict against Appellant than Edgefield's inadmissible, but ancillary, testimony regarding how he learned the names of Appellant and his co-defendant. In this connection, we must note that Edgefield professed great uncertainty about the accuracy of his knowledge regarding the defendants' names. In view of the foregoing circumstances, we conclude that Appellant has not demonstrated reversible error in the admission of Edgefield's testimony.

With respect to the testimony offered by Detective Gaul, the detective explained at trial that he assembled a second photographic array after  
*(Footnote Continued)* \_\_\_\_\_

including striking the pertinent testimony, issuing a curative instruction, or both. The trial court erred in failing to take these measures.

additional investigation led him to consider Appellant as a suspect in Perkins' shooting death. **See** Trial Court Opinion, 5/30/12, at 8-11 (*quoting* N.T. Trial, 11/10/11, at 70-77). Initially, the trial court correctly observed that no hearsay was introduced by Detective Gaul because it was unknown whether an extrajudicial statement or some other source of information caused the detective to assemble the second array. **See** Trial Court Opinion, 5/30/12, at 10. In the alternative, we note that, even if an out-of-court statement caused Detective Gaul to take action, "[i]t is a long-standing rule of jurisprudence that '[a]n out-of-court statement offered to explain a[n officer's] course of conduct is not hearsay.'" **Dargan**, 897 A.2d at 500. For these reasons, no relief is due on Appellant's opening claim.

In his second claim, Appellant alleges that the trial court erred in admitting testimony regarding threats uttered by Jacobs toward Perkins. Appellant argues there was no link between the murder of Perkins and Jacobs' demeanor and the threats he issued toward Perkins during and immediately after the fight. This claim is meritless. The evidence showed that Appellant and Jacobs were brothers and that, after Appellant retrieved Jacobs' cellular telephone from a neighbor, Appellant searched for Perkins in the neighborhood. Thus, there was a sufficient link between Jacobs' demeanor and the threats he issued toward Perkins and the issues presented to the jury. **See Commonwealth v. Philistin**, 53 A.3d 1, 16 (Pa. 2012) ("Evidence to prove motive is generally admissible.").

Appellant's final claim asserts that the trial court erred in permitting Detective Gaul to testify regarding his efforts to interview Jacobs. At trial, Detective Gaul testified that an attorney informed him that Jacobs, a minor, would not be made available to speak with the police. Appellant asserts that this evidence, combined with testimony regarding the threats issued by Jacobs against Perkins "impermissibly raise[d] the inference[] that Jacobs, having threatened retaliation, asked [Appellant] to undertake that act and then declined to speak on advice of counsel because doing so might incriminate him." Appellant's Brief at 15. This claim fails. As we stated above, evidence of motive is generally admissible. Here, the Commonwealth's theory at trial was that Appellant participated in Perkins' murder because the victim broke up a fight between Jacobs and another individual and because the victim took Jacobs' cellular telephone. We discern no abuse of discretion in the admission of Detective Gaul's testimony.

Judgment of sentence affirmed.