IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2009-AP-61
Lower Court Case No: 2009-MM-7377

ANTHONY CLAITT,
Appellant,
vs.

STATE OF FLORIDA,
Appellee.
_____/

Appeal from the County Court,
for Orange County, Florida,
W. Michael Miller, County Court Judge

Robert Wesley, Public Defender and Justin Bleakley,
Assistant Public Defender, for Appellant

No Appearance for Appellee

Before POWELL, MCDONALD, and J. ADAMS, SR., J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Anthony Claitt appeals from his conviction for Battery after a jury trial, contending that the trial court erred by admitting hearsay testimony of a next door neighbor that the eight year old daughter of the victim knocked on her door and said "Tony (the Appellant), hurting my mommy". We have read the Initial Brief of Appellant (the State did not appear and file an answer brief), read the entire transcript of the trial, and reviewed the filings in the record on appeal. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. After careful consideration, we affirm.

Since Appellant's trial counsel made no objection until the witness was asked to repeat her answer again[1], and made no motion to strike and for a curative instruction, the point has not been properly preserved for appeal. *See Padovano, Florida Appellate Practice (2011),* Pp. 153-160.)

Furthermore, even if Appellant's counsel had made the proper objection and/or motions, the testimony would have been admissible as an "excited utterance" exception to the Hearsay Rule. The trial transcript demonstrates the following. The event surrounding the child's statement was startling enough to cause the child to be excited. She saw the Appellant committing the battery on her mother. The statement was made without time to contrive or reflect. The child had run next door to the witness' apartment, knocked on the door and when it opened several moments later, immediately made the statement. And the child made the statement under the stress of the startling event. The witness testified that Appellant was attempting to pull the child away and the child "was scared." *See* § 90.803(2), Fla. Stat. (2009); *Hayward v. State,* 24 So. 3d 17 (Fla. 2009) ("'[T]he test regarding the time eclipsed is not a bright-line rule of hours and minutes.'"); *and see e.g. Floyd v. State,* 18 So. 3d432, 445-446 (Fla. 2009) (7 year old child's un-objected to hearsay statement to a neighbor after running from the scene that his grandfather (the defendant) shot his grandmother was admissible under the excited utterance exception).

AFFIRMED.

[1] There was no objection to the first question asked and answered. The ground stated for the objection to the repeat question was "asked and answered". It was overruled. There was never any objection that the testimony was inadmissible hearsay. To preserve the point for appeal, the objection must be timely, it must be based on a specific ground, and the supporting argument on the objection must be the same as the argument made on appeal. *Padavano, p.154.*

DONE AND ORDERED at Orlando, Florida this __24th___ day of ____March_____, 2011.

_/S/_____
ROM W. POWELL
Senior Judge

_/S/_____
ROGER J. MCDONALD
Circuit Judge

_/S/_____
JOHN H. ADAMS, SR.
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Justin Bleakley, Assistant Public Defender,** 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Lawson Lamar**, **State Attorney**, 415 N. Orange Avenue, Orlando, Florida 32801; and **Honorable W. Michael Miller**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this __24th__ day of __March_____, 2011.

_/S/_____
Judicial Assistant