

Circuit Court for Prince George's County
Case No. CJ180423

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3181

September Term, 2018

DOMINIC SPEARS

v.

STATE OF MARYLAND

Kehoe,
Gould,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 2, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Prince George’s County, Dominic Spears, appellant, was convicted of second-degree assault. On appeal, Mr. Spears contends that the trial court committed reversible error in admitting hearsay statements of the victim. We shall affirm.

On October 19, 2017, Deputy Thomas Russell, of the Prince George’s County Sheriff’s Office, was part of a team of officers preparing to serve an arrest warrant on Mr. Spears at a ground-level apartment in Suitland. The sliding glass door from the apartment to the outside patio was open. Deputy Russell heard “a bunch of commotion” and “loud voices [] arguing” from inside the apartment, and he “could hear [something] about calling the police.” The police entered the apartment through the sliding door just as Mr. Spears exited through the front door of the apartment. Mr. Spears was apprehended and placed into custody.

Upon entering the apartment, Deputy Russell encountered the victim, Kellysha Hood, who was “upset” and “frantic.” She was wearing a wig that was “messed up,” had “redness and scratching to her face [and] neck area that was fresh,” and she was crying.

The prosecutor asked Deputy Russell whether Ms. Hood said anything to him, eliciting a hearsay objection from defense counsel. The prosecutor responded that Ms. Hood’s statements to police were admissible under the “excited utterance” exception to the hearsay rule. The court overruled the objection, finding that Ms. Hood was upset, frantic, and crying and that “all three of those things indicate that she was still under an exciting event.”

Deputy Russell then stated that he asked Ms. Hood what happened, and she said that “there was an argument over text messages, and that [Mr. Spears] began to strike her . . . with a closed fist.” Although the State had planned to call Ms. Hood as a witness at trial, she did not appear.¹

Hearsay is defined 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.” Md. Rule 5-801(c). “A trial court has ‘no discretion to admit hearsay in the absence of a provision providing for its admissibility.’” *Vielot v. State*, 225 Md. App. 492, 500 (2015) (citations omitted). The proponent of the evidence bears the burden of proving that the evidence falls within an exception to the hearsay rule. *Morten v. State*, 242 Md. App. 537, 546-47 (2019).

“[W]hen the issue involves whether evidence constitutes hearsay, that is a legal question that we review *de novo*.” *Baker v. State*, 223 Md. App. 750, 760 (2015). “Whether hearsay evidence is admissible under an exception to the hearsay rule, on the other hand, may involve both legal and factual findings.” *Id.* “In that situation, we review the court’s legal conclusions *de novo*, but we scrutinize its factual conclusions only for clear error.” *Id.*

¹ According to the record, Ms. Hood sent a text message to the prosecutor on the first day of trial, stating that she had been in an accident on her way to court, and might need to go to the hospital. The court took a brief recess, after which the prosecutor advised the court that she had not yet been able to contact Ms. Hood, and requested that the trial be continued to the next day, in lieu of a body attachment. Over objection, the trial was continued to the next day, at which time the prosecutor requested a body attachment be issued for Ms. Hood. The court denied that request.

The hearsay exception at issue here is an “excited utterance,” which is “[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 Court of Appeals has explained that “[t]he rationale for overcoming the inherent untrustworthiness of hearsay is that the situation produced such an effect on the declarant as to render his [or her] reflective capabilities inoperative.” *Mouzone v. State*, 294 Md. 692, 697 (1982) (overruled on other grounds by *Nance v. State*, 331 Md. 549 (1993)).

Timing is a “critically important factor” in assessing whether the statement falls within the exception for an excited utterance. *Morten*, 242 Md. App. at 548. “So long as the declarant, at the time of the utterance, was still in the throes of the ‘exciting event’ and therefore not capable of reflective thought, and sufficient foundation was laid to enable the trial court to reach this conclusion, the statement is admissible.” *Id.* at 549 (quoting *Harmony v. State*, 88 Md. App. 306, 320 (1991)).

Based on our review of the record, we conclude that there was a sufficient foundation established to allow the trial court to reach the conclusion that Ms. Hood was “still in the throes of the ‘exciting event’” when she made the statement, based on evidence that Deputy Russell overheard a “commotion” and loud argument from within the apartment immediately before the statement was made, and that Ms. Hood had “fresh”

injuries and was frantic, upset, and crying at the time the statement was made.

Accordingly, the trial court did not err in admitting the statement.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**