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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Jasper County
Honorable Carmen T. Mullen, Trial Judge
Honorable J. Derham Cole, Post-Conviction Relief Judge

Appellate Case No. 2025-000055

EUZEMA MAURICE AUSTIN, SR.,

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

BRIEF OF RESPONDENT PURSUANT TO *WHITE v. STATE*

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STATEMENT OF ISSUE ON BELATED APPEAL

“Whether the trial court erred in allowing Officer Swett to testify over objection where the testimony was cumulative hearsay that only served to improperly bolster the testimony of Craig Scott?”

COUNTER-STATEMENT OF ISSUE ON BELATED APPEAL

The trial court did not abuse its discretion in admitting the testimony of Officer Swett because it was not offered for the truth of the matter asserted, and the statement was otherwise admissible as an excited utterance. Furthermore, any error was harmless because it was cumulative to the testimony of Craig Scott.

STATEMENT OF THE CASE

During the May 2021 term, the Jasper County Grand Jury indicted Petitioner for first degree burglary (2021-GS-27-00715) and third-degree assault and battery (2021-GS-27-00445). Patrick A. Hall, Esquire represented Petitioner and Mary Jordan Lempesis, Esquire, prosecuted the case. On February 7, 2022, Petitioner proceeded to a jury trial before the Honorable Carmen T. Mullen. Petitioner was found guilty as indicted and sentenced to fifteen years imprisonment for first degree burglary. Petitioner did not appeal his convictions or sentences.

Petitioner filed an application for post-conviction relief on September 19, 2022. On May 8, 2024, an evidentiary hearing was convened before the Honorable J. Derham Cole at the Beaufort County Courthouse. Petitioner was present and represented by Michael H. Lifsey. Assistant Attorney General T. Cruise Mitchell represented the State. Following the hearing, Judge Cole issued an order on December 23, 2024, granting a belated appeal pursuant to *White v. State*¹ and denying and dismissing all other allegations with prejudice. Petitioner appealed and filed a Petition for Writ of Certiorari and Brief of Petitioner pursuant to *White v. State*. This brief follows.

¹ 263 S.C. 110, 208 S.E.2d 35 (1974)

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on an evidentiary matter, absent a clear abuse of that discretion resulting in prejudice to the defendant. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see *State v. Torres*, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Patterson*, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

ARGUMENT

The trial court did not abuse its discretion in admitting the testimony of Officer Swett because it was not offered for the truth of the matter asserted, and the statement was admissible as an excited utterance. Furthermore, any error was harmless because it was cumulative to the testimony of Craig Scott.

Petitioner contends that the trial judge erred in allowing Officer Swett to testify that he learned from Craig Scott that Petitioner broke into his residence, kicked down his door, entered his bedroom, and assaulted Ms. Primus because the statement constituted improper hearsay evidence that only served to bolster the testimony of Craig Scott. However, this testimony was not offered for the truth of the matter asserted. Additionally, even if the statement constituted hearsay, it was admissible pursuant to the excited utterance exception. Furthermore, any error in admitting the statement was harmless because it was merely cumulative to the testimony of Craig Scott and Asa Primus.

Relevant Facts

On the night of August 25, 2020, Craig Scott (“Scott”) was asleep in his bedroom at his home with Asa Primus (“Primus”). (App. p. 23). Scott was awoken between 2:00 a.m. and 3:00 a.m. when he heard Petitioner kicking on his garage door to the side of the house. Scott explained that after coming in the garage side door, Petitioner had to kick through another door, then kick through his bedroom door. (App. p. 24). Once Petitioner entered his bedroom, him and Scott began fighting while Petitioner was yelling and cursing at Primus. Scott then ran to call the police, and Petitioner began assaulting Primus by punching her in the face with his fists. (App. pp. 25–26). After calling 911, Scott got dressed and went outside where he heard Petitioner dragging Primus down the road. (App. p. 26). Some of Primus belongings, including her shirt, bra, hair, and money, were scattered in the driveway. When law enforcement arrived, Scott informed them that Petitioner

broke into his house. (App. p. 27). Scott explained he has known Petitioner from the neighborhood for approximately 30 years. (App. p. 24). On cross-examination, Scott testified to the following:

Q. Okay, all right, just so we're clear, do you recall giving an interview to someone from the Sheriff's Office?

A. Yes.

Q. All right. Now, in the interview you told the Deputy that you and Ms. Primus were asleep in your bedroom, correct?

A. Yes.

...

Q. Okay. All right, I just want to make sure we're clear. You told Deputy Swett that you heard somebody kicking the side door of your residence; is that correct?

A. Correct.

...

Q. All right, and, again, specifically, with respect to the interview with Deputy Swett, you stated that your bedroom door was kicked open; is that correct?

A. Correct.

Q. And you also told Deputy Swett that my client allegedly entered the bedroom and began physically fighting with both you and Ms. Primus; is that correct?

A. Correct.

Q. And you also, I believe, told Deputy Swett that my client was allegedly there, stated that he had a gun, and would kill you both; is that correct?

A. Correct.

Q. And do you recall giving a statement to Deputy Swett, that never observed or felt a gun, while you were fighting with my client. Allegedly, correct?

A. Correct.

Q. And you told Deputy Swett that my client allegedly punched Ms. Primus several times causing her to bleed; is that correct?

A. Correct.

Q. And you told Deputy Swett that my client allegedly grabbed Ms. Primus, dragged her out of the residence, and you told Deputy Swett that she was dragged down Sanders Road; do you recall that?

A. I don't recall that, but I know that's what happened.

(App. p. 37; p. 38; pp. 40–41).

Deputy Bert Swett ("Swett") of the Jasper County Sherriff's Office testified he was the responding officer to the scene. (App. pp. 51–52). Swett explained he received the call around 3:00 a.m. and responded quickly. (App. p. 60). Swett testified there were scattered items in the driveway including money, clothing, and strands of hair. (App. p. 53). Swett then testified to the following:

Q. Okay. And what did he - - what was his appearance, or his mood when you arrived at that location?

A. *He was upset*, stating a friend - - or an acquaintance had broke into his house and beat him and his - -

Mr. Hall: Your Honor, I'm going to object to hearsay. Mr. Scott's already testified, and this officer would be reiterating that testimony by what the victim has already said on the stand.

The Court: Okay, I think he can go ahead, just tell - -

Ms. Lempesis: Thank you.

Q. What did you learn from Mr. Scott, as far as your investigation, or when you arrived?

A. *Mr. Scott was upset*. He stated he and Ms. Primus were laying in his bedroom. He heard someone break into his residence, and shortly after kicking into his bedroom door, enter into his bedroom and became - - began a physical altercation with himself and Ms. Primus.

(App. pp. 53–54) (emphasis added).

The following night, Swett met with Primus at the Hardeeville Police Department where she provided a statement. (App. pp. 56–57). Primus testified she did not really remember the

night of August 25th, 2020. Primus testified she recalled being in Scott's bedroom when Petitioner entered in the middle of the night. (App. p. 79). Primus asserted she did not recall meeting Swett at the police station. (App. p. 80). Primus did not recall stating to law enforcement that Petitioner kicked in the door of Scott's house. Primus testified the door was closed but Petitioner did not kick it in. (App. p. 91). Primus did recall Petitioner coming into the bedroom and assaulting her. (App. p. 92). Primus was shown a photograph of the injuries to her face she sustained due to the assault, and she explained that Petitioner caused those injuries. (App. p. 93). On cross-examination, Primus testified that she was in a sexual relationship with both Scott and Petitioner. (App. p. 95). Primus again reiterated that she was in the bedroom when Petitioner came in. (App. p. 96).

Analysis

The pertinent testimony of Officer Swett was not hearsay, because the testimony was not offered for the truth of the matter asserted, rather, it was offered to explain Officer Swett's investigation. *See State v. Thompson*, 352 S.C. 552, 559, 575 S.E.2d 77, 81 (Ct. App. 2003) (finding statements made by bystanders to law enforcement was not offered for their truth but rather to explain and outline the officers' investigation).

Even if this testimony was hearsay, it qualifies as an excited utterance. Hearsay is defined as "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 801 (c), SCRE. Generally, hearsay is not admissible unless it falls within an exception. Rule 802, SCRE. Hearsay is not admissible unless it is pursuant to an exception provided by the South Carolina Rules of Evidence or other means. Rule 802, SCRE.

Hearsay is admissible if it falls within the excited utterance exception, which allows statements "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. There are three elements that must be met to find a statement qualifies as an excited utterance: (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 or excitement; and, (3) the stress or excitement must be caused by the startling event. *State v. Ladner*, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007). "[T]he intrinsic reliability of an excited utterance derives from the statement's spontaneity which is determined by the totality of the circumstances surrounding the statement when it was uttered." *Id.* at 119-20, 644 S.E.2d at 693; *see also State v. Sims*, 348 S.C. 16, 20, 558 S.E.2d 518, 521 (2002) (explaining the "rationale behind the excited utterance exception is that the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication").

Here, Officer Swett testified that Scott appeared visibly upset at the time of his out-of-court statement. Officer Swett further testified that Scott was upset because Petitioner broke into his residence and engaged in a physical altercation with Scott and Primus. Officer Swett responded to the call at approximately 3:00 a.m. and testified that he was already in the Hardeeville area, indicating that he arrived at the scene shortly after receiving the call. Officer Swett further testified that he was the first officer to arrive following the burglary.

Significantly, Scott spoke with Officer Swett in the driveway of the residence where the crime had just occurred. At the time of Officer's Swett arrival, the scene remained chaotic, with items scattered throughout the driveway, including money, clothing, and strands of Ms. Primus' hair. These circumstances demonstrate that Scott's statements were made while he was still under the stress of the altercation, rather than after time of reflective thought.

Additionally, any error in the admission of these statements was harmless. Officer Swett's testimony that Scott identified Petitioner as the individual who broke into his home is cumulative

to Scott's own trial testimony. At trial, Scott testified that Petitioner broke into his home and assaulted him and Primus. On cross-examination, defense counsel elicited testimony from Scott regarding the exact statements he made to Officer Swett, including that Petitioner committed the burglary. Not only did Scott testify to the substance of the events, but defense counsel also elicited the precise statements made to Officer Swett. Thus, any alleged error in the admission of this statement was harmless.

CONCLUSION

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

Respectfully submitted,

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This 28th day of January, 2026