Circuit Court for Montgomery County
Case No. 128339C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2302

September Term, 2016

RYAN ANTHONY SALANDY

v.

STATE OF MARYLAND

Meredith,
Reed,
Sharer, J. Frederick.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: June 14, 2018

Following a five-day bench trial, the Circuit Court for Montgomery County convicted Ryan Salandy ("Appellant") of second degree murder. During trial, Appellant attempted to move into evidence a statement that he believed was an excited utterance. The statement was his response upon hearing that the victim had died. Appellant was precluded from bringing in this evidence because the court ruled that it was not a hearsay exception. At the sentencing hearing, Appellant was sentenced to thirty years of incarceration with all but eighteen years suspended. Appellant timely appeals and brings one question for our review, which we have rephrased for clarity:

I. In a specific intent murder versus involuntary manslaughter trial, is it reversible error to preclude from admission a video capturing Appellant's spontaneous reaction of disbelief and shock upon learning that the victim had died?

For the reasons that follow, we affirm the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

Ryan Salandy ("Appellant"), a "Christian" Hip-Hop artist who goes by the moniker Ry Money, writes and produces "positive and uplifting" rap music. In 2010, Appellant met the victim, William McDaniel ("Mr. McDaniel"), through a mutual acquaintance who was also in the music business. Both Mr. McDaniel and Appellant developed a working relationship where Mr. McDaniel assisted Appellant with the production of artwork for his album covers. In the summer of 2015, Appellant hired Mr. McDaniel to print cover art for about 150 CDs. By September, Appellant had received 100 of them back while Mr. McDaniel held the remainder in his possession.

In an effort to retrieve the CDs, Appellant texted and called Mr. McDaniel about once a week, but much to his chagrin, was being ignored. Appellant, feeling "hurt, confused, and upset," sent Mr. McDaniel a text message on September 24, 2015 stating: "I'm going to fuck you up when I see you. We're going to see each other someday, bitch boy, you better give me my shit before it's too late." Subsequent to the first text, Appellant sent a message on Facebook Messenger saying, "When you see me, run." During trial, Appellant testified that the purpose of his messages was to "get [Mr. McDaniel's] attention or to get him to respond to [Appellant]."

The following day, on September 25, 2015, after hearing no response from Mr. McDaniel, Appellant loaded rocks into his front seat and drove to Mr. McDaniel's house. During trial, Appellant, testified that his intention was to throw rocks at his house in retaliation for Mr. McDaniel ignoring him. When he arrived at the home, he saw Mr. McDaniel walking his dog. Neighbors testified that Appellant got out of his car and began yelling and cursing at Mr. McDaniel. The two began arguing, and after realizing the "argument was going nowhere," Appellant got back into his vehicle and drove away.

While driving away, Appellant saw Mr. McDaniel in his rearview mirror "make a gesture with his arms that [Appellant] interpreted as challenging him to a fight." As a result, Appellant turned his vehicle, accelerated his speed, and struck Mr. McDaniel. There was no evidence that Appellant applied pressure to the brakes during this time. Appellant testified that as he was driving towards Mr. McDaniel, he was unsure whether or not Mr. McDaniel would move. Further, Appellant believed that the speed of his car would push him to the side of the road. Instead of pushing him to the side of the road, Mr. McDaniel

fell forward into the windshield of his car, causing Appellant to lose control. The vehicle itself was severely damaged. The evidence adduced at trial showed that the impact caused the tempered glass on the windshield to be shattered, causing a large hole in the window on the passenger side of the vehicle. After causing the collision, Appellant fled the scene because "[he] panicked, [he] was scared. [He] didn't know what to do. [He] was in shock of what had just happened." After Appellant drove away, paramedics arrived to the scene to examine Mr. McDaniel.

The force of the impact threw Mr. McDaniel's body "'much further' down the street than where he was standing when he was struck." According to paramedics, Mr. McDaniel's body was "twisted," his face was "pushed against the pavement," and he was "gasping for air." One of the investigating Detectives testified that the collision caused blunt force trauma injuries to Mr. McDaniel. He suffered from a fractured sternum and ribs, his spine was dislocated, several injuries to the lungs and aorta, a head injury, and all of the bones in his legs were broken. Mr. McDaniel's "upper body and … lower body were actually twisted in opposite directions." Paramedics pronounced Mr. McDaniel dead at the scene. At trial, Appellant asserted that he was unaware of Mr. McDaniel's death.

Nearly six hours after Mr. McDaniel was killed, Appellant was interviewed by Montgomery County Homicide Detective Beverly Then. At the time of the interview, he had not been processed. During the recorded interview, Appellant asked Detective Then about Mr. McDaniel's injuries.

[APPELLANT]: Is he like really injured?

[DETECTIVE THEN]:	(inaudible)
[APPELLANT]:	Like concussion?
[DETECTIVE THEN]:	He's dead.
[APPELLANT]:	He's dead?!
[DETECTIVE THEN]:	Yes.
[APPELLANT]:	He's dead?!
[APPELLANT]:	Oh my god.
[DETECTIVE THEN]:	That's why we're trying to understand what happened and why did it happen.
[APPELLANT]:	I'm not a murderer. I'm not a murderer. No. No. Please don't.

Following the interview, Appellant was charged with Mr. McDaniel's murder.

At trial, Appellant testified that while he intentionally hit Mr. McDaniel with his car, he did not intend to kill him. Moreover, he testified that he did not think that the impact would severely harm him. Instead, he thought the car "would hit [Mr. McDaniel's] leg or something" and push him to the side of the road. During trial, to prove that he did not intend to kill Mr. McDaniel, Appellant attempted to introduce a video recording showing Appellant's reaction to Detective Then after learning of Mr. McDaniel's death. The State objected and Appellant "argued that the nonverbal reaction did not include statements and were therefore not hearsay and that his verbal responses were admissible under the excited utterance exception to the hearsay rule." Ultimately, the court stated it refused, "because it did not want to taint the verdict by viewing potentially inadmissible evidence."

The court then ruled separately on the admissibility of the statements made by both Detective Then and Appellant. First, the court ruled on Detective Then telling Appellant that Mr. McDaniel had died. Appellant argued that the statements were not hearsay because they were not offered for the truth of the matter asserted, but rather for the effect on Appellant. The court ruled that the statements were inadmissible because the court believed "…the theory is that it is the truth of that statement that then generates the response from [Appellant], and so it makes no sense except if they are offered for the truth of the matter." Second, the court ruled on Appellant's statements, stating that they were not excited utterances because he was not describing anything but asking questions.

The trial court found that Appellant was guilty of second degree grievous bodily harm because the court believed that there was a "lack of evidence, direct or circumstantial, that [Appellant] actually intended to bring about [Mr. McDaniel's] death." Rather, the court found beyond a reasonable doubt that "[Appellant] specifically intended to cause Mr. McDaniel grievous bodily harm, such that a reasonable person could or would know under the circumstances that death would be the likely result." Accordingly, the court found Appellant guilty of second degree murder. It is from this ruling that Appellant appeals.

STANDARD OF REVIEW

Ordinarily, we review the admissibility of evidence on an abuse of discretion standard. *See Bernadyn v. State*, 390 Md. 1, 7 (2005). However, if the admissibility of evidence to be examined is hearsay, it is reviewed de novo.

> Hearsay under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is permitted by applicable constitutional

> provisions or statutes. Thus, a circuit court has no discretion to admit hearsay in the absence of a provision for its ability. Whether evidence is hearsay is an issue of law reviewed de novo.

Id. at 8. (emphasis in original) (Internal quotation marks omitted).

DISCUSSION

Although Appellant asks one question of this Court, he makes his argument in multiple sections. We will address each argument in turn, as they appear in his brief.

I. The Trial Court did not commit a reversible error as a matter of law in excluding Exhibit 2, the CD.

A. Parties' Contentions

Appellant argues that the trial court committed a reversible error when it excluded admission of the video that captured Appellant's discussion with Detective Then. He contends that his "spontaneous reaction of disbelief and shock upon learning that [Mr. McDaniel] died" was admissible because, first, Detective Then's statements were not offered for the truth and therefore not hearsay and second, Appellant's statements were an excited utterance. The court ruled that Detective Then's statements were hearsay because:

> …[t]hey are [offered for the truth of the matter] because the theory here is that it is the truth of that statement that then generates the response from [Appellant], and so it makes no sense except if they are offered for the truth of the matter. It would be difficult for [the trial court] to believe that Detective Then would be saying something to [Appellant] in that nature that was untrue purely for the point of trying [to] arouse a response in him. I mean that doesn't sound like what was happening. So, I think they are being offered for the truth of the matter.

Moreover, the court found that Appellant's "he's dead?!" statements were hearsay under no recognized exception because they were questions. It ruled: "I don't think that these statements are excited utterances because this is not [Appellant] describing anything. It's him asking questions. He may have reactions to what he learns, but I don't think it qualifies for that reason as an excited utterance."

The State argues that "[b]ecause the court excluded the video of him reacting with shock to the news of [Mr. McDaniel's] death, [Appellant] says, he was unable to convince the court that he was guilty only of misdemeanor manslaughter." Therefore, the State contends "the admission of the statement could not have affected the trial court's ultimate verdict, and therefore, even if the court erred, it was harmless." We agree.

B. Analysis

Detective Then's Statements

The trial court held that Detective Then's statement, "[h]e's dead," was inadmissible because it was offered for the truth of the matter asserted. We find that even if a statement is true, it is still admissible if it is not being offered for the truth of the matter asserted. Because, under those circumstances, the statement then becomes a non-hearsay statement.

Hearsay is a statement made "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. Hence, "when the out-of-courts statement is offered for purpose other than to prove the truth of matter asserted… the statement is not hearsay." *Ali v. State*, 314 Md. 295,304 (1988). For example, in *Frobouck v. State*, 212 Md. App. 262 (2013), officers' statements about why they were dispatched to a rental property were not hearsay because

they were not offered to prove the truth of the matter asserted, that there was marijuana being grown in the apartment, rather to explain what brought the officers to the scene in the first place. *See also*, *Wagner v State*, 213 Md. App. 419 (2013) (a detective's testimony that a witness could not read and write was not hearsay because it was not admitted for its truth, that the witness could not read and write, but was to explain why the comments section of his photo array sheet was blank.); *Ashford v. State*, 147 Md. App. 1 (2002) (A defendant's wife implicating him in the murder, was not hearsay because it was to show that the defendant heard the statement and reacted to it by admitting his own involvement in the murder); *but cf. Pitt v. State*, 152 Md. App. 332 (2003) (Stolen property compiled by a victim was inadmissible hearsay in a theft prosecution, the writing was offered for its truth, namely that the listed items were stolen and the values indicated that in the writing.)

A statement that is offered for the purpose of showing how the listener or reader will respond to that statement, is not a statement offered for its truth, and thus not hearsay.

As with the present case, a declarant's statements that, if shown to have an effect on the listener or reader, are admissible as non-hearsay.

> The rule against hearsay does not apply to a statement offered for the limited purpose of showing what effect it had upon the hearer (assuming, of course, that effect on the hearer is relevant to a material issue). If the plaintiff suffers depression upon hearing his doctor tell him that he has six months to live, he may testify to the doctor's statements and its effect upon him. The doctor's statement is admissible for the limited purpose of allowing the jury to understand and properly evaluate *the effect it allegedly had on the plaintiff. It is not admissible to prove the truth of the diagnosis.*

(emphasis added) JOSEPH A. MURPHY, MARYLAND EVIDENCE HANDBOOK, 311 (LexisNexis, eds., 4th ed. 2010). This rule includes statements that are given to put the hearer or reader on notice or to give that person a reason to act. *See* LYNN MCCLAIN, MARYLAND EVIDENCE, STATE & FEDERAL (Thompson West, eds., 3rd, 2017).

Here, Detective Then notified Appellant that Mr. McDaniel had died from his injuries as a result of Appellant's actions. Although this statement was true, Appellant contends it had an impact that shows that he: (1) had no prior knowledge of Mr. McDaniel's death; (2) is evidence that Appellant probably had no intention to kill Mr. McDaniel; and (3) impacted him greatly, as indicated by his "…nonverbal and verbal responses, reflecting disbelief and shock." We hold that merely because the statement "[h]e's [d]ead" is a true statement, it does not diminish the effect it had on the listener and thus, was admissible as a non-hearsay statement. Yet, we hold that even though the statement should have been admitted as non-hearsay, its exclusion was harmless. We shall explain in the section to follow.

Appellant's Statements

The trial court also ruled that Appellant's response to Detective Then's statement, as explained above, was not an excited utterance because they were questions. In the interview between Detective Then and Appellant, Appellant stated: "he's dead?" and began to show, what appears to this Court, signs of disbelief and shock. We disagree with Appellant that this was an excited utterance and thus affirm the trial court.

An excited utterance is a statement made related to a startling event or condition made while the declarant was under the stress caused by the event or condition. *See* Md.

Rule 5-804(b)(2). In essence, "the admissibility of evidence under this exception is, therefore, judged by the spontaneity of the declarant's statement and an analysis of whether it was the result of thoughtful consideration or the product of the exciting event." *Parker v. State*, 365 Md. 299, 313 (2001) (quoting *Mouzone v. State*, 294 Md. 692, 697 (1982)). Accordingly, there must have been a startling event and a response made during, or at some time so close to that event, such that the declarant remains under stress or influence of that event. An excited utterance need not be actual spoken words. *Id.* (the court found that the 'excited utterances' of two unidentified declarants who were described as visibly upset and crying were held to be admissible.) *See also, Marquardt v. State*, 164 Md. App. 95 (2005) (the court found that statements made to a police officer in a patrol car were excited utterances because the assault had ended only minutes before the victim made the statements, she was crying, emotional upset, hysterical, and unable to given coherent statements).

In review of Appellant's case, we agree with the trial court that his statements following learning about Mr. McDaniel's death, were not excited utterances. It is visible from the video that after learning of his death, Appellant's face is in shock, he exclaims "he's dead?" and subsequently after saying "oh my God." Clearly, Appellant was under the shock of the situation. However, there was a six hour difference between when Appellant hit Mr. McDaniel with his vehicle, and his interview with Detective Then. That time span between the incident and his statement, makes this Court hesitant in ruling that the statements were excited utterances. Rather, Appellant had six hours to determine how he would react to Mr. McDaniel's injuries – whether they proved fatal or not, between the

incident and the inevitable police investigation. Nevertheless, even if we had held that the trial court erred in excluding these statements, its exclusion was not injurious to Appellant. Thus, we affirm the decision of the trial court.

II. The exclusion of Detective Then's and Appellants statements were not injurious to Appellant's verdict of guilty of second degree murder.

Appellant was found guilty of second degree murder, because it was reasonable to infer that death was likely to occur as a result of Appellant's actions.

> I find beyond a reasonable doubt that [Appellant] intentionally drove into Mr. McDaniel at Approximately 45 miles an hour that he accelerated into him, that he was flooring it for approximately four seconds before hitting him. I find beyond a reasonable doubt that [Appellant] knew that Mr. McDaniel was badly injured. Based on all of the evidence including the injuries to Mr. McDaniel, I find beyond a reasonable doubt that [Appellant] specifically intended to cause Mr. McDaniel grievous bodily harm, such that a reasonable person could or would know under the circumstances that death would be the likely result. Accordingly, I find [Appellant] guilty of murder in the second degree…

In order to determine whether there is grievous bodily harm, it must be found that there was an intent to cause significant bodily injury to which "a reasonable person could or should know, under the circumstances, would likely result in death to the victim. Because the crime involves an unintentional killing, the defendant need not actually know that his conduct will result in the victim's death." *Thorton v. State*, 397 Md. 704, 713 (2007). The intent to commit severe bodily harm is enough to qualify a person for murder, specifically second degree murder. *See Selby v. State,* 361 Md. 319 (2000).

It is clear to this Court that Appellant intended to cause grievous bodily harm to Mr. McDaniel, this is indicated by his actions, he (1) packed his vehicle with rocks; (2) drew a baton on the victim; (3) sent threatening messages through text and Facebook Messenger; and (4) turned his vehicle around, after leaving the scene, accelerated his vehicle and struck Mr. McDaniel with his vehicle. There is enough evidence to suggest that although Appellant may not have intended to kill Mr. McDaniel, he intended to cause grievous bodily harm such that a reasonable person[1] would know that death was a likely occurrence. Simply because Appellant did not know that Mr. McDaniel had died does not diminish the fact that his actions were egregious and were intended to cause harm. Thus, even if the trial court had admitted both the statements of Appellant and Detective Then, it would not have changed the overall verdict – he's guilty of second degree murder because he ran over someone with his vehicle and all of his actions up to that point, clearly indicate an intention to cause grievous harm.

[1] Appellant attempts to introduce an argument that because he has ADHD he does not appreciate the consequences of his actions. This Court believes that Appellant is making a competency argument, one that is untimely and should not be brought before this Court. There is no case law or scientific evidence to show that a person with ADHD does not know that there is a likelihood that a person could die after being run over by a vehicle. This Court appreciates, after a cursory view of Appellant's vehicle—with the glass enclaved and completely shattered on the passenger side—that that death is a likely occurrence to the person struck by the vehicle.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.