ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EDWARD W. STACKHOUSE, JR.,

APPELLANT

Appellate Case No. 2012-212058

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by admitting testimony from Officer Alford that the decedent's child told him "Edward Stackhouse killed my momma" since this testimony was highly prejudicial hearsay since it implied appellant's acts were deliberate and not self-defense?

STATEMENT OF THE CASE

Appellant was indicted by the Marion County Grand Jury for the offenses of murder, attempted murder, assault and battery of a high and aggravated nature (ABHAN), and possession of a weapon during a violent crime. R. 442. His case was called to trial on May 15, 2012 before the Honorable William H. Seals, Jr. and a jury. Scott Floyd represented appellant. E.L. Clements, III was the solicitor. R. 1.

The jury found appellant guilty of murder, not guilty of attempted murder, guilty of ABHAN, and guilty of possession of a weapon during the commission of a violent crime. R. 435, ll. 5-22. Judge Seals sentenced appellant to life imprisonment for murder, twenty years imprisonment for ABHAN, consecutive, and five years imprisonment for possession of a weapon during a violent crime. R. 439, l. 258 – 440, l. 8.

This appeal follows.

ARGUMENT

The court erred by admitting testimony from Officer Alford that the decedent's child told him "Edward Stackhouse killed my momma" since this testimony was highly prejudicial hearsay since it implied appellant's acts were deliberate and not self-defense.

Relevant Facts

Mullins Police Chief Kenneth Davis responded to a dispatch to the home where appellant and his decedent wife lived. He found the house to be "in somewhat disarray" which indicated to him "there had been some kind of struggle." R. 279, ll. 6-22.

Davis testified that appellant told him during the interrogation, which was on videotape -- the redacted version of which was played for the jury -- that the fight with the decedent began regarding a telephone call. Appellant was on the phone and his wife thought he was talking to another woman. Davis recalled being informed by appellant:

> There was an argument that ensued from that, and he indicated to us that they fought down the hallway. They wound up in the bedroom and that he was knocked to the floor by Daquan [his stepson and the decedent's child], and he indicated that when he fell to the floor he came upon a knife and indicated to us that - - if memory serves correctly - - he switched hands with the knife and he came up defending himself, he said slashing, because he was, he indicated he was scared they might hurt him.

R. 302, l. 23 – 303, l. 6.

Davis recalled that appellant never admitted he stabbed his girlfriend, and he demonstrated on the videotape -- now before this Court -- how he attempted to defend himself by swinging the knife. Appellant eventually thought something was wrong because his decedent wife ceased fighting. Appellant further told Davis that Daquan, "came in and knocked him down during the confrontation with his mom, with his mother, and he was

scared that Daquan and Sharon might hurt him and indicated when he - - he figured he hit Daquan or had hurt Daquan or nicked Daquan, something to that effect because Quan jumped back and said, ow." R. 302, l. 16 – 304, l. 10. Davis remembered appellant telling him that he was afraid his decedent wife and stepson "together might hurt him." R. 306, ll. 2-4.

Mullins police officer Ken Alford was also dispatched to Meadow Park Apartments on September 17, 2010 where appellant, his wife, and their stepsons lived. When Alford arrived at the apartment: "I could see a large knife with a wooden handle laying in front of the couch on the floor." He entered the apartment with another police officer and they saw a cell phone broken into "a bunch of pieces" on the floor. R. 97, l. 9 – 99, l. 4.

Alford remembered the inside the bedroom he saw a small "black lady and what I can recall blood on the left side of her body, and it seemed it like she had on more than just one set of clothing." She was not moving or breathing. R. 101, l. 12 – 102, l. 4.

Alford testified as he started writing in his crime scene log another young man came up screaming: "[I] was trying to listen to what he was saying and what was going on." When the solicitor asked *what this young man was screaming*, defense counsel objected on the basis of hearsay. The solicitor claimed it was admissible as an excited utterance. The judge overruled the objection. R. 103, l. 13 – 105, l. 18.

Officer Alford then testified that the child said "that he hurt my mother, he hurt my mother. Then he - - as **he broke down more he was seeing that we were putting up tape. He started screaming** *Edward Stackhouse killed my momma.* I can distinctly remember the child saying that." R. 103, l. 13 – 105, l. 18. (emphasis added).

The pathologist, Dr. Ellen Riemer, testified that the decedent died from a single stab wound to the chest. "This was a non-survivable injury because there were too many essential vital structures that were severely damaged including the heart and both lungs and the aortic pump. There's no way that anybody would have been able to recover from that even if there were expert team of surgeons at the scene." R. 259, l. 9 – 260, l. 3.

Chief Davis testified that appellant told him during the interview about numerous problems and fights he had had with the decedent in the past. Appellant informed Davis that the decedent had stabbed him in the past, and the decedent also hit him with a hammer or threatened to hit him with a hammer on a prior occasion. R. 316, ll. 5-8.

The sixteen-year old-stepson, Daquan B., testified that appellant lived with him, his decedent mother, and his brother at Meadow Park Apartments. Daquan was fifteen-years - old at the time of the incident. R. 336, l. 9 – 339, l. 1.

Daquan recalled on that September day he heard "a lot of noise bumping against the wall, and I looked up out of the corner of my eye and I seen him [appellant] come back from the kitchen with a knife. And my momma called me. So I got up, me and my brother, I went in there. He went out the door. I seen him stabbing her right in the abdomen right here. So I grabbed his hands like right here and had them like that, and that's when I guess he cut me right here." R. 339, ll. 2-12.

The judge charged the jury the law of murder, self-defense, voluntary manslaughter, and involuntary manslaughter in the decedent's death. The judge charged attempted murder, ABHAN and other lesser included offenses as to Daquan's injuries. R. 409, l. 25 – 423, l. 22.

Discussion

The proponent of an excited utterance must prove three elements for a statement to be admitted as an exception to the hearsay rule: (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. Sims, 348 S.C. 16, 21, 558 S.E.2d 518, 521 (2002). The court must consider the totality of the circumstances when determining whether a statement falls within the excited utterance exception. State v. McHoney, 344 S.C. 85, 94, 544 S.E.2d 30, 34 (2001).

Rule 803(2), SCRE, defines an 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."

The alleged statement by the young man in this case did not qualify as an excited utterance. The statement by the young man, under the totality of the circumstances, strongly appears to be a conclusion on the part of the child as the police put up the crime scene tape. It was not *caused by witnessing the stabbing*. In other words, the statement does not appear to have its genesis in the observing the startling event – the stabbing -- but rather in the emotions of the crime scene tape being put up, and knowing for sure that serious harm or death had occurred.

While being told that someone close to you had been badly injured or killed would almost surely elicit an emotional reaction or response, it does not qualify as an excited utterance because the excitement does not come from witnessing the startling event that caused the injury or death. It would be similar to hearing that your mother had been killed

and stating in an excited manner that you thought her worst enemy -- or the person last with her -- was her killer. The statement does not originate from have witnessed the startling or horrific event.

In contrast, Bennett v. State, 383 S.C. 303, 680 S.E.2d 273 (2009), concerned a statement the victim made while being assaulted: "He's going to kill me." The other statement was: "Please hurry, please hurry, because if he gets hold of me, he's going to kill me." The Supreme Court determined that these statements qualified as excited utterances because they were made while the victim was under the stress of the startling event, and therefore defense counsel could not be found ineffective regarding any deficiency in manner of objecting.

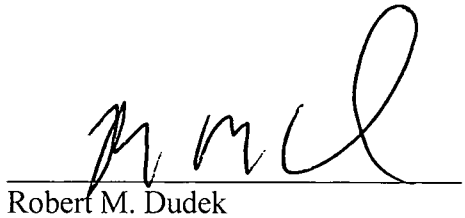
Here, again, the child's statement does not appear to come from witnessing or participating in a startling event. Rather, it appears to be an emotional reaction from learning of a tragic event, seeing the crime scene tape go up, and it therefore was not admissible as an excited utterance.

The prejudice from this hearsay was that appellant asserted self-defense or involuntary manslaughter - - "criminal negligence" - - as proper verdict options given the evidence of what really happened. The alleged statement to Officer Alford had the impermissible tendency to indicate to the jury that the declarant child had just witnessed an intentional killing, meaning murder. The admission of this hearsay testimony as an excited utterance was therefore highly prejudicial, and appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and his case remanded to the Marion County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of July, 2013.

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IN THE COURT OF APPEALS

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Edward W. Stackhouse, Jr. states:

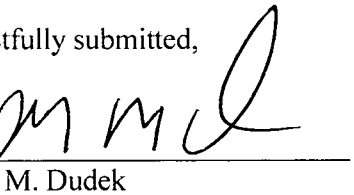
1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge William H. Seals, Jr., which was held on May 15, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Edward W. Stackhouse, Jr.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of July, 2013.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True–billed indictments;
(2) Entire Trial Transcript;
(3) State's Exhibit #36 (Video of Interview).

I certify that this designation contains no matter which is irrelevant to this appeal.

July 18th, 2013

Robert M. Dudek
Chief Appellate Defender

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Division of Appellate Defense
PO Box 11589
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 18th, 2013

Robert M. Dudek
Chief Appellate Defender

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Columbia, South Carolina 29211-1589

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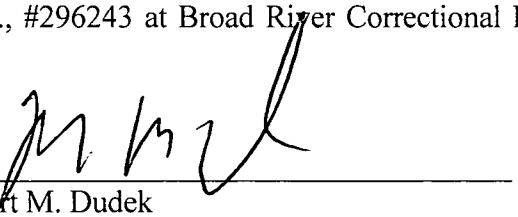
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Edward W. Stackhouse, Jr., #296243 at Broad River Correctional Institution, this 18th day of July, 2013.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of July, 2013.

(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013 .