

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARMANDO STREETER,

Defendant-Appellant.

UNPUBLISHED

June 15, 2004

No. 246336

Wayne Circuit Court

LC No. 02-001686

Before: Smolenski, P.J., and White and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and possession of a firearm in the commission of a felony, MCL 750.227(b). He was sentenced to 10 to 20 years' imprisonment for the assault conviction and to a consecutive two-year prison term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arose out of a shooting outside of his brother's home on November 16, 2001. Early that evening, defendant was playing pool and arguing with the victim. Later, defendant was arguing with his brother, Rafeal Streeter, when the victim left the house. The victim claimed that when he stepped in to break up the argument, defendant shot him five times. Defendant claimed that he shot the victim in self-defense.

When the police arrived at the scene, Officer David Toler spoke to Streeter about the shooting. Streeter told Toler that during the evening he found out that defendant had a gun and when he asked his brother to leave the premises, he and defendant began arguing. Despite being subpoenaed, Streeter did not appear at defendant's trial. At trial, over defendant's objection, the trial court permitted Toler to testify about Streeter's statement and demeanor.

As his sole issue on appeal, defendant argues that the trial court erred in admitting Streeter's statement because the prosecution failed to show that Streeter was still under the stress of the event at the time the statement was made. We disagree. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 681 (1996). "An abuse of discretion is found only if an unprejudiced person considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2002).

The trial court permitted Toler to testify regarding Streeter's statement finding that it fell under the "excited utterance" exception to the hearsay rule. MRE 803(2). An excited utterance is "[a] statement relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition." *Id.* For hearsay to be admitted under this exception, three criteria must be met: (1) a startling event must have occurred; (2) the declarant must still be under the stress of the event; and (3) the statement must relate to the event. *People v Kowlak, (On Remand)* 215 Mich App 554, 556; 556 NW2d 681 (1996). The reason for establishing that the declarant is still under the stress of the event is to assure that the declarant has neither the time nor emotional capacity to lie about what occurred. *People v Bowman*, 254 Mich App 142, 146; 656 NW2d 835 (2002).

Here, the shooting at Streeter's home was unquestionably a startling event. Although some time had passed between the shooting and the arrival of the police, Toler testified that Streeter was "real excited, in shock," that Streeter was talking quickly, and that he behaved "almost like he couldn't believe what happened." This testimony was sufficient to show that Streeter was still under the stress of the event. Moreover, the statement clearly related to the circumstances surrounding the shooting. Upon review of the record, we find that the trial court did not abuse its discretion in admitting the statement.

Affirmed.

/s/ Michael R. Smolenski
/s/ Helene N. White
/s/ Kirsten Frank Kelly