STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUWAN DARNELL LOMAX,

APPELLANT

APPELLATE CASE NO. 2012-212485

PRO SE BRIEF OF APPELLANT

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The trial court reversibly erred by finding the victim and Tobin's statement to the law enforcement voluntarily and admissible. Appellant asserts that the Victim's written statement should have been inadmissible under the excited utterance hearsay exception.

STATEMENT OF THE CASE

Appellant Juwan D. Lomax was indicted by the Greenville County grand jury for attempted murder, first degree burglary, armed robbery, and conspiracy. R. 81, line 16—R. 83, line 11; R. 591 (Indictments). The charges stemmed from Appellant's alleged complicity with others in the home invasion of an apartment wherein one of the occupants was shot. Appellant's case proceeded to trial, along with his codefendant De'nia Z. O. Dawkins (Dawkins), from April 9-11, 2012 before the Honorable G. Edward Welmaker and a jury. R. 1. Robert Ianuario (Counsel) represented Appellant, while Cassandra Gorton represented Dawkins. Katryna Salisbury represented the State. R. 1.

The jury found Appellant guilty on all charges. R. 559, lines 7-24. A sentencing hearing was held on July 11, 2012, where the trial court imposed the following concurrent sentences: 15 years incarceration for attempted murder; 15 years for first degree burglary; 15 years for armed robbery; and 5 years for conspiracy. R. 586, lines 12-16.

The trial court reversibly erred by finding the Victim and Tobin's statement to the law enforcement voluntarily and admissible. Appellant asserts that the victim's written statement should have been inadmissible under the excited utterance hearsay exception.

The trial court erred by determining the Victim's written statement to the law enforcement was freely and voluntarily given, and later allowing the statement to be admitted into evidence. First, appellant contends the statement does qualify as an excited utterance. Without challenging the statement, " The defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary statement [confession], without regard for the truth of falsity of the statement [confession]". **Jackson v. Denno, 84 S.CT. 1774 (1964)**. Specifically, appellant argues the victim's was under the influence of the startling event as evidenced by **R.174 lines,3-22,** and **R.213 lines, 16-22**.

There is however an rule such as the excited utterance exception. The Rules Of Evidence define excited utterance as 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 803 (2), SCRE**.

An excited utterance may be admitted wheter or not the declarant is available as a witness. **See: Rule 803, SCRE** (Entitled "Hearsay Exceptions; Availability of Declarant Immaterial"). Moreover, when a statement is admissible because it falls within a Rule 803 exception, it may be used substantively, that is, to prove the truth of the matter asserted. **See: State v. Dennis, 523 S.E.2d**

173 (1999). Consequently, in the instant case the victim's statement qualifies as an excited utterance, the State improperly admitted the written statements to prove that the appellant committed any of the offences alleged against him.

Looking at the rule, there are three elements that must be met to find a statement to be an excited utterance: (1) The statement must relate to a startling event or condition; (2) The satement must have been made while the declarant was under the stress of excitement; and (3) The stress of excitement must be caused by the startling event or condition. See: State v. Sims, 558 S.E.2d 518 (2002). The excited utterance exception is based on the rationale that " the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication." See: State v. Dennis, 523 S.E.2d at 177. A court must consider the totality of the circumstances when determing whether a statement falls within the excited utterance exception, and that determination is left to the sound discretion of the trial court. Sims, supra.

The trial court abused its discretion by not admitting the victim's statement as an excited utterance. Clearly, the statement related to the startling event of the victim being severly injured. The victim was highly upset when the written statements was made, and thus, the victim made the declaration while under the stress of his attack. Finally, this stress obviously was caused by the startling event of the Home Invasion itself, the requirements of Rule 803 (2), SCRE, were easily satisfied in this case.

In order to introduce a confession or statement from an custodial interrogation, the State must prove by a preponderance

of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 86 S.CT. 1602 (1966); See Also: Lego v. Twomey, 92 S. CT. 619 (1972). (" The prosecution must prove at least by a preponderance of the evidence that the confession or statement was voluntary").

Given the totality of the circumstances in the case at hand, The statements was made by the declarant, under the stress of excitement of an startling event which suspended his process of his reflective thought, reducing the likelihood of fabrication. See: State v. Ladner, 644 S.E. 2d 684 (2007).

Intially, the Victim's stated they wasn't set up by the appellant co-defendant. R.174, lnes 3-5. He further was questoned about that remark and responded as R.174, lines 22. Not thinking he was set up.

In short the Victim oral statement proclaimed the appellant co-defendant did not setthis crime up. And the victim called the appellant co-defendant at the hospital and she was traumitize because the incident occured. As a result, the evidence in the record shows that the Appellant didn't have anything to do with the chargesalleged. See: R.146, lines 17-21; Also See: R.521, lines 10-12. The trial court reversibly erred by finding the victims written statement to the law enforcement was admissible without being challenged. Accordingly, the initial statement was an oral statement. The written statement should have been admitted under the excited utterance doctrine because it was made after weeks if not months to prepare a strategy because the victim also faced Distribution Charges as well.

The written statement wasn't voluntarily made. It was pursuaded by the law enforcement thoughts of the crime scene. And coerced, trying to get an conviction from the appellant of the crime at hand. That's why the victim was offered an plea deal to cooperate with the State on these charges against the Appellant. Therefore, the appellant is not guilty of any of the charges alleged against him.

CONCLUSION

For the foregoing reasons, Appellant Juwan Lomax respectfully requests reversal of his conviction, andremand for a new trial.

Respectfully Submitted,

_____

Juwan Lomax
Pro Se

This ____day of September 2013.

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Did the trial Court err by not making the Appellants trial racially neutral. And did the Court also err by not challenging the disparity of the Jurors Race, Age, and Incongruity.

STATEMENT OF THE CASE

Appellant Juwan D. Lomax was indicted by the Greenville County grand jury for attempted murder, first degree burglary, armed robbery, and conspiracy. R. 81, line 16—R. 83, line 11; R. 591 (Indictments). The charges stemmed from Appellant's alleged complicity with others in the home invasion of an apartment wherein one of the occupants was shot. Appellant's case proceeded to trial, along with his codefendant De'nia Z. O. Dawkins (Dawkins), from April 9-11, 2012 before the Honorable G. Edward Welmaker and a jury. R. 1. Robert Ianuario (Counsel) represented Appellant, while Cassandra Gorton represented Dawkins. Katryna Salisbury represented the State. R. 1.

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Did the trial court err by not making the Appellants trial racially neutral. And did the Court also err by not challenging the disparity of the Jurors Race, Age and Incongruity.

The trial court erred by not making the Appellants trial racially neutral. Appellant contends under the governing case law of **Batson v. Kentucky, 106 S.CT. 1712, (1986)**. And also the fourteenth Amendment of the United States Constitution he is entitled to fair and impartial juror. Appellant asserts that his potntial jury panel consisted of thirty three individuals catergorized as follows:

16 White Females

10 White Males

2 Black Females

3 Black Males

2 Race Unknown

Accepting the following Jurors

9 White Females

1 White Male - 1 Alternate

1 Black Female

1 Black Male - 1 Alternate

2 Race Unknown -

In which one Juror number **(70) Tammie Genco, Race Unknown** was asked to be excused by Mr.Inaurio. For the reasons of **R.89 Lines 10-15** (asking to be excused) **R.96 Lines 21-25, & R. 97 Lines 1-3**. The trial Judge erroneously inserted Mrs.Tammie Genco besides she could've been easily replaced by anyone of the twenty people that

was remaining in the jury pool.

Given the count of the jurors in the pool. Appellant is an eighteen year old black male and received disparate treatment by not being tried by an juror of his kind. The juror panelitself was impartial. Having more white females and white males in the juror pool than black females and black males. See: Chavous v. Brown, 385 S.E.2d 206 (1989) at 210. Also See: State v. Jones 358 S.E.2d at 703. There are requirements for the reason an trial is not racially neutral. And an explantion is required. The Appellant attorney did not give any valid reason he struck every white male or didn't choose more black males or black females. See: R.108 Lines 18-25, R.109 Lnes 1-4, R.110 Lines 2-25, and R.111 Lines 1-5. The trial court reversibly erred by letting the Appellant proceed with the jurors he had. Easily satisfying the requirement of Batson v. Kentucky and State v. Rayfield, 631 S.E.2d 244 (2006).

Futhermore, the trial court reversibly erred by not challenging the disparity of the Juror's. Every Juror on the jury panel was over the age of thirty. The Appellant is an eighteen year old black male who is on trial for the first time, he was not equally protected by the state. His preemptory strikes was racially motivated it was not pretext. See: State v. Oglesby, 379 S.E.2d 891 (1989), and Also See: Chavous v. Brown, 385 S.E.2d 206, (1989).

Trial Counsel, along with Co-Counsel did not make an credible determination in excersing their preemptory challenges. And the trial court erred by abusing its discretion to the Court by not having an racially neutral juror seated for the Appellant. See: State v. Flynn, 627 S.E. 2d 763 (2006). Therefore, the none challen-

ging of the disparity reasonably affected the result of the trial.

CONCLUSION

For the foregoing reasons, Appellant Juwan Lomax respectfully requests reversal of his conviction, and remand for a new trial.

Respectfully Submitted,

Juwan Lomax
Pro Se

This ____day of September 2013.