UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1135

September Term, 2015

CALVIN EDWARD SCHOOLFIELD, JR.

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: July 21, 2016

Convicted by a jury, in the Circuit Court for Wicomico County, of second-degree assault and reckless endangerment, Calvin Edward Schoolfield, Jr., appellant, presents the following question for our review:

> Did the trial court err in admitting testimony concerning an out-of-court statement made by the alleged victim to a police officer?

Finding no error, we shall affirm.

I.

On December 12, 2014, Nike Monique Tenner called "911" and said to the dispatcher, "I need police here." Then, after giving the dispatcher her address, she stated: "[m]y ex-boyfriend is here and keeps putting his fucking hands on me and I'm pregnant."

When, in responding to that call, Trooper Kevin Moore of the Maryland State Police arrived at Ms. Tenner's residence, Emergency Medical Services personnel were already there, attending to Ms. Tenner. She was, according to Trooper Moore, "very upset," "disheveled," "didn't really know kind of what to do at the time because of the fact that her phone had been taken,"[1] and "was holding her head because of an injury that she had sustained."

At that time, Ms. Tenner told the trooper that appellant had "grabbed her by the throat and struck her head against the couch" and that, when she tried to stop him from entering her son's bedroom, appellant "grabbed her again by the head and slammed her into the wall," whereupon she "struck a piece of furniture that was leaning up against that wall," breaking it.

[1] Appellant had taken Ms. Tenner's cellphone.

Consistent with Ms. Tenner's account, Trooper Moore subsequently observed blood stains on the wall and a bookshelf with several broken shelves. The trooper later testified that "it looked like things had been thrown around," and "[i]t definitely looked like something had happened inside the apartment." Trooper Moore ultimately took photographs of Ms. Tenner. Those photographs, which were later introduced into evidence at trial, showed a laceration and blood on the back of her head, as well as bruises on her neck, collarbone, and arm. Finally, according to the trooper, when appellant was arrested, and advised that the charges he faced stemmed "from an incident that occurred in December of 2014," appellant responded, "she told me she wasn't going to press charges for that."

When Ms. Tenner was called as a witness by the State, she asserted that she did not want to testify, and had, in fact, asked the prosecutor to drop the charges. She explained that she had just given birth to appellant's son and that they were engaged to be married. Although Ms. Tenner admitted that she and appellant had argued on December 12, 2014, she denied that appellant had put his hands on her, choked her, and caused an injury to her head. In any event, "it wasn't nothing that was major," she declared, "for him to put his hands on me or me to put my hands on him."

After a recording of her 911 call was played, in which she stated that she needed help because appellant kept "putting his fucking hands on me," Ms. Tenner explained that she called the police because it was "the only way I could get him out of there so we both could calm down." Her head injury, she claimed, had occurred when she tripped on a toy and hit her head on a light switch.

II.

At trial, during Trooper Moore's direct examination by the State, defense counsel objected, on hearsay grounds, when the trooper was asked about what Ms. Tenner had told him after he had responded to the scene of the incident. The court overruled the objection, stating "I think it's an excited utterance under all the circumstances." But appellant contends that Ms. Tenner's hearsay statement to Trooper Moore, namely, that appellant had assaulted her, did not qualify as an "excited utterance" exception to the hearsay rule, and, therefore, the court erred in admitting the statement into evidence. We disagree.

"'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). It is, generally, not admissible, unless it falls within an exception to the hearsay rule or is "permitted by applicable constitutional provisions or statutes." Md. Rule 5-802. Although hearsay rulings are ordinarily subject to *de novo* review on appeal, *Gordon*, 431 Md. at 533, the admissibility of a statement, under a hearsay exception, can involve, as it did here, "several layers of analysis" which "may require the trial court to make both factual and legal findings," and, of course, "[s]uch factual findings require deference from appellate courts." *Id.* at 536-37. Consequently, the trial court's determination of whether Ms. Tenner's statement to the officer was an "excited utterance" will not be disturbed unless we find an abuse of discretion.[2] *Marquardt v. State*,

[2] We reject appellant's suggestion that the trial court made no findings of facts. Implicit in the court's ruling that Ms. Tenner's statement was "an excited utterance under all the circumstances" was a factual finding that the statement was made when Ms. Tenner was still "under the stress of excitement" caused by the assault.

164 Md. App. 95, 124 (citation and internal quotation marks omitted), *cert. denied*, 390 Md. 91 (2005).

The "excited utterances" exception to the hearsay rule is set forth in Maryland Rule 5-803(b)(2), which provides that 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" may be admissible. "The rationale behind the excited utterance exception is that the startling event suspends the declarant's process of reflective thought, thus reducing the likelihood of fabrication." *State v. Harrell*, 348 Md. 69, 77 (1997) (citations omitted). Consequently, for a statement to be admissible as an "excited utterance," the trial court must "look[] into 'the declarant's subjective state of mind' to determine whether 'under all the circumstances, [she is] still excited or upset to that degree.'" *Gordon v. State*, 431 Md. 527, 536 (2013) (*citing* 6A Lynn McLain, *Maryland Practice; Maryland Evidence State & Federal*, § 803(2):1(c) (2d ed. 2001)). In making this determination, a court looks at the "totality of the circumstances," *Marquardt*, 164 Md. App. at 124, which may include "how much time has passed since the event, whether the statement was spontaneous or prompted, and the nature of the statement, such as whether it was self-serving." *Gordon*, 431 Md. at 536. But, ultimately, it is the "emotional state of the [declarant] at the time [that] governs admissibility," *Davis v. State*, 125 Md. App. 713, 716, *cert denied*, 356 Md. 178 (1999),

Here, the hearsay statement at issue is Ms. Tenner's statement to Trooper Moore that appellant had assaulted her. Prior to Trooper Moore's testimony, and the introduction of the hearsay statement, a recording of Ms. Tenner's 911 call was played for the jury. This recording provided the court with evidence of Ms. Tenner's emotional state at the time of

the 911 call, and Trooper Moore arrived shortly after that call took place.[3] Moreover, Trooper Moore testified that, when Ms. Tenner made the statement at issue, she was "very upset," looked "kind of disheveled," and was "holding her head because of an injury she had sustained."

Trooper Moore's testimony, if believed, was sufficient to support the finding that Ms. Tenner remained "under the stress of excitement" from the assault when she made the statement at issue, and, therefore, her description of how she had been assaulted by appellant constituted an "excited utterance." Indeed, there is nothing about the statement, or the circumstances that surrounded it, that suggests that it was the product of reflection.

But, appellant, relying principally upon *Marquardt*, claims that Ms. Tenner's statement to the trooper was not admissible as an "excited utterance." According to appellant, like the statement in *Marquardt*, the statement at issue here was the product of thoughtful consideration and reflection, because it was made long after the incident to which it related, was in response to an inquiry, and was a "detailed recitation of what had taken place." But, despite appellant's assertion, the facts of *Marquardt* are materially different, and, thus, that case is distinguishable from the case before us.

Marquardt's wife, after being abducted and repeatedly beaten by her husband, gave a statement, thirty minutes after escaping from Marquardt, to a police officer at the hospital,

[3] Records from the Wicomico County Department of Emergency Services ("EMS"), admitted as State's Exhibit 12A appear to indicate that the 911 call was made at 8:44 a.m., EMS received the call at 8:52, arrived at Ms. Tenner's apartment at 9:01, and left at 9:11. When the trooper arrived at Ms. Tenner's apartment, emergency medical services were already there, meaning that the trooper arrived after 9:01 and before 9:11, which would have been 15 to 25 minutes after the initial 911 call.

where she was being treated for wounds she had received as a result of those assaults. Appearing "a little upset," and "crying," she gave the officer a lengthy narrative of the events. In addition to recounting the assaults, she described her attempt to covertly use her cellphone to call "911" for aid, named the roads on which Marquardt drove after abducting her, gave the officer the directions they traveled on each of those roads, and identified the stores in the area when Marquardt briefly stopped his vehicle. *Id.* at 114.

At trial, when the officer testified as to the information Marquardt's wife gave him at the hospital, Marquardt objected, but the court admitted the statement. Then, on appeal, Marquardt challenged the statement's admission as not falling within any exception to the hearsay rule. *Id.* at 127. This court concluded, however, that it was not an excited utterance, reasoning that, even though the wife "was 'still a little upset,' and 'crying,'" there was "nothing in [the police officer's] description of [her] mental or emotional state to suggest that she was reacting without deliberation." *Id.* at 128. Furthermore, the "detailed nature and amount of information" she gave in her statement indicated, we noted, that it was not an excited utterance. *Id.* at 129.

The circumstances of the statement at issue here stand in contrast to those in *Marquardt*. In contrast to the officer's description of Marquardt's wife as being a "little upset" at the time she made her statement, Trooper Moore stated, twice, that Ms. Tenner was "very upset," and, then, added that she appeared "kind of disheveled," and was "holding her head because of an injury she had sustained." And, Ms. Tenner's statement to the officer was nowhere near as detailed and loaded with information as Marquardt's

wife's statement was. And, thus, in contrast to Marquardt's wife's statement, which was obviously a product of reflection, Ms. Tenner's statement was clearly spontaneous.

Appellant suggests, nonetheless, that, because the statement at issue was prompted by a question from Trooper Moore, it was the product of reflection and therefore did not qualify as an "excited utterance." Although Ms. Tenner's statement was in response to a question, that fact, as we have said, "is relevant but hardly dispositive," *see Billups v. State*, 135 Md. App. 345, 360 (2000), *cert. denied*, 363 Md. 207 (2001); *Marquardt*, 164 Md. App. at 124 ("[t]he lapse in time and spontaneity of the statement are factors to be considered in the analysis, but neither is dispositive."), and, when viewed in the context of all of the surrounding circumstances, does not change our conclusion.

In sum, there was sufficient evidence before the circuit court to support a finding that Ms. Tenner's statement was made when she was still "under the stress of excitement." Consequently, it is clear that, here, given the totality of the circumstances, the lower court did not err in admitting the statement as an "excited utterance."

III.

Even if we were to assume that Ms. Tenner's statement was improperly admitted, that error was harmless. Harmless error exists when "a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Dorsey v. State,* 276 Md. 638, 659 (1976). We must be satisfied 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.*

The "911" call, during which Ms. Tenner stated that she needed the police there because appellant kept "putting his fucking hands on [her]" was evidence that appellant had, in fact, just assaulted her. Moreover, photographs of Ms. Tenner, taken shortly after the assault, showed bruises on her neck, collarbone, and arm, and a laceration on the back of her head. Furthermore, the blood stains on the wall, and the broken bookshelf, also supported her account of what had happened, as did Trooper Moore's statements that "it looked like things had been thrown around," and "[i]t definitely looked like something had happened inside the apartment." Finally, appellant's statement, at the time of his arrest, that "[Ms. Tenner] told me she wasn't going to press charges for that" was further evidence that the assault in question had occurred.

Finally, although Ms. Tenner denied the assault at trial, her testimony was called into question by a Domestic Violence report introduced by the State, that summarized Ms. Tenner's statement the day of the assault, and, which Trooper Moore testified that he went "over with [Ms. Tenner]" that evening. The report stated: "[s]ubject grabbed her by the head and struck her head against the wall. Suspect also threw her down on the ground and kicked her." The court instructed the jury that the report, which was not signed by Ms. Tenner, could not be used as substantive evidence but could be used to assess the credibility of Ms. Tenner's trial testimony. Here, the evidence of guilt was overwhelming, and it is clear, beyond a reasonable doubt, that even assuming the admission of Ms. Tenner's statement to the trooper was erroneous, that admission constituted harmless error.

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