Circuit Court for Carroll County
Case No.: C-06-CR-20-000107

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1753

September Term, 2021

BUCK K. SEXTON, JR.

v.

STATE OF MARYLAND

Nazarian,
Ripken,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 27, 2022

Convicted by a jury, in the Circuit Court for Carroll County, of attempted first-degree murder, first-degree assault, and two counts of openly carrying a dangerous weapon, Buck K. Sexton, Jr., appellant, presents one question for our review: "Did the circuit court err by permitting inadmissible hearsay?" For the following reasons, we shall affirm.

This appeal centers on a statement made during a fight between Sexton and Kenneth Spaulding. Spaulding and his friend Summar Quesenberry were walking to another friend's apartment at night in Carroll County. On their way, Sexton ambushed them by jumping out from behind a set of stairs. Spaulding pushed Quesenberry out of the way and began fighting with Sexton. During the scuffle, Sexton stabbed Spaulding. As the brawl continued, the residents of the apartment under whose stairs Sexton had initially hidden, Caitlin Biden and John Harrod, came out to investigate the commotion. Harrod immediately moved to intervene in the fight. At trial, Biden testified that when she got outside, Quesenberry "yelled at [her] 'he stabbed him, he stabbed him.'" Biden then called the police. Two officers arrived shortly thereafter, broke up the fight, and arranged emergency medical transportation for Sexton and Spaulding. On appeal, Sexton asserts the trial court erred by admitting Biden's testimony about Quesenberry's statement because it was inadmissible hearsay. We disagree.

Hearsay is any out-of-court statement offered at trial to prove the truth of what it asserts. Md. Rule 5-801(c). Absent a statutory exception, hearsay is not admissible. Md. Rule 5-802. The trial court here admitted Quesenberry's statement under the present-sense-impression exception. A present sense impression is a statement describing an event made either while the declarant is perceiving the event or immediately afterwards. Md. Rule

5-803(b)(1). The State now argues that Quesenberry's statement was also admissible under the excited-utterance exception. *See Barrett v. State*, 234 Md. App. 653, 665 (2017) (permitting an appellee "to assert any ground adequately shown by the record for upholding the trial court's decision, even if the ground was not raised in the trial court." (quotation marks and citation omitted)). An excited utterance is a statement relating to a startling event made while the declarant was under the stress of excitement caused by the event. Md. Rule 5-803(b)(2). These exceptions overlap, though based on somewhat different theories. *Washington v. State*, 191 Md. App. 48, 92 (2010). Their underlying rationale are similar: "both preserve the benefit of spontaneity in the narrow span of time before a declarant has an opportunity to reflect and fabricate." *Id.* (quotation marks and citation omitted).

We review determinations of hearsay admissibility *de novo*. *Gordon v. State*, 431 Md. 527, 536 (2013). That said, for these two hearsay exceptions, a trial court's decision to admit a statement necessarily involves fact-finding. *See id.* Admission of a statement under the excited-utterance exception requires the trial court to assess "the declarant's subjective state of mind to determine whether under all the circumstances, [they are] still excited or upset to that degree." *Id.* (quotation marks and citation omitted). For this and the present-sense-impression exception, a court may also be required to consider matters such as how much time has passed since the event, whether the statement was spontaneous or prompted, whether the declarant had personal knowledge of the event, and the nature of the statement, such as whether it was opinion or fact. *See id.* We give the trial court deference on such factual determinations. *Id.* at 536–37.

Sexton asserts that Quesenberry's statement was not a present sense impression solely because she spoke in the past tense. But that exception explicitly covers statements made immediately after an event, which would naturally be spoken in the past tense. *See* Md. Rule 5-803(b)(1). Sexton further argues that Quesenberry's statement also was not an excited utterance solely because the only evidence as to Quesenberry's demeanor when she made the statement was that she "yelled." But a declarant's outward demeanor when they made a statement is only one factor examined when reviewing the totality of the surrounding circumstances—and one that is overshadowed by timing and spontaneity, both of which the trial court found here. *See Marquardt v. State*, 164 Md. App. 95, 124 (2005); *West v. State*, 124 Md. App. 147, 164 (1998). Thus, neither of these arguments is persuasive.

In effect, Sexton asks us to draw inferences from the evidence that are different from those drawn by the trial court. But we are required to defer to the trial court's factual findings—including those implicit in its ruling. *See Gordon*, 431 Md. at 536–37. *See also Smith v. State*, 20 Md. App. 577, 589 (1974). We conclude that, based on the totality of the surrounding circumstances, Quesenberry's statement fell within both the present-sense-impression and excited-utterance exceptions. Implicit in the trial court's ruling is a finding that Quesenberry made her statement immediately after Sexton stabbed Spaulding—an event she witnessed. And although the stabbing had already happened by the time Quesenberry made her statement, there was still an evolving situation before her; the brawl was ongoing. Thus, the intensity of the situation had not fully subsided when Quesenberry yelled to Biden, and she was still "in the throes of the exciting event[.]" *Morten v. State*,

242 Md. App. 537, 549 (2019). The trial court's findings here are not clearly erroneous. Therefore, it did not err in admitting Biden's testimony about Quesenberry's statement.

JUDGMENTS OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.