

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-266

STATE OF LOUISIANA

versus

OSWALDO DACUNHA JR

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 23-198, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

April 13, 2026

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and Stephen J. Windhorst

AFFIRMED

SJW
JGG
MEJ

TRUE COPY



MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR DEFENDANT/APPELLANT,
OSWALDO DACUNHA, JR.

Jane L. Beebe

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.

Thomas J. Butler

Matthew R. Clauss

WINDHORST, J.

In this criminal appeal, defendant/appellant, Oswaldo Dacunha, Jr., seeks review of his convictions and sentences for second degree murder and obstruction of justice. For the following reasons, we affirm defendant's convictions and sentences.

PROCEDURAL HISTORY

On April 20, 2023, a Jefferson Parish Grand Jury indicted Oswaldo Dachunha, Jr., with second degree murder and obstruction of justice under La. R.S. 14:30.1 and 14:130.1. Defendant was arraigned on April 21, 2023, and pled not guilty. On April 15, 2024, defendant filed a motion to appoint a sanity commission, which was granted. After a competency hearing, the trial court found defendant competent to proceed.

Trial began on November 12, 2024 with defendant representing himself, although the trial court ordered counsel to remain as defendant's shadow counsel. Before allowing defendant to represent himself, the trial court strongly discouraged defendant from doing so and explained the problems with self-representation. The trial court informed defendant his indigent defense counsel had 30 years experience, questioned him regarding his experience with the rules of evidence and available defenses, and cautioned him regarding the difficulty in questioning witnesses appropriately. Defendant repeatedly indicated his preference to represent himself. We conclude that the trial court satisfied the requirements of Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

On November 18, 2024, the jury found defendant guilty of second degree murder and obstruction of justice. On December 2, 2024, the trial court denied defendant's oral motion for a new trial.

On December 4, 2024, the trial court sentenced defendant to life imprisonment without benefit of parole, probation, or suspension of sentence for second degree murder and twenty years imprisonment at hard labor for obstruction of justice, with the sentences to run concurrently.

TRIAL EVIDENCE

The State presented evidence indicating that on September 3, 2022, at approximately 4:00 a.m., defendant shot the victim on the side of a Brother's Food Mart in Kenner, Louisiana. Richard Mottley, a retired Kenner Police Department captain, saw the incident while sitting at a red light. Captain Mottley heard a gunshot, observed one man fall to the ground and the other man run westbound on Clemson. Captain Mottley called 911 to report the shooting.

Officer Zachary Babin of the Kenner Police Department was the first officer to arrive at the crime scene. He found the victim, Quiroz Alejandro, lying on the ground face up, with blood on his face and his chest. Officer Babin testified that paramedics came to the scene and transported the victim to University Hospital, where he later died. Officer Babin recalled that there were two individuals present when the police arrived on the scene: Daniel Garcia, who witnessed the incident, and another man whose name he did not recall.

Sergeant Arthur Coll of the Kenner Police Department and Sergeant Peter Foltz investigated this homicide. Sergeant Coll testified that there were two eyewitnesses to the shooting, Mr. Garcia and Keva Ramsey, both Brother's customers. Sergeant Coll obtained video surveillance, which showed the suspect traveling to the crime scene, before the shooting, and leaving the crime scene after the shooting. While the video does not show the actual shooting, the gunshots can be heard on the video.

Mr. Garcia, with an interpreter's assistance, testified that he had known the victim for seventeen years and was good friends with him. At the time of the shooting, Mr. Garcia and the victim were drinking beer at the Brother's on Loyola. Mr. Garcia explained that a man came up from behind him and shot the victim, and that neither he nor the victim threatened the man before the shooting. Mr. Garcia recalled that the shooter wore a bandana and was Brazilian, and that he had seen him

twice before the shooting — around 10:00 p.m. and around 2:00 a.m. He stated that after the shooting, the man left on a bicycle.

Mr. Garcia also testified that the police later showed him a picture of a man taken inside Brother's and that he identified the man in the picture as the perpetrator. Mr. Garcia testified that the shooter had said he was going to kill someone that night.

Ms. Ramsey testified that she was at the Brother's near Loyola on the night of the shooting for several hours drinking and socializing. Ms. Ramsey explained that at approximately midnight, a man, later identified as defendant, arrived on his motorcycle and asked them for marijuana. She testified that defendant stood by Mr. Garcia, the victim, and another man ("Jason"), and bought four cases of beer for them, but never drank any. Ms. Ramsey recalled that defendant had tattoos, including a red "LA" tattoo on his arm or his hand, and said he was from Brazil.

Ms. Ramsey stated that defendant stayed at Brother's for several hours until approximately 4:00 a.m. She explained that at some point, defendant left on his motorcycle and returned about ten minutes later on a bicycle, which he threw in the dumpster on the side of Brother's and then got into the dumpster. She and "Fred" were standing nearby. "Fred" looked into the dumpster, after which defendant put a scarf or a mask on his face and told "Fred" to "get the 'F' out of the dumpster." Ms. Ramsey testified that defendant came out of the dumpster shooting a gun, and she and "Fred" started running. She stated that she turned around and saw the victim stand up and break two bottles of beer, but he did not threaten defendant. After that, she saw defendant shoot the victim twice in the head and shoot at "Jason" four times, but missed. Defendant subsequently got on his bicycle and left.

Ms. Ramsey testified that she went inside Brother's and told them to call the police. Ms. Ramsey later talked to the police, gave them a statement, and identified the shooter in a photographic lineup.

Joel O’Lear, a Jefferson Parish Sheriff’s Office (JPSO) crime lab employee, was accepted as an expert in the field of firearm and tool mark examination. Mr. O’Lear testified that he examined the three cartridge casings found at the scene and determined that they were all fired from the same unknown firearm. He confirmed that there was no evidence of more than one firearm being fired at the scene.

Marcela Zozaya, a JPSO DNA lab employee, was accepted as an expert in the field of forensic DNA analysis. She examined several items from the crime scene, including a swab from a beer bottle. Ms. Zozoya testified that the profile obtained from the swab of the beer bottle involved one contributor, more than likely the defendant. She indicated that the DNA did not come from Mr. Garcia or the victim.

Dr. Michael Defatta, who was accepted as an expert in the field of forensic pathology, testified that his autopsy showed the victim died of three gunshot wounds – one to the face, one to the head, and one to the left chest. Dr. Defatta’s opined that the cause of death was multiple gunshot wounds.

LAW and ANALYSIS

On appeal, defendant argues that the trial court erred by allowing hearsay testimony, denying his right of confrontation, not declaring a mistrial *sua sponte*, and denying his motion for a new trial, all based on the death of Sergeant Foltz and the testimony of Sergeant Coll.

Defendant argues that the trial court erred by admitting the hearsay testimony of Sergeant Coll regarding the investigation of the lead detective, Sergeant Foltz. Based on this alleged error, defendant asserts the trial court erred by denying his motion for a new trial and/or failing to *sua sponte* declare a mistrial because he was denied the right to confront his accuser, Sergeant Foltz.

The State responds that defendant waived the right to raise these issues, because he did not object to any portion of Sergeant Coll’s testimony. The State points out that defendant objected to certain State exhibits based on relevance, but

did not challenge Sergeant Coll's testimony based on hearsay or confrontation issues. Thus, the State contends defendant failed to preserve for appeal any hearsay claims concerning Sergeant Coll's testimony or the inability to confront Sergeant Foltz. See La. C.Cr.P. art. 841.

Nevertheless, the State maintains that defendant's characterization of Sergeant Coll's testimony as hearsay is not supported by the record. Sergeant Coll repeatedly testified that he directly participated in the investigation leading to defendant's arrest and had personal knowledge concerning the subject matter of his testimony.

During trial, Sergeant Foltz, the lead investigating officer died. Because Sergeant Coll had investigated the case with Sergeant Foltz, the State requested to recall Sergeant Coll to testify regarding additional aspects of the investigation. Defendant indicated he thought that sounded fair. As a result, Sergeant Coll was recalled as a witness and indicated he was going to give some additional testimony regarding the investigation. Defendant cross-examined Sergeant Coll.

La. C.Cr.P. art. 841 A provides that "An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence." To seek appellate review of an alleged trial error, a party must make a contemporaneous objection at trial, and he must state the grounds for the objection. La. C.Cr.P. art. 841; State v. Lane, 20-137 (La. App. 5 Cir. 12/23/20), 309 So.3d 886, 907, writ denied, 21-100 (La. 4/27/21), 341 So.3d 836. On appeal, a defendant is limited to matters to which an objection was made, and also to the grounds for his objection articulated at trial. State v. Brown, 24-16 (La. App. 5 Cir. 10/30/24), 398 So.3d 796, 802; State v. McGowan, 16-130 (La. App. 5 Cir. 8/10/16), 199 So.3d 1156, 1161. The contemporaneous objection rule is also applied to motions for mistrials. State v. Smith, 11-638 (La. App. 5 Cir. 3/13/12), 90 So.3d 1114, 1123.

In State v. Patin, 13-618 (La. App. 5 Cir. 9/24/14), 150 So.3d 435, 443, writ denied, 14-2227 (La. 4/22/16), 191 So.3d 1043, this court held it could not review the admission of other crimes evidence because Patin failed to contemporaneously object to its admission. Before trial in Patin, the trial court granted the State's notice of intent to introduce other crimes, wrongs, or acts committed by the defendant under La. C.E. art. 404 B. Id. at 436-37. On appeal, Patin argued that the trial court erred when it allowed the State to introduce evidence for his arrest for narcotics offenses in New Orleans. Id. at 442. This court found that because Patin did not object to the testimony regarding other pending charges or to the admission of related evidence, he consented to the admission of the evidence at trial and failed to preserve the issue for appeal. As a result, this court was precluded from reviewing the issue on appeal.

Hearsay is a statement, other than one made by the declarant while testifying at the present trial, offered in evidence to prove the truth of the matter asserted. La. C.E. art. 801 C. Hearsay is not admissible except as specified by the Code of Evidence or other legislation. La. C.E. art. 802. Hearsay is excluded because the value of the statement rests on the credibility of the out-of-court declarant, who is not subject to cross-examination and other safeguards of reliability. State v. Bello-Urbina, 24-8 (La. App. 5 Cir. 10/30/24), 398 So.3d 782, 794. Even if a statement constitutes inadmissible hearsay, if the statement is corroborative or cumulative of other evidence, the admission of the evidence is harmless error. Id.

In this case, the record of the direct and redirect testimony of Sergeant Coll both before and after Sergeant Foltz's death reflects that defendant failed to lodge any contemporaneous hearsay objections. During defendant's questioning of Sergeant Coll, defendant indicated that it was hard to ask questions regarding the police report without Sergeant Foltz present. Defendant, however, did not articulate a specific objection or identify evidence or testimony that he believed should not be

allowed. Defendant did not object to Sergeant Coll providing additional testimony regarding the investigation at trial. Consequently, defendant failed to preserve this issue for appellate review.

Nonetheless, we find Sergeant Coll's testimony did not violate defendant's right of confrontation under Crawford v. Washington, 541 U.S. 36, 53-54, 124 S.Ct. 1354, 1365, 158 L.Ed.2d 177 (2004).¹ In Crawford, the United States Supreme Court held that the Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." Id.

No prior statements of Sergeant Foltz were admitted into evidence, and the police report authored by Sergeant Foltz was not admitted into evidence.² When defendant tried to read into the record Sergeant Foltz's statements from the police report, the trial court prevented him from doing so. In addition, defendant cross-examined Sergeant Coll about the police report. Finally, even though Sergeant Foltz was the lead detective, Sergeant Coll played a significant role in the investigation and spent an extensive amount of time collecting video surveillance to piece together defendant's movements before, during, and after the shooting, among other things.

Even if defendant's right to confrontation was violated, however, the violation is subject to a harmless error analysis. State v. Payne, 17-553 (La. App. 5 Cir. 10/17/18), 258 So.3d 1015, 1023, writ denied, 18-1932 (La. 4/15/19), 267 So.3d 1122. An error is harmless if the court concludes the guilty verdict surely was not attributable to the error based on many factors, including: (1) the importance of the witness's testimony; (2) whether the testimony was cumulative in nature; (3)

¹ The United States and the Louisiana Constitutions guarantee an accused in a criminal prosecution the right to confront witnesses against him. State v. Jackson, 03-883 (La. App. 5 Cir. 4/27/04), 880 So.2d 841, 852, writ denied, 04-1399 (La. 11/8/04), 885 So.2d 1118.

² An investigative report prepared by police and other law enforcement personnel is generally excluded from the public records and reports exception to the hearsay rule. State v. Honore, 09-313 (La. App. 5 Cir. 1/12/10), 31 So.3d 485, 503.

whether corroborating or contradictory evidence regarding the major points of the testimony existed; (4) the extent of cross-examination permitted; and (5) the overall strength of the State's case. Id.

The record indicates that even if defendant's right to confrontation was violated by the admission of Sergeant Coll's testimony, the error is harmless as there was overwhelming evidence of defendant's guilt. Both Ms. Ramsey and Mr. Garcia positively identified defendant as the individual who shot and killed the victim. The video surveillance showed that defendant approached the scene with a gun, flashes of light were then seen, and then defendant left the scene. When defendant was brought to the interview room, he was wearing the same shoes he wore in the surveillance video. Further, the police had a description of the suspect wearing a bandana around his neck, a surveillance video showed the suspect wearing a bandana over his face, and the police found a bandana in defendant's backpack when they took him into custody.

We also find no merit in defendant's assertion that the trial court should have declared a mistrial. A mistrial is a drastic remedy, and except when mandatory, is warranted only when a trial error results in substantial prejudice to defendant depriving him of a reasonable expectation of a fair trial. State v. Sterling, 13-287 (La. App. 5 Cir. 12/12/13), 131 So.3d 295, 302, writ denied, 14-65 (La. 8/25/14), 147 So.3d 698. Where a defendant does not request a mistrial and no grounds exist for the trial court to order a mistrial *sua sponte*, the trial court does not err in not granting one. State v. Day, 14-708 (La. App. 3 Cir. 12/23/14), 158 So.3d 120, 128.

Defendant did not request a mistrial and no grounds exist for the trial court to have ordered a mistrial *sua sponte*. In addition, the granting of a mistrial would not help defendant relative to Sergeant Foltz's ability to testify. Regardless of when the case would be re-tried, Sergeant Foltz would not have been available to testify. Importantly, defendant does not point to anything specific in Sergeant Coll's

testimony that should not have been admitted. We therefore find the trial court did not abuse its discretion in not ordering a mistrial.

For these same reasons, we further find the trial court did not abuse its discretion by denying the motion for a new trial. After his convictions, defendant orally moved for a new trial, arguing that Sergeant Foltz, the lead detective, died on his way to trial, and he could not cross-examine him. The trial court heard counsel's arguments and denied the motion for a new trial.

The decision on a motion for a new trial rests within the sound discretion of the trial judge and her ruling will not be disturbed on appeal absent a clear showing of an abuse of discretion. State v. Daniels, 15-78 (La. App. 5 Cir. 9/23/15), 176 So.3d 735, 739, writ denied, 15-1997 (La. 11/29/16), 211 So.3d 386. A motion for a new trial is based upon the supposition that an injustice has been done to the defendant, and unless such injustice is shown, the new trial motion shall be denied, regardless of the allegations upon which the motion is grounded. See La. C.Cr.P. art. 851; State v. Paul, 15-501 (La. App. 5 Cir. 1/27/16), 185 So.3d 188, 198.

Considering the foregoing, we find that defendant failed to preserve the alleged hearsay issue for appellate review. We also find no violation of defendant's right of confrontation, and no abuse of discretion in the trial court not declaring a mistrial *sua sponte* or by denying defendant's motion for a new trial.

DECREE

For the reasons stated herein, we affirm defendant's convictions and sentences.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 13, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-KA-266

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE NANCY A. MILLER (DISTRICT JUDGE)
JANE L. BEEBE (APPELLANT)
THOMAS J. BUTLER (APPELLEE)

HONORABLE PAUL D. CONNICK, JR.
(APPELLEE)

MATTHEW R. CLAUSS (APPELLEE)

MAILED

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