

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

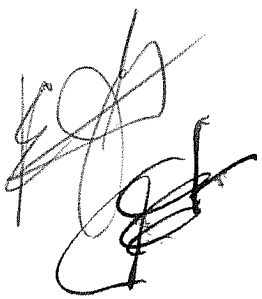
**FIRST CIRCUIT**

**NO. 2006 KA 1686**

**STATE OF LOUISIANA**

**VERSUS**

**ROBERT JONES**



*Judgment Rendered: March 23, 2007*

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**Appealed from the  
22nd Judicial District Court  
In and for the Parish of St. Tammany, Louisiana  
Case No. 334151**

**The Honorable William J. Knight, Judge Presiding**

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**Walter P. Reed  
District Attorney  
Covington, Louisiana**

**Counsel for Appellee  
State of Louisiana**

**By: Kathryn Landry  
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Baton Rouge, Louisiana**

**Prentice L. White  
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellant  
Robert Earl Jones**

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**BEFORE: KUHN, GAIDRY, AND WELCH, JJ.**

*Welch J. concurs without reasons.*

## **GAIDRY, J.**

The defendant, Robert Earl Jones, was charged by bill of information with attempted aggravated rape, a violation of La. R.S. 14:27 and 14:42. He pled not guilty. Prior to trial, the State filed notice of its intent to introduce evidence of other crimes under the provisions of La. Code Evid. art. 412.2. After hearing arguments from counsel, the trial court ruled that the evidence regarding the defendant's prior conviction was admissible. Shortly thereafter, a jury trial commenced. This trial ended in a hung jury. Prior to commencement of the defendant's second trial, defense counsel filed a pleading captioned "Motion in Limine," which merely cited a portion of the Louisiana Benchbook on "Proof of Other Offenses,"<sup>1</sup> and was treated as a request for jury instruction. The trial court granted the request and agreed to include the provided language in the jury instruction. The defendant was retried by a jury and convicted as charged. The defendant was sentenced to imprisonment at hard labor for thirty years without the benefit of probation, parole, or suspension of sentence. The defendant moved for post-verdict judgment of acquittal and for a new trial. The trial court denied both motions. The State filed a multiple offender bill of information seeking to have the defendant adjudicated a second felony habitual offender. After a hearing, the trial court adjudged defendant a second felony offender, vacated the original sentence, and imposed an enhanced sentence of imprisonment at hard labor for sixty years without benefit of probation, parole, or suspension of sentence. The defendant moved for reconsideration of the sentence. The trial court denied the motion. The defendant now appeals. Finding no merit in the assigned error, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

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<sup>1</sup> The motion provided the following language, "[r]emember that the accused is on trial only for the offense(s) charged. You may not find him guilty of this offense merely because he may have committed another offense. – Louisiana Benchbook, Vol. I, p. 5.4."

## FACTS

On February 4, 2001, at approximately 4:00 a.m., the victim, L.P.<sup>2</sup> was asleep at her Covington, Louisiana residence when she was awakened by a knock at her door. L.P. opened the door to find a black male, later identified as the defendant, standing there. L.P. recognized the man from her neighborhood, but did not know his name. The man asked L.P. if he could use her restroom. L.P., an admitted cocaine user, allowed the man to enter her residence. Inside the residence, the man told L.P. he wanted to “have a little fun” and began pinching L.P.’s buttocks and attempting to reach under her dress. When L.P. resisted the advances and asked the man to leave her residence, a struggle ensued. According to L.P., the man put his hands in her mouth to keep her from screaming. He stuck his hand down her throat and almost choked her. The man also repeatedly attempted to reach under L.P.’s dress. L.P. eventually managed to free herself and ran to her neighbor, Larry Hammond’s, residence and asked him to contact the police. Hammond was unable to contact the police because he did not have a telephone. L.P. then rode a bicycle to her son’s residence. L.P. did not immediately report the incident to the police because she did not know the perpetrator’s name. According to L.P., she reported the incident to the Covington Police later that day after she learned the perpetrator’s name.

As evidence of the defendant’s intent, the State called Gary Frizzard. Frizzard, a former detective with the Covington Police Department, testified that he investigated the homicide of Julie Plunkett in September 1988. Plunkett’s body had been found lying nude on the floor of her Covington, Louisiana apartment. She had been shot once in the neck. The conditions of the apartment revealed signs of forced entry through the kitchen window. The defendant was a suspect in Plunkett’s murder. Frizzard testified that the defendant eventually admitted to

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<sup>2</sup> In accordance with La. R.S. 46:1844(W), the victim herein is referenced only by her initials.

having sexual intercourse with Plunkett and shooting her. The defendant also admitted that he threw the gun used to shoot Plunkett into the woods. A rape examination performed on Plunkett's body was inconclusive. The defendant, originally charged with first degree murder, subsequently pled guilty to the reduced charge of manslaughter. Frizzard admitted that the defendant was never charged with any type of sexual assault in connection with Plunkett's murder.

The defendant testified on his own behalf at the trial. He admitted that he knew L.P. from the neighborhood and that he had been to her house before to assist her in hanging some Christmas lights. The defendant denied going to L.P.'s residence on the night in question. He also denied wanting or ever trying to have sex with L.P.

When questioned regarding Plunkett's murder, the defendant admitted that he had contact with Plunkett on the night she died. He testified that Plunkett invited him into her residence through the front door. He denied entering the apartment through the window. The defendant admitted that he engaged in sexual intercourse with Plunkett, but denied that the encounter was forced; he claimed the sexual encounter was entirely consensual. The defendant did not offer an explanation as to how Plunkett was shot and killed.

### **ASSIGNMENT OF ERROR #1**

In his sole assignment of error, the defendant contends the trial court erred in allowing the State to prematurely expose the prospective jury members to information regarding the defendant's prior conviction for a similar sex-related offense.<sup>3</sup> The defendant argues that the premature introduction of this information damaged the impartiality of the jury pool and "tainted the prospective jurors'

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<sup>3</sup> We note, the defendant does not challenge the trial court's pretrial ruling finding the evidence of his prior conviction admissible at trial. Instead, the entirety of the defendant's argument on appeal focuses on the exposure of the prospective jurors to information regarding his criminal history. The defendant specifically argues that the trial court erred in allowing the State to introduce argument regarding his criminal history "before selecting a jury from the panel of prospective jurors."

ability to be impartial by alerting them that [the defendant] had a history of sexually assaulting women.” Consequently, the defendant argues his conviction must be reversed and his motion for a new trial granted.<sup>4</sup> In response, the State asserts that the defendant is precluded from raising this issue on appeal for want of a contemporaneous objection. The State alternatively argues that the introduction of the information regarding the defendant’s prior conviction was proper, as the trial court had already ruled that evidence of the conviction would be admissible at the defendant’s trial. The State further argues that even if the introduction of the information during voir dire can be considered to be erroneous, such an error is clearly harmless.

Our review of the record reveals, as the State correctly asserts, that the defendant raises the issue of the premature introduction of “other crimes evidence” during voir dire for the first time on appeal. During voir dire, without elaborating on the details, the State advised the prospective jurors that the defendant had a prior conviction resulting from similar facts and questioned them regarding their ability to decide the instant case based only on the evidence presented. The State further advised of the limited purpose of the other crimes evidence, *i.e.*, to show intent. There was no objection by the defense. The State introduced the same information and posed the same line of questioning to three separate panels of prospective jurors. In each instance, the defense failed to object to the fact that the prospective jurors were prematurely exposed to defendant’s criminal history, as he argues in his brief. The defense’s only objection during voir dire came during the examination of the second panel of prospective jurors. Once the State advised the jurors that evidence of the defendant’s prior conviction for a similar offense would

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<sup>4</sup> In his brief the defendant argues the trial court should have granted his motion for a new trial, but our review of the record reflects that the defendant’s motion for a new trial does not contain an allegation of error in the voir dire proceedings.

be presented at trial, one of the prospective jurors questioned the relevance of the evidence. The following exchange occurred:

[PROSPECTIVE JUROR]:

If he has already been convicted on the other one, why does that have to come in to account, if we are judging the crime that has been done?

[PROSECUTOR]:

That's a good question. And it's admissible, there's a law that says if you have a sexual offense, and a defendant has a previous conviction that was a sexual offense –

[DEFENSE COUNSEL]:

I object to the characterization the DA uses. That's not what the defense was.

[THE COURT]:

The court is going to – let me explain the law.

At this point, the trial court proceeded to explain article 412.2 of the Code of Evidence to the panel of prospective jurors. As previously noted, the aforementioned objection, which was based solely upon the prosecutor's "characterization" of the law and not the mention of the defendant's criminal history, was the only objection urged by the defense during voir dire. Thus, the issue regarding any "premature" exposure of the jury to allegedly prejudicial other crimes evidence was never raised in the trial court.

The jurisprudence is well settled that a new basis for an objection cannot be raised for the first time on appeal. See *State v. Simms*, 381 So.2d 472, 476-77 (La. 1980); *State v. Charles*, 326 So.2d 335, 336 (La. 1976). Under La. Code Crim. P. art. 841, a contemporaneous objection is required to preserve an error for appellate review. The contemporaneous objection rule has two purposes: 1) to put the trial judge on notice of the alleged irregularity so that he may cure the problem, and 2) to prevent a defendant from gambling for a favorable verdict and then resorting to an appeal on errors that might easily have been corrected by an objection. *State v.*

*Hernandez*, 98-448, p. 20 (La. App. 5th Cir. 5/19/99), 735 So.2d 888, 899, writ denied, 99-1688 (La. 11/12/99), 750 So.2d 194. Thus, the defendant is precluded from raising the issue on appeal. La. Code Evid. art. 103(A)(1); La. Code Crim. P. art. 841; *State v. Noil*, 2001-521, p. 25 (La. App. 5th Cir. 12/26/01), 807 So.2d 295, writ denied, 2002-0276 (La. 10/25/02), 827 So.2d 1177.

This assignment of error lacks merit.

### **DECREE**

For the foregoing reasons, the defendant's conviction, habitual offender adjudication, and sentence are affirmed.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE ARE AFFIRMED.**