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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM LAURENS COUNTY
Court Of General Sessions
The Honorable J. Cordell Maddox, Circuit Court Judge

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Appellate Case No. 2024-000370

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THE STATE, Respondent,

v.

MARCUS TYRONE GRANT, Appellant.

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**FINAL BRIEF OF RESPONDENT**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .......... ii.

STATEMENT OF ISSUE ON APPEAL .......... 1

STATEMENT OF THE CASE .......... 2

STATEMENT OF FACTS .......... 3

STANDARD OF REVIEW .......... 5

ARGUMENT .......... 6

The court did not err in the admission of evidence that qualified as the excited utterance hearsay exception because the statement was made shortly after the assault and witnesses described declarant as shaken up. .......... 6

CONCLUSION .......... 11

## TABLE OF AUTHORITIES

**South Carolina Cases:**

State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978) ........ 7, 10

State v. Bryant, 372 S.C. 305, 642 S.E.2d 582 (2007) ........ 5

State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011) ........ 10

State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998) ........ 6

State v. Mitchell, 286 S.C. 572, 336 S.E.2d. 150 (1985) ........ 10

State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991) ........ 9

State v. Sims, 304 S.C. 409, 405 S.E. 2d 377 (1991) ........ 7, 9

State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002) ........ 7

State v. Washington, 379 S.C. 120, 665 S.E.2d 602 (2008) ........ 6, 7, 8

State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999) ........ 7

Turner v. Thomas, 431 S.C. 527, 848 S.E.2d 353 (Ct. App. 2020) ........ 6

**Other Cases:**

Bell v. State, 847 So. 2d 558 (Fla. Ct. App. 2003) ........ 8

Campos v. State, 186 S.W.3d 93 (Tex. Ct. App. 2005) ........ 8

Jackson v. State, 419 So. 2d 394 (Fla. Ct. App. 1982) ........ 8

Rogers v. State, 660 So. 2d 237 (Fla. 1995) ........ 8

State v. Jano, 524 So. 2d 660 (Fla. 1988) ........ 8

## STATEMENT OF ISSUE ON APPEAL

Whether the court erred in the admission of evidence by finding the statement qualified as an excited utterance hearsay exception where the statement was made shortly after the assault and witnesses described declarant as shaken up.

## STATEMENT OF THE CASE

A Laurens County Grand Jury indicted Appellant Marcus Grant for assault and battery by mob and kidnapping. He proceeded to a jury trial on March 4, 2024, before the Honorable J. Cordell Maddox, Jr. Appellant was convicted of third-degree assault and battery by a mob and kidnapping. With respect to assault and battery by a mob, Appellant was sentenced to one year incarceration. Appellant also received a concurrent eighteen-year sentence for kidnapping with five years' probation. A timely notice of appeal was filed on March 11, 2024. This direct appeal follows.

## STATEMENT OF FACTS

On January 22, 2021, Victim was sitting in his home when a group of four men broke into his apartment, held Victim down, and stomped on his face. (R. 77-9; 120). Previously, Victim worked with the State as an informant to assist in the conviction of Grant. Grant recalled that after learning Victim was working as an informant he stated, "by the grace of god if I make it out of prison before this man is dead, I'm going to beat this man." (State's Exhibit #2 at 10:20).

Victim's uncle, Little, testified that Victim called him after the incident. (R. 77-78). Little testified that Victim identified Grant as an attacker on the phone. (R. 77-78). While on the phone, Victim indicated the group held him down while Grant stomped on his face. (R. 79). Little then drove to Victim with a weapon, so Victim could protect himself. (R. 82; 91). Little testified, the drive took ten to fifteen minutes. (R. 80). Little stated Victim <u>seemed upset</u> and <u>shaken up</u>. (R. 51). Little gave him a .22 caliber for protection. (R. 82). Little never saw Victim alive again. (R. 84). He next saw him lying deceased in the road after being shot. (R. 84).

Victim also spoke with Debra, Little's wife, after the incident. (R. 122). Debra went with Little to see Victim. (R. 83). She stated that Victim was <u>shaken up</u> and <u>scared</u>. (R. 122). She testified that Victim stated the group was jumping on him and calling him a snitch. (R. 113). Debra testified Victim stated he could not go back home because the group was all there. (R. 114). She testified Victim stated there were about fifteen people inside his home and that about half of them jumped him along with Grant. (R. 114).

Detective Sellers from the Laurens County Police Department testified that he arrived at the scene where Victim's body was found. (R. 168). Sellers testified he had sustained gunshot wounds. (R. 170-1). Photographs were introduced showing Victim's injuries. (R. 177). A video statement was introduced where Grant admitted to the assault of Victim. (R. 203).

Grant called Laurens police after hearing they were searching for him following Victim's death. (State's Exhibit #2 at 3:30). Grant admitted he fought Victim on the night in question. (State's Exhibit #2 at 3:35). Grant stated that when they entered the apartment it seemed as if Victim did not recognize him. (State's Exhibit #2 at 5:00). According to Grant, after Victim recognized him, Victim reached for a machete. (State's Exhibit #2 at 5:00). Grant stated at this point he "stomped him out." (State's Exhibit #2 at 5:00). Grant said he then left and went to a bar. (State's Exhibit #2 at 5:30). Grant recounted that after learning of Victim's involvement in obtaining his prior conviction, he stated, "by the grace of god if I make it out of prison before this man is dead, I'm going to beat that man." (State's Exhibit #2 at 10:20).

During another trial, Grant stated that he entered Victim's apartment and found him lying on a bed facing the wall. (R. 348). Grant then testified he hit Victim. (R. 348). Grant further testified that he then started stomping on him and punching his stomach. (R. 348).

Prior to the testimony of Little, Grant objected to the admission of out of court statements made by Victim to the Littles. (R. 9). Grant argued the testimony would amount to hearsay (R. 9). The court then stated "We're going to proffer some evidence . . . I've got to decide whether or not it's hearsay." (R. 49). After the testimony was proffered, the State argued that the testimony satisfied the excited utterance exception pointing to the timeframe between the call and arrival of the Littles and the description of Victim's demeanor. (R. 67-69). Grant argued that the time lapse between the incident and Victim's statement allowed time for reflection. (R. 66). The court ruled it satisfied the exception because of the short time lapse. (R. 70).

## STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id.

## ARGUMENT

**The court did not err in the admission of testimony that qualified as an excited utterance hearsay exception because the statement was made within approximately twenty minute of the initial phone call and witnesses described declarant as shaken up.**

The trial court did not commit reversible error by admitting hearsay evidence because Victim was subjected to a severely startling event, spoke to the Littles in person within approximately twenty minutes of the initial phone call, and was described as shaken up and scared.

Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Turner v. Thomas, 431 S.C. 527, 848 S.E.2d 353 (Ct. App. 2020). Among the exceptions available to hearsay is the excited utterance exception which is available *regardless of the availability of the declarant*. Id. For a statement to be an excited utterance, three elements that must be met: (1) the statement must relate to a startling event or condition; (2) the statement 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. State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). The consideration of admission is made under totality of the circumstances with broad deference left to the sound discretion of the trial court. Id.

The rationale is that a startling event suspends a witness's process of reflective thought, thus reducing the likelihood of fabrication. State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998). The trial court must look at the totality of the circumstances, which may include the declarant's demeanor and age, and the severity of a startling event. State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002).

The declarant does not have to behave in a typically "excited" way: behavior that is withdrawn and automatic, and the answering of questions in a vague manner can still be considered characteristic of someone who is under the stress of excitement. Even a statement made in response to a question does not necessarily lack spontaneity, especially where the declarant is a child. Sims, supra. Furthermore, the mere fact that a statement was made some time after the incident does not disqualify it as an excited utterance, as long as circumstances surrounding the statement indicate its reliability. State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978) (statement after 11 hours admissible); Sims, supra (statement after 12 hours admissible where 5-year-old had stayed with mom's body all night); cf. State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999) (statement after 9-10 hours not admissible, where victim had chance to tell earlier).

When courts have previously found trial courts to rule in err, the primary consideration is the proximity in time and emotional composure of the witness. In State v. Washington, a statement to police did not qualify as an excited utterance because the statement was made ninety minutes after an incident during a formal police interview. Washington, 379 S.C. at 124, 665 S.E.2d at 60. Unlike in Washington, the statement by declarant here was much quicker—just fifteen minutes later—and not made in response to any questions—formal or otherwise—at the time of its utterance. (R. 71; 80). In State v. Sims, panicked and hysterical statements made by an eyewitness at the crime scene were found to be sufficient for admission as excited utterance. State v. Sims, 304 S.C. 409, 405 S.E. 2d 377 (1991). Here the stress evident in Little's perception of Victim fits within the logic of the Sims ruling. The trial court did not err in ruling Victim's testimony fit within the excited utterance exception.

Other states have similarly considered this issue. In Florida Appellate courts have recognized "[t]he test regarding the time elapsed is not a bright-line rule of hours or minutes." Rogers v. State, 660 So. 2d 237, 240 (Fla. 1995). In fact, the "excited state may exist a significant length of time after the event." Charles W. Ehrhardt, Florida Evidence § 803.2 (2020 ed.). While it "would be an exceptional case in which a statement made more than several hours after the event could qualify as an excited utterance," State v. Jano, 524 So. 2d 660, 663 (Fla. 1988), Florida courts have often concluded that statements made within about an hour of the event qualified as excited utterances. See Jackson v. State, 419 So. 2d 394, 395–96 (Fla. Dist. Ct. App. 1982) (one hour); Bell v. State, 847 So. 2d 558, 561 (Fla. Dist. Ct. App. 2003) (50 minutes).

In Texas, a victim's statements to her neighbor about an incident were admissible in a robbery trial under the exception to the hearsay rule for excited utterances, even though approximately 30 minutes had passed between the time that victim's attacker left her apartment and the time that she made her statements to a neighbor, where the neighbor testified that when the victim came to his apartment, she was crying, still partially bound by wire used by her attacker, and seemed pretty upset. Campos v. State, 186 S.W.3d 93 (Tex. App. 2005).

However, when hearsay should not be admitted as an excited utterance is where statements are made in a formal interview hours after the crime. State v. Washington, 379 S.C. 120, 665 S.E.2d 602 (2008). These statements pose a higher risk because they come as responses to officer's questions regarding specific facts of the incident as opposed to emotional or unprompted responses. Id.

Here, Victim's statements met the exception because they were made while under the stress of the attack he just sustained. First, the statement to Little was made at the result of a startling event, the violent assault in Victim's apartment. Second, the statement to Little was

made within fifteen to twenty minutes of the initial phone call. While time is not the only factor, it is a critical one. Our courts have found the exception to be met in instances much longer than twenty minutes. Florida courts have gone so far as to note that statements made within an hour are often adequate. Lastly, and most importantly, the statement must be made under the stress of the incident. As noted by the State in the transcript, testimony established that Victim was nervous, shaken up, and even sweating. Also, Victim's statement was volunteered to a relative, not at the result of police questioning. Victim's stress stemmed from the severity of the event that transpired in his apartment. Cf. Sims, 348 S.C. at 16 (the trial court considers the totality of the circumstances including the declarant's demeanor and age, and the severity of a startling event). When considering the facts in their entirety, it is clear the statement meets the exception. Victim underwent a severe attack, his demeanor established stress, and the timeframe was consistent with what courts have deemed acceptable.

Notably, the scenario here is strongly consistent with the scenario posed to the Texas Court of Appeals in Campos. Both Victims were attacked in their own residence, both statements were made within about a thirty-minute timeframe, and both victims were described as visibly upset or shaken up. Here, Victim did not remain bound by wire, but he underwent a severe beating to the head that left noticeable wounds. The totality of the circumstances here, like Campos, support a finding that Victim remained under the stress of the incident when making his statement to Little. Accordingly, the statement was inherently reliable, because it limited Victim's ability to process or reflective upon the incident. Thus, the court did not abuse its discretion or otherwise err in admitting the testimony.

Moreover, Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991).

Admission of evidence in error is harmless when the erroneously admitted evidence is merely cumulative in light of the collective evidence of Appellant's guilt. In State v. Mitchell, the South Carolina Supreme Court found that error is harmless when it could not reasonably affect the result of a trial. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d. 150, 151 (1985). "A harmless error analysis is contextual and specific to the circumstances of the case." State v. Byers, 392 S.C. 438, 447, 447–48, 710 S.E.2d 55, 60 (2011). There is no definitive rule of law governing harmless error, rather the prejudicial character of the error is determined from its relationship to the entire case. Id.

Here, even assuming an error occurred, any error in the admission of hearsay concerning Little or Debra's conversation with Victim is harmless. The initial phone call to Little established that Victim identified Grant as his attacker. Additionally, Grant's motive and statements placing him at the scene were properly admitted through alternative means. Accordingly, an error in the admission of hearsay concerning Victim's in person conversation with the Littles alone is harmless because it is cumulative in the light of the collective evidence of Grant's guilt. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("[u]nder settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence"). This Court should affirm.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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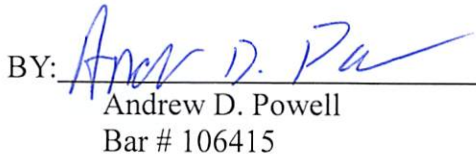
BY: 
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**PROOF OF SERVICE**

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I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Wanda H. Carter, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 21st day of April, 2025.

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