

Circuit Court for Frederick County
Case No: C-10-CR-22-000238

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1488

September Term, 2024

JOSHUA JOHN DIAZ

v.

STATE OF MARYLAND

Graeff,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 22, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On March 15, 2024, the Circuit Court for Frederick County found that Joshua John Diaz, appellant, violated his probation by consuming alcohol and engaging in “abusive and harassing contact” with his wife, Brittany Diaz. The court sentenced appellant to serve nine years of incarceration, which was the time remaining on his sentence, with no suspension and no probation, with 140 days’ credit.

On appeal, appellant presents the following question for this Court’s review:

Did the circuit court err in admitting statements made by Ms. Diaz, which were captured on police body-worn video?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On October 14, 2022, appellant pleaded guilty to second-degree assault, and on April 14, 2023, the court sentenced him to 10 years’ incarceration, all but one year suspended, and three years of supervised probation. On October 30, 2023, the State requested a warrant based on appellant’s violation of his probation by drinking and choking Ms. Diaz.

On March 15, 2024, the court held a violation of probation hearing, at which time the following evidence was presented. At approximately 3:13 a.m. on October 30, 2023, deputies of the Washington County Sheriff’s Office, along with two Maryland State Troopers, responded to a residence in Hagerstown following a report that a caller’s wife had abused him. Deputy McCoy testified that he arrived at the scene and encountered

appellant, who appeared “calm, collected” and “under the influence of alcohol.”¹ Deputy McCoy observed wine glasses on the kitchen island.

The State introduced into evidence video footage from Deputy McCoy’s body-worn camera. In the first video, appellant described having an argument with his wife, Ms. Diaz, during which she became “belligerent and violent.” Appellant reported that Ms. Diaz threw a purse at him, which had keys attached, and the keys struck him on the forehead. Deputy McCoy observed a laceration on appellant’s head that was bleeding.

Appellant informed the police officers that Ms. Diaz was upstairs taking a shower. Deputy McCoy and other officers proceeded upstairs to speak with her. Deputy McCoy located Ms. Diaz sitting on the bathroom floor wearing a towel. He described her as “hyperventilating, very upset” and “crying.” Ms. Diaz “remain[ed] emotional” during the encounter, although she was able to “calm down and recount the events that occurred.” Deputy McCoy testified that he observed four markings on the side of Ms. Diaz’s neck and possibly a small laceration.

When the State sought to introduce into evidence Deputy McCoy’s body-worn video footage of his interaction with Ms. Diaz, defense counsel objected on the ground of hearsay. The State responded that Ms. Diaz’s statement was admissible under the excited utterance exception to the rule against hearsay. The circuit court overruled defense counsel’s objection and admitted the video.

¹ Deputy McCoy’s first name does not appear in the transcript.

In the video played for the court, Ms. Diaz stated that she and appellant had been arguing in the kitchen when appellant hit her, choked her, pressed her against a wall, and placed his hands around her mouth and his fingers down her throat. She stated that she threw her purse at appellant, and the keychain attached to the purse caused the laceration on his head. She tried to assist appellant as he bled, and “he got more mad.” During the argument, appellant had called her “a liar,” “a bitch,” and other obscenities, and she was in fear for her life. Appellant told her he wanted to take a shower together upstairs and turned on the shower, but he then pushed her face down onto the bed and put his fingers in her mouth. Appellant then pushed her into the shower and returned downstairs.

Deputy Mario Angelini encountered appellant in the kitchen at which point he detected the odor of alcohol on appellant’s breath. Deputy Angelini spoke with appellant for approximately five to ten minutes before going upstairs to speak with Ms. Diaz. When Deputy Angelini encountered Ms. Diaz, she was “highly emotional” and “hysterical,” visibly upset, and crying. She was “covered with a towel or . . . the actual shower curtain,” which had been “torn down” from the shower rod.

After speaking with Ms. Diaz, Deputy Angelini returned downstairs and engaged in a second conversation with appellant. The State played for the court Deputy Angelini’s body-worn video of that second interaction. In that recording, appellant stated that he and his wife “were in each other’s faces . . . arguing,” and “when she was pounding on me, I pushed [her] away.” Appellant denied grabbing Ms. Diaz around the neck or placing his fingers in her mouth. When asked about the red marks on her neck, appellant stated that

she “probably did that to herself,” explaining that he had grabbed her wrists to stop her from punching herself in the face.

Appellant testified in his own defense. He stated that he called 911 because “things were escalating from a normal couple’s conversation that turned into more,” and because Ms. Diaz hit him in the head. He acknowledged that he had been drinking that night, but he denied harassing or abusing Ms. Diaz. He testified that, when he pushed her, it was not to hurt her, but “[j]ust enough to get her away.” He denied calling 911 to confuse the police or to preempt her call to law enforcement to report him. He further denied asking Ms. Diaz to lie about the events of that night.

Ms. Diaz testified for the defense. She testified that she had been drinking on the night of appellant’s arrest, and the two of them were “just arguing.” Appellant did not harass, abuse, or choke her that night, and she had hurt him by throwing her purse at him. She did not recall telling the police that appellant had choked her.

Ms. Diaz stated that the red marks on her neck were not caused by appellant. She stated that she had caused the marks herself with her fingernails, explaining that, when she experiences anxiety, she engages in “kind of self-harm.”² She testified that appellant did not ask her to lie about the incident to police or in court.

At the conclusion of the evidence, the court found that neither appellant’s testimony nor Ms. Diaz’s trial testimony was credible. The most credible evidence was Ms. Diaz’s statements to the deputies at the time of the incident, which were recorded on the body-

² The State recalled Deputy McCoy, who testified that Ms. Diaz did not tell him that she had caused her injuries to herself.

worn video. The court found that appellant had violated his probation by consuming alcohol and engaging in abusive and harassing contact with Ms. Diaz. As indicated, the court revoked appellant’s probation and imposed the entirety of appellant’s suspended sentence of nine years of incarceration.

On October 3, 2024, this Court granted appellant’s application for leave to appeal to this Court.

STANDARD OF REVIEW

“Whether the trial court properly admitted a particular statement under an exception to the rule against hearsay often requires separate inquiries with divergent standards of review.” *Curtis v. State*, 259 Md. App. 283, 298 (2023) (quoting *Gordon v. State*, 431 Md. 527, 538 (2013)). We review the circuit court’s preliminary factual findings regarding the circumstances under which the statements were made for clear error. *Id.* at 298. The circuit court’s “holding as to whether those circumstances, as well as the content of the statement itself, render it admissible under a hearsay exception is a legal determination that we review without deference to the trial court’s determination.” *Id.* (quoting *Bernadyn v. State*, 390 Md. 1, 7-8 (2005)).

DISCUSSION

Appellant contends that the circuit court erred in admitting the statements Ms. Diaz made to the police, which were contained in the body-worn video. He argues that the statements were not admissible as excited utterances because she was no longer under the stress of excitement caused by the earlier event and her statements were prompted by police questioning.

The State contends that the court properly exercised its discretion in admitting Ms. Diaz’s statements under the excited utterance exception to the rule against hearsay. It asserts that Ms. Diaz’s statements “offered a distressed, emotionally raw account that bore the hallmarks of unfiltered trauma.”³

Hearsay is defined by Maryland Rule 5-801(c) as “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.” Hearsay is inadmissible unless it falls within an exception to the hearsay rule or is permitted by constitutional provision or statute. Md. Rule 5-802; *Bernadyn v. State*, 390 Md. 1, 8 (2005). The exception to the hearsay rule that is applicable in this case is the excited utterance exception, i.e., a “statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” Md. Rule 5-803(b)(2). The rationale underlying the excited utterance exception is that “the startling event suspends the declarant’s process of reflective thought, thus reducing the likelihood of fabrication.” *Curtis*, 259 Md. App. at 314-15 (quoting *State v. Harrell*, 348 Md. 69, 77 (1977)).

There are three components of the excited utterance exception. A party seeking to have hearsay admitted under this exception must establish: (1) “that an exciting or

³ The State also argues that Ms. Diaz’s statements were admissible under the relaxed rules of evidence applicable at violation of probation hearings. *See Bailey v. State*, 327 Md. 689, 699 (1992) (hearsay evidence is admissible at probation revocation hearings as long as the trial court finds such evidence “reasonably reliable” and there is good cause for its admission). *Accord Thompson v. State*, 156 Md. App. 238, 246 (2004). Because the circuit court did not make a finding as to whether Ms. Diaz’s statement was reasonably reliable or whether there was good cause to admit it, we shall not address that argument.

startling event occurred, and that the declarant had personal knowledge of that event,” (2) “that the statement relates to the underlying startling event,” and (3) “the spontaneity of the statement.” *Curtis*, 259 Md. App. at 315-17. Appellant’s challenge here relates solely to the spontaneity of the statement.

In considering whether a statement qualifies as an excited utterance, “we look at the totality of the circumstances to determine whether the foundation for its admissibility has been established.” *Cooper v. State*, 163 Md. App. 70, 97 (2005). One factor that is significant is the amount of time that has elapsed between the startling event and the statement. *Curtis*, 259 Md. App. at 317. We also consider whether the statement was made in response to questioning, although this factor is not controlling. *State v. Harrell*, 348 Md. 69, 77 (1997). “The essence of the exception is the lack of opportunity of the declarant to have reflected on the events about which the statement is concerned.” *Johnson v. State*, 63 Md. App. 485, 495 (victim’s statement to a police officer following a robbery was admissible as an excited utterance where the officer had to calm the declarant enough to make sense of her statements), *cert. denied*, 304 Md. 248 (1985). Ultimately, however, it is “[t]he emotional state of the victim at the time of her response [that] governs admissibility.” *Davis v. State*, 125 Md. App. 713, 716 (victim’s “emotionally agitated” statement to police was admissible as an excited utterance), *cert. denied*, 356 Md. 178 (1999).

Appellant claims that Ms. Diaz’s statement to the police was not spontaneous because the startling event of the altercation at the Diaz home had concluded by the time she spoke to the police. Appellant further contends that Ms. Diaz’s statement was made in

response to police questioning, which “took her out of the throes of excitement.”

Although the record does not disclose how much time elapsed between the events at the Diaz home and Ms. Diaz’s statements to police, a review of the body-worn footage supports the court’s finding that Ms. Diaz was still experiencing the emotional distress caused by the startling events that evening. The deputies encountered her sitting on the floor of the bathroom hyperventilating, crying, and “hysterical.” Though she was able to give the deputies an account of what had happened, she remained emotional and visibly upset during her encounter with the deputies.⁴

That Ms. Diaz’s statements were provided in response to the deputies’ questioning is a relevant, but not dispositive, fact in determining whether the statements constituted excited utterances. See *Billups v. State*, 135 Md. App. 345, 360 (2000) (victim’s statement given in response to a question from police was relevant in the excited utterance analysis but “hardly dispositive”), *cert. denied*, 363 Md. 207 (2001); *Parker v. State*, 365 Md. 299, 317-18 (2001) (statements made in response to police questioning while the startling event “dominated the thought processes of the declarants” were admissible as excited utterances).

⁴ The court did preclude admission of comments made after Ms. Diaz had composed herself.

The evidence in the record supports the circuit court’s conclusion that Ms. Diaz remained under the stress of the startling event and her statements to police were not the product of reflection or deliberation. The circuit court did not err in admitting the statements as excited utterances.

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**