



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARC T. TAYLOR,

DEFENDANT BELOW,
APPELLANT,

v.

STATE OF DELAWARE

APPELLEE.

No. 293, 2012

DEFENDANT BELOW APPELLANT'S REPLY BRIEF ON
APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

SUBMITTED BY

/s/ Michael C. Heyden, Esquire

Michael C. Heyden, Esquire

1201 N. King St.

Wilmington, Delaware 19801

(302) 654-0789

Delaware bar ID: 2040

Dated: March 28, 2013

TABLE OF CONTENTS

	Page
Table of Citations	I
Summary of Argument	1
Argument I	2
Conclusion	6

TABLE OF CITATIONS

Cases	Page
<u>Booth v. State</u> , 508 A2d 96 (1986)	4
<u>People v. Vasquez</u> , 670 NE2d 1328 (NY 1996)	4
<u>State v. Flesher</u> , 286 NW 2d 215 (Iowa 1979)	4
<u>Tics v. State</u> , 642 A2d 399 (DE 1993)	2
<u>United States v. Blakey</u> , 607 F2d 779 (7 th Cir 1979)	4
<u>Warren v. State</u> , 774 A2d 246 (DE 2001)	4
<u>Williamson v. State</u> , 707 A2d 350 (DE 1998)	5
Rules	
Rule of Evidence 803	3, 4, 5
Other Authorities	
Salzburg Federal Rules of Evidence Manual	4

SUMMARY OF ARGUMENT

Argument I

The court erred when it permitted a hearsay statement that purportedly identified the defendant as the shooter.

ARGUMENT I

QUESTION PRESENTED

Whether the court erred when it permitted hearsay evidence that purportedly identified the defendant as the shooter?

SCOPE OF REVIEW

Rulings of the trial court on evidentiary issues are reviewed for abuse of discretion. Tics v. State, 624 A2d 399 (DE 1993)

OBJECTION NOTED

(T9, A20)

MERITS OF ARGUMENT

In this case, Marc Taylor had various nicknames, “Guntown, Gunner and G”. He was friends with two members of the Trap Stars Group. His girlfriend lived in the area of 8th & Adams Streets and he would often go there and visit her. Tyaire Brooks was associated with the opposing group. He testified that he was looking to seek revenge on the Trap Stars and after having received instructions to “shoot on sight” went to the area of 8th & Adams Streets looking for Trap Stars to get his revenge. He was known as “Gunner ”

Erica Jenkins testified that on the night of the shooting she heard a young boy, Maleek, say “Gunner shot the guy”. The defense objected on the grounds of hearsay. The State argued that it was an excited utterance or a present sense impression and thus an exception to the rule excluding hearsay evidence. The trial Court agreed with the State.

There was no showing that Maleek was unavailable as a witness. There was no explanation for his absence. There was no proof that the statement was spontaneous. It was not known whether his statement was based upon personal observation or mere hearsay or conjecture. It was unknown whether he was in a good position to observe the shooting. It is unknown if he was a competent witness. There was no inquiry concerning surrounding facts of this alleged statement.

As a general rule, hearsay evidence is not permitted because it deprives the litigant of the chance to cross examine and confront the witness. Furthermore, there is always an issue regarding the reliability of the evidence. Rule 803 permits excited utterances or present sense impressions to be admitted into evidence on the assumption that the spontaneity of the statement provides an indicia of reliability to the statement. Taylor; however contends that the Court’s

inquiry should not stop at whether or not the statement fits the exception to the rule. The court should also make an inquiry into the surrounding circumstances of the statement to determine whether it has the requisite guarantees of trustworthiness.

In People v. Vasquez, 670 NE2d 1328 (NY 1996), the court held that there must be some independent verification of the declarant's descriptions of the unfolding events. United States v. Blakey, 607F2D 779 (7th Cir 1979) held that it is necessary that the witness be able to corroborate the defendant's statement. see also Salzburg Federal Rules of Evidence Manual 1650-51 (7th edition 1998) observing that most Federal Court reading a corroboration requirement into Rule 803 (1). Contrary rulings are found in State v. Flasher, 286 NW 2d 215 (Iowa 1979) and Booth v. State, 508 A2d 96 (1986), holding that no corroboration is required.

In Warren v. State, 774 A2d 246 (DE 2001), this court considered the issue in connection to 911 calls. In that case, the court indicated that the calls fell within a firmly rooted hearsay exception and therefore it was not necessary to undertake an analysis to determine whether the statement contained a particularized guarantee of trustworthiness. In that case; however, the 911 calls were available to be played. There was no question as to their existence. The wording, the

content of the statements and inflection of the speaker were available to be heard by the playing of the tapes of the calls. The date and time of the calls could be verified. In Williamson v. State, 707 A2d 350 (DE 1998), this Court considered the issue in connection with 911 calls and a statement to a police officer by a crime victim. The court indicated that a victim of violent attack has strong motivation to be truthful in his statement to an investigating police officer and therefore there was an indicia of reliability.

This case is factually distinguishable. Here, the very existence of the statement cannot be verified. Furthermore, the timing of the statement and circumstances surrounding of this statement cannot be verified. Nothing is known about the person who allegedly made the statement. There were no contemporaneous notes by a professional investigator. There is no recording of the statement so that the content can be verified. There is no explanation for his absence from the trial. The fact that a witness said it was a spontaneous statement should not standing alone, make it admissible. The court should have made an inquiry into the facts and circumstances surrounding the statement before allowing it to be admitted into evidence.

CONCLUSION

For the above stated reasons, the verdict should be reversed or the defendant granted a new trial.