

Circuit Court for Prince George's County  
Case No. CT180880X

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1100

September Term, 2019

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THOMAS FREDDIE A. HUGHES

v.

STATE OF MARYLAND

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Fader, C.J.,  
Wells,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Raker, J.

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Filed: January 20, 2021

\*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

Appellant, Thomas Freddie A. Hughes, was convicted by a jury in the Circuit Court for Prince George’s County of voluntary manslaughter and assault in the second degree.

He presents one question for our review:

“Did the trial court err in admitting hearsay statements recorded by a police officer’s body worn camera into evidence?”

We shall hold that the statement by the unidentified woman recorded on the police officer’s body camera was inadmissible hearsay and the court erroneously admitted the statement into evidence. The error was not harmless. Therefore, we shall reverse and remand for a new trial.

## I.

Appellant was indicted by the Grand Jury for Prince George’s County for the offenses of first-degree murder, second-degree murder, voluntary manslaughter, first-degree assault, and second-degree assault. The jury acquitted him of murder and first-degree assault, convicting him of voluntary manslaughter and second-degree assault. The court sentenced appellant to a term of incarceration of ten years, all but eight years suspended.

We glean the following facts from trial. These unfortunate events arose from an altercation on June 4, 2018, in the parking lot of the Dollar Tree store in the Bowie Town Center in Bowie, Maryland, between Nicholas Keys, the decedent, and appellant. Sterling Davis was with Mr. Keys on that date in a small parking lot. As they approached their car

to leave, Mr. Davis could not get to his door because a woman was leaning her door on his car. She pulled her door away, but Mr. Davis, concerned about possible damage to his car, asked her for her insurance information. After they exchanged information and Mr. Davis entered his car, his friend Mr. Keys walked up to the woman's window and said, "What's your problem?" Then, appellant left the driver's seat of the woman's car and told Mr. Keys not to disrespect his girlfriend. Mr. Keys then ran to his car and retrieved a bat, which appellant wrested from his hands. According to Mr. Davis, appellant threw the bat across the parking lot. He then struck Mr. Keys in the face two times with his fist. Appellant then left in the car. Mr. Davis called 911, and the police arrived soon, followed by an ambulance. Mr. Keys was taken to the hospital, where he died shortly thereafter.

Dr. Zabiullah Ali, a forensic pathologist with the Baltimore Medical Examiner's Office, testified that the cause of Mr. Keys's death was from his head injuries, and the manner of death was homicide.

Appellant testified in his defense. He argued self-defense. He said that he said nothing when Mr. Davis and his friend Tanesha exchanged information. After Mr. Davis returned to his car and Tanesha closed the door, Mr. Keys walked up, banged on the window and said, "Bitch, what's your problem you going around hitting people's car, what's wrong with you?" Appellant testified that that is when he told Mr. Keys to stop disrespecting her and Mr. Keys responded, "I got something for you." Mr. Keys walked back to his car and returned with a baseball bat, swinging it until appellant caught it and wrested it away. Appellant threw the bat away, and as he did Mr. Keys grabbed him by

his shoulder. Appellant stated that, fearing further assault, he turned, threw two punches at Mr. Keys, and then drove away before Mr. Keys could retrieve the baseball bat.

Officer Anthony Imperiale, wearing a body camera recorder, arrived at the Bowie Town Center. He spoke with Mr. Davis and other bystanders, including an unidentified woman. The State offered the body camera recordings into evidence, over appellant's objection that the evidence was inadmissible hearsay. The recording contained statements from Mr. Davis, and an unidentified woman. The court admitted the evidence, ruling that the statements on the video were excited utterances and, as such, within exceptions to the hearsay rule.

The video contained statements from Mr. Davis, the unidentified woman, and another police officer. The unidentified woman, who did not testify at trial, stated: "I'm trying to help them stay calm. I don't know. *From what I understand, he was hit with a bat by another driver.*" The statements from Mr. Davis were more in the nature of first-hand observations of the event.

As indicated, appellant was convicted and sentenced. This timely appeal followed.

## II.

Before this Court, appellant argues that the video footage from Officer Imperiale's body camera was inadmissible hearsay, both as to Mr. Davis and the unidentified woman. As to the unidentified woman, he argues that it is clear that the woman did not experience the event and that, instead of acting under the excitement of the incident, she was trying to

keep others calm. According to appellant, her claim that appellant was struck by a baseball bat was unreliable, prejudicial double hearsay, coming from a person who did not observe the incident. He argues that the error was not harmless because it went to his defense in the case, self-defense—particularly who was the aggressor, the use of force, and excessive force.

The State argues that Mr. Davis’s extra-judicial statements were admissible as an excited utterance. They were made while he was still in the throes of a violent assault on his friend, Mr. Keys, and were classic excited utterances. The State does not appear to argue that the unidentified woman’s statements were admissible as excited utterances, and only addresses her statements in a footnote, arguing harmless error. *See* State’s Br. at 3, n.2. According to the State, if error, it was harmless because the woman stated that Mr. Keys was hit with a bat, which was contrary to the State’s theory of the case and hence it could not have been harmful or prejudicial.

### III.

Maryland Rule 5-801 defines hearsay 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 presumptively inadmissible unless it falls under one of the recognized hearsay exceptions. Rule 5-802; *Parker v. State*, 156 Md. App. 252, 259 (2004). An out-of-court statement is admissible, however, if it is not being offered for the truth of the matter asserted or if it falls within one of the recognized exceptions to the

hearsay rule. *Conyers v. State*, 354 Md. 132, 158 (1999). We review *de novo* whether evidence is hearsay and, if so, whether it falls within an exception to the hearsay rule. *Bernadyn v. State*, 390 Md. 1, 7–8 (2005).

The circuit court admitted the video footage under Rule 5-802, the “excited utterance” exception. Rule 5-803(b)(2) provides, in pertinent part, as follows:

“The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

...

“(b)(2) *Excited Utterance*. A statement relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition.”

We have no trouble finding that Mr. Davis’s statements were excited utterances. They were made sufficiently close in time to satisfy the exception; they were made while he was under the stress and excitement of having just witnessed his friend in a violent incident; and that excitement had not abated.

The unidentified woman is a different story. It is dispositive of this appeal. From her statements, it is clear that she did not witness the event. It does not appear that she was stressed or excited, but instead was calm and collected. Her statement suggests that she didn’t witness the event, but heard about it, and it is classic hearsay within hearsay, and is not admissible. *See* Rule 5-805; *Morten v. State*, 242 Md. App. 537, 550 (2019).

We agree with appellant that the error was not harmless. Harmless error requires us to find, beyond a reasonable doubt, that the error in no way contributed to the guilty verdict. *Dorsey v. State*, 276 Md. 638, 653–56 (1976). Appellant’s defense was self-defense, both imperfect and perfect self-defense. The unidentified woman’s testimony introduced into

the case that Mr. Keys was hit and harmed with the baseball bat. Appellant's testimony was that he threw the bat away and that he punched Mr. Keys twice. Appellant's position was that he was not the initial aggressor and that he did not raise the fight to a deadly level of force. If the jury credited the woman's statement that Mr. Keys was hit with the baseball bat, that testimony could have impacted the jury's consideration of appellant's defense of perfect self-defense. The erroneous admission of the statements into evidence is reversible error.

**JUDGMENTS OF THE  
CIRCUIT COURT FOR  
PRINCE GEORGE'S  
COUNTY REVERSED.  
CASE REMANDED TO  
THAT COURT FOR A  
NEW TRIAL. COSTS  
TO BE PAID BY  
PRINCE GEORGE'S  
COUNTY.**