Circuit Court for Baltimore City
Case No. 116314021

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1117

September Term, 2017

RUDOLPH ALLEN DATCHER, JR.

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 2, 2018

*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.

On May 9, 2017, a jury sitting in the Circuit Court for Baltimore City convicted appellant, Rudolph Allen Datcher, Jr., of attempted voluntary manslaughter, second-degree assault, use of a firearm in a crime of violence, discharging a firearm in Baltimore City, and possession of an unregistered shotgun. The court sentenced appellant to a total of twenty years of incarceration and suspended all but seven years. This appeal followed, wherein appellant argues that the trial court erred in admitting a 911 call. We affirm.

BACKGROUND

In the afternoon of October 3, 2016, the Baltimore City Police Department received a number of 911 calls reporting shots fired in the 4500 block of Manorview Road in Baltimore. These calls were played to the jury at trial. Several callers described a woman being shot in the street and lying on the ground. One caller described a "fellow out shooting a shotgun" at two people in front of his house. Another reported that the shooter was a resident of 4533 Manorview Road. Appellant testified that he too called 911 during the shooting. A recording of that call was played for the jury and in it, appellant reported that Semona Singletary, Syreeta Singletary, and a male were "shooting and everything." He also reported that "[t]hey bust out the windows." When asked if anyone had been shot, appellant replied that he wasn't "sure." On a final call played for the jury, a distraught woman reported that her daughter had been shot on Manorview Road.

When emergency personnel arrived, they located Syreeta Singletary lying on Manorview Road and bleeding from the mouth and nose. She was transported to the University of Maryland Medical Center where she was treated for shotgun wounds. X-rays revealed that she had metallic foreign bodies, "consistent with shotgun pellets," lodged

in her nose, left upper chest wall, and left shoulder. They were not removed and Singletary was discharged later the same day.

Singletary testified that she lived on Mountview Road, which is one street over from Manorview, and that appellant was a close friend with whom she was having an argument on the day prior to the shooting. On October 3rd, while she was walking on Manorview Road with a male friend, appellant came to his door with a gun and shot her from his doorway.

When appellant was interviewed by the police, he admitted to shooting Singletary with a shotgun. The State introduced a recording of the interview which was played for the jury. In it, appellant advised that he was a close friend of Singletary, and that they had begun arguing on the day before the shooting. On the day of the shooting, he was upstairs in the home he shared with his aunt at 4533 Manorview Road, when he heard banging in the basement. When he went to investigate, he saw Syreeta Singletary and her sisters, Semona and Shawna, at his rear door. There were additional individuals in a car outside of his home, and a man standing in his yard whom appeared to be with Syreeta. The group kicked his door and yelled for appellant to open the door. They then moved to the front of the house and used a metal pole to bang on his SUV, which was parked in front of his house. Appellant asked them to leave, and when they refused, he fired his shotgun through the door. The group continued to bang on the door, at which time appellant called 911.[1]

[1] In his statement to police, appellant alternates between saying the individuals were at his car and banging on the door. Singletary testified that at the time she was shot, she was in the street, and hiding behind appellant's vehicle. The police located appellant's (continued)

He said that he had not intended to hurt anyone, but that "he was being pushed to the limit," and that they were scaring his blind elderly aunt. He advised officers that after the shooting he put the shotgun by the basement door.

Evonne Topp, appellant's godmother, was called by the defense and testified that she lived next door to appellant. On October 3rd she was outside of her home taking out the trash when she heard banging on appellant's door. She then saw Syreeta Singletary banging on the back door of appellant's house with a broom and screaming up at the window. A man was with Syreeta, and Topp saw Syreeta's sister Semona at the end of the alley running behind appellant's house. Topp then went back into her house. Once inside she heard someone running around the front of the home, and then she heard a "bang." She ran outside to investigate and heard Syreeta Singletary screaming, "[s]omeone shot me. It was Rudolph Datcher."

Responding officers located shotgun shells in the front yard of appellant's home, and inside the front door. A hole was discovered in the front door and was "blown out going towards the street," indicating that someone had fired through the door from inside the house. Police officers later executed a search warrant at the home but failed to locate the shotgun.

vehicle parked on the street in front of his home and discovered that one of the windows to the vehicle, as well as a side panel, were punctured and contained a number of small round holes.

DISCUSSION

Appellant argues that the "trial court erred by admitting into evidence, under the present sense impression exception to the hearsay rule, a 911 call made by the mother of Syreeta Singletary." He argues that the "call did not constitute a present sense impression" because it was "not made while perceiving the event of the shooting." He further asserts that even if the call "fell under the present sense impression exception to the hearsay rule, the prejudicial effect of the call was substantial, and not counterbalanced by any probative value."

Prior to playing the 911 calls, defense counsel objected to the admission of the call, and the following exchange occurred:

> [STATE]: It's just the call from – it will be the mom of the victim just explaining what she's observing and then they respond.
>
> THE COURT: Is it – well, do you believe it qualifies as a present sense impression?
>
> [STATE]: Oh, yes, absolutely.
>
> THE COURT: And do you disagree?
>
> [DEFENSE COUNSEL]: She's actually not a factual eyewitness to the events, she comes after the fact.
>
> THE COURT: What is she saying on the phone?
>
> [DEFENSE COUNSEL]: Her daughter has been shot.
>
> THE COURT: My daughter's been shot.
>
> [STATE]: She sees her daughter's been shot and is calling in. That's one of the number of calls that goes out to dispatch.

[DEFENSE COUNSEL]: But she's extremely upset and we feel that the tone and emotion of her call adds nothing to the factual scenario, but is prejudicial.

THE COURT: So you think it's more prejudicial than it is probative?

[DEFNSE COUNSEL]: Yes.

THE COURT: I understand the objection, but I'm looking at present sense impression. It says a statement describing her explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.

Do you know time wise when the call is made?

[STATE]: It's within a couple minutes.

THE COURT: Like in relation – okay.

[STATE]: It's not long.

THE COURT: So it's your belief that it might also qualify as an excited utterance?

[STATE]: I'm sorry, could you say that again?

THE COURT: Is it your belief it might also qualify –

[STATE]: Oh, yes. I mean – well she's calling. It's certainly present sense and she's calling at the time she's observing this.

THE COURT: I understand that the emotion may be somewhat prejudicial, but in many ways, anything that's going to be remotely relevant will also be prejudicial to some effect. I do not find, judging from what I've heard so far, that the prejudicial effect will outweigh the probative value so I'm going to overrule your objection to the fourth call.

All of the 911 calls were then admitted and published to the jury. The call, which is the subject of this appeal, is as follows:

[911 OPERATOR]:	911, what is your emergency.
[FEMALE VOICE]:	(Woman crying.)
[911 OPERATOR]:	Ma'am? Hello.
[FEMALE VOICE]:	Oh, my God.
[911 OPERATOR]:	Hello, ma'am? Hello. 911. Did somebody dial 911?
[FEMALE VOICE]:	Yes. Please come, please, please. At Mountview Road, please. Someone had got shot. Please.
[911 OPERATOR]:	Tell me where you at, ma'am? Tell me where you are? Tell me where you are?
[FEMALE VOICE]:	Oh, no. **He shot my daughter.** Yes. Can I have the police come quickly, please at Manorview Road, please. Please. Someone got shot. Please.
[911 OPERATOR]:	Where are you at, ma'am?
[FEMALE VOICE]:	Oh, no. Yes.
[911 OPERATOR]:	Tell me where you are? Tell me where you are?
[FEMALE VOICE]:	I'm here on 4546 Mountview Road, but the shooting is around the corner from me on Manorview Road. Oh my God.
[911 OPERATOR]:	Ma'am, where they at? Where were they shot at? Ma'am, help me. Tell me where you are.
	(Woman crying uncontrollably.)
[911 OPERATOR]:	Ma'am, you want to tell me where your daughter is?

[FEMALE VOICE]: Okay. She's on Manorview Road. 4555 Manorview Road. Please.

[911 OPERATOR]: Is your daughter well?

(Emphasis supplied.)

Ordinarily, we review rulings on the admissibility of evidence using an abuse of discretion standard. *Gordon v. State*, 431 Md. 527, 533 (2013). "Whether evidence is hearsay," however "is an issue of law reviewed de novo." *Bernadyn v. State*, 390 Md. 1, 8 (2005). Hearsay is "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." Rule 5-801(c). Hearsay is not admissible "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes." Rule 5-802.

Maryland Rule 5-803 provides exceptions to the general prohibition against hearsay. Present sense impressions and excited utterances are not excluded by the hearsay rule. A present sense impression is a "statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately after. Rule 5-803(b)(1). An excited utterance 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." Rule 5-803(b)(2). "The underlying rationale of the two exceptions are similar, *i.e.*, both preserve the benefit of spontaneity in the narrow span of time before a declarant has an opportunity to reflect and fabricate." *Booth v. State*, 306 Md. 313, 324 (1986).

To qualify as a present sense impression, "precise contemporaneity" is not required, but because the "presumed reliability of a statement of present sense impression flows from

the fact of spontaneity, the time interval between observation and utterance must be very short." *Id.* at, 324. Further, the declarant must be "speaking from personal knowledge before the statement may be admitted." *Id*. To be admissible as an excited utterance, the declaration must be "made at such a time and under such circumstances that the exciting influence of the occurrence clearly produced a spontaneous and instinctive reaction on the part of the declarant . . . [who is] still emotionally engulfed by the situation." *Cooper v. State*, 163 Md. App. 70, 97 (2005) (citations and internal quotation marks omitted).

Appellant argues that the caller's statement, "he shot my daughter," was not a present sense impression because the caller did not see the shooting. At trial however, the court ruled on the objection prior to the 911 call being played based upon proffers made by the State and the defense. The proffers did not inform the court that the caller had said "he shot my daughter," but simply that the caller "sees her daughter's been shot and is calling in." The defense did not complain about the statement "he shot my daughter" prior to the court's ruling on the motion, nor did it renew its objection after the 911 call was played. As such, the circuit court was not asked to rule upon the admissibility of the statement "he shot my daughter." Although the caller indicates that she is not at the precise location of the shooting, the court's admission of the call as a present sense impression and an excited utterance based upon the proffer that the call was made "within a couple of minutes" of the caller's daughter being shot and that she was "calling in" regarding the event, was not in error. Appellant nonetheless argues that, even if "the 911 call fell under the present sense impression exception to the hearsay rule, the prejudicial effect of the call was substantial, and not counterbalanced by any probative value."

We review a trial court's balancing of probative value with unfair prejudice for abuse of discretion. *State v. Simms*, 420 Md. 705, 725(2011). "Trial judges generally have 'wide discretion' when weighing the relevancy of evidence." *Id.* Here, the 911 call reporting the shooting was relevant as it was made a short distance away from the shooting, and soon in time after it occurred. There is no indication that the State sought to introduce the call to appeal to the emotion of the jury, but instead used it to construct a timeline of events. Accordingly, we hold that the court did not abuse its discretion in concluding that the probative value of the call outweighed the danger of unfair prejudice.

Even had the court erred in admitting the 911 call, the error was harmless. *Frobouck v. State*, 212 Md. App. 262, 283 (2013) (Erroneously admitted hearsay statements are reviewed for harmless error.). "To prevail in a harmless error analysis, the beneficiary of the alleged error must satisfy the appellate court 'that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.'" *Id.* at 284 (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). Here, in light of all the evidence, the admission of Ms. Singletary's 911 call was harmless. The caller did not identify appellant as the shooter. Moreover, Ms. Singletary herself testified that appellant shot her and appellant himself admitted in his interview with police that he had fired shots in the direction of Ms. Singletary. Finally, in closing, defense counsel conceded that appellant had shot Ms. Singletary, but argued that he had done so in self-defense. As a result, the identity of the shooter was not at issue in

the case, and therefore, the caller's statement, "he shot my daughter" could not have contributed to the jury's guilty verdict.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.