IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. TRISTAN FELEPADIUDE BRIGHT, Appellant.	No. 39235-6-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — Following a bench trial, the trial court found Tristan Bright guilty of unlawful imprisonment and fourth degree assault. Bright appeals, arguing that the trial court erred in admitting the tape of his girl friend's 911 call into evidence and that there was insufficient evidence to support his unlawful imprisonment conviction. As these claims lack merit, we affirm.

FACTS

Bright and his girl friend, Lakesha Edwards, argued one night over whether Bright could bring his daughter to Edwards's house for a visit. Edwards told Bright she was going to the bathroom but instead took her car keys and phone and went out to her truck. She called 911 at 1:41 am after locking herself inside the vehicle.

She told the 911 operator that the police needed to come to her house because her children were there with Bright, who had a knife in his hand. She said Bright was beating her, had kept her in the house, and that he was drunk. She added that Bright had hit her and would not let her out, and that after she went to the bathroom and snuck her keys, she ran outside, breaking through her screen door. She repeated that she needed her children and said that Bright had threatened her. She then yelled at Bright, telling him to settle down so she could come in and go to sleep. She said that Bright, who could be heard yelling in the background, no longer had the knife. She told Bright that she would come back in if he did not hit her. After Bright ran back into the house, the officers arrived. Officer Jeff Smith found Edwards still in her car, crying hysterically and trying to talk. It took him several minutes to calm her down. Other officers detained Bright, who was unarmed. Smith did not see any injuries, but Edwards indicated on a supplemental investigation form that she had been injured.

The State charged Bright with unlawful imprisonment and fourth degree assault. Bright waived his right to a jury trial. Edwards could not be located, despite the issuance of a material witness warrant, and the trial court granted the State's motion to admit the 911 tape as an excited utterance under ER 803(a)(2).[1] The court also decided to admit part of Officer Smith's police report as a recorded recollection under ER 803(a)(5), ruling that the officer could testify about his observations when he arrived at the scene but not about what Edwards told him.

[1] The court found that admission of the statements did not violate Bright's right to confrontation under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Bright does not challenge that ruling on appeal. *See State v. Pugh*, 167 Wn.2d 825, 225 P.3d 892 (2009) (because statements during 911 call were nontestimonial, their admission did not violate the confrontation clause even though declarant did not testify).

The court admitted the 911 tape at trial, and Officer Smith relied on his report in describing Edwards's condition when he arrived at the scene. Bright testified that he and Edwards had a long and serious argument before the police arrived, but he denied hitting or detaining her. He also denied threatening her or possessing any weapon, but he admitted that he refused to leave when Edwards told him to do so. He thought she was on the phone with her family, but he got dressed when he heard sirens. When the officers asked him about the knife, he said there were knives in the kitchen. He testified that Edwards was having a panic attack that night and that he was yelling at her to be supportive.

The trial court found Bright guilty as charged and imposed a standard range sentence. Bright appeals his convictions.

ANALYSIS

911 Tape as Excited Utterance

Bright argues initially that the trial court erred in admitting the 911 tape under the excited utterance exception to the hearsay rule because there was no evidence other than the tape to establish that a startling event occurred.

Hearsay "is 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." ER 801(c). Hearsay is inadmissible as evidence except as provided by the rules of evidence, other court rules, or statute. ER 802. Under ER 803(a)(2), a statement is not excluded as hearsay if it is an utterance "relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." The excited utterance exception is based on the idea that "'under certain external circumstances of physical shock, a stress of nervous excitement may be

produced which stills the reflective faculties and removes their control.'" *State v. Chapin*, 118 Wn.2d 681, 686, 826 P.2d 194 (1992) (quoting 6 John H. Wigmore, *Evidence* § 1747, at 195 (1976)). The key question is whether the declarant was still under the influence of the event to the extent that the statement could not be the result of fabrication, intervening actions, or the exercise of choice or judgment. *State v. Briscoeray*, 95 Wn. App. 167, 173, 974 P.2d 912, *review denied*, 139 Wn.2d 1011 (1999). We review for abuse of discretion a trial court's decision to admit a hearsay statement as an excited utterance. *State v. Young*, 160 Wn.2d 799, 805, 161 P.3d 967 (2007).

Three requirements must be met for hearsay to qualify as an excited utterance: (1) a startling event or condition must have occurred, (2) the statement must have been made while the declarant was under the stress of the startling event, and (3) the statement must relate to the startling event or condition. *State v. Hardy*, 133 Wn.2d 701, 714, 946 P.2d 1175 (1997).

Bright argues that there was no corroborating evidence that a startling event occurred and that the declarant's words alone are insufficient to establish that element. Our Supreme Court recently agreed that the declarant's statement alone—the bare words of the utterance—is insufficient to corroborate the occurrence of a startling event. *Young*, 160 Wn.2d at 809. Although words alone can satisfy the third element of the excited utterance test—that the utterance relates to the event causing the declarant's excitement—the first and second elements must be established by evidence extrinsic to the declarant's bare words. *Young*, 160 Wn.2d at 809-10. Corroboration that a startling event occurred may include circumstantial evidence regarding the declarant's behavior, appearance and condition, appraisal of the declarant by others, and the circumstances under which the statement is made. *Young*, 160 Wn.2d at 810.

Here, Edwards's condition during the 911 call supports the occurrence of a startling event. She was clearly upset about Bright's actions and about the fact that her children were in the house with him. As the trial court stated in admitting the 911 call as evidence,

> He had a weapon he was using, and she was frantic, and she was calling for help from the car with her cellular phone, a 911 call. . . . She wants somebody to come and help her to assist in helping her children. She was under stress and concern for her children.

2 Report of Proceedings at 29-30. The circumstances under which the 911 call were made also supports the existence of a startling event. Edwards made the call from her locked vehicle shortly after midnight, and Bright could be heard yelling at her in the background. Bright admitted that the two had a heated argument beforehand. The fact that he got dressed as soon as he heard police sirens, even though he stated that he thought Edwards was calling her family, supports Edwards's version of events.

Finally, Officer Smith's observations also support the existence of a startling event. He found Edwards in her car, crying hysterically and trying to talk, when he arrived on the scene. It took him several minutes to calm her down.

In *Young*, the court found corroborating evidence of a startling event even though the child victim recanted her allegations of that event—sexual abuse—at trial. 160 Wn.2d at 817. Three witnesses testified at a pretrial hearing about the victim's condition while making the allegations, and others testified at trial about the defendant's incriminating statements and actions afterward. *Young*, 160 Wn.2d at 818-19. Similarly, the corroborating evidence here includes the victim's condition during and immediately following the 911 call, as evidenced by the tape and the responding officer, and the defendant's behavior during and following that call. There is sufficient

corroborating evidence to satisfy the first element of the excited utterance test, which is the only element Bright challenges on appeal, and we hold that the trial court did not abuse its discretion in admitting the 911 tape under ER 803(a)(2).

Sufficiency of the Evidence: Unlawful Imprisonment

Bright next challenges the sufficiency of the evidence supporting his unlawful imprisonment conviction.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

A person is guilty of unlawful imprisonment if he knowingly restrains another. RCW 9A.40.040(1). "Restrain" means to restrict a person's movements without consent and without legal authority in a manner that interferes substantially with that person's liberty. RCW 9A.40.010(1). Restraint is without consent if it is accomplished by physical force or intimidation. RCW 9A.40.010(1)(a). "Substantially" means a real or material interference with liberty, as opposed to a petty annoyance, slight inconvenience, or imaginary conflict. *State v. Robinson*, 20 Wn. App. 882, 884, 582 P.2d 580 (1978), *aff'd*, 92 Wn.2d 357, 597 P.2d 892 (1979).

Bright asserts that the sole evidence to support his conviction of unlawful imprisonment was the 911 call, and he argues that Edwards's statements do not provide facts sufficient to support the conviction. She says on the tape that he kept her in the house and would not let her out, but she does not explain how he prevented her from leaving or describe any threats he made. As support for his claim, Bright cites a case where eyewitnesses and the presence of physical injury confirmed a victim's story that the defendant used physical force to try to prevent her from leaving his car. *State v. Washington*, 135 Wn. App. 42, 143 P.3d 606 (2006), *review denied*, 160 Wn.2d 1017 (2007). Bright contends that the evidence does not establish that Edwards was under restraint because she was able to escape and because there is no evidence that he used a knife to try to restrain her.

The fact that victims can escape from a place of detention does not automatically preclude a prosecution for unlawful imprisonment. For the State to successfully prosecute, however, the known means of escape must present a danger or more than a mere inconvenience. *State v. Kinchen*, 92 Wn. App. 442, 452 n.16, 963 P.2d 928 (1998) (locking two boys in an apartment was insufficient to constitute unlawful imprisonment where a window and sliding glass door were left unlocked).

The trial court entered several findings of fact relevant to the unlawful imprisonment charge. Bright does not challenge any of these findings, so they are verities on appeal. *State v. Ross*, 106 Wn. App. 876, 880, 26 P.3d 298 (2001), *review denied*, 145 Wn.2d 1016 (2002). The court found that Edwards used the excuse of needing to use the bathroom to escape the residence and that, upon exiting, she "was able to grab her keys and break through the screen door trying to

get out." Clerk's Papers at 34. While she was on the phone with the 911 operator, Bright came out of the residence holding a knife. The court also found that Edwards's call for help was credible. During that call, Edwards told the operator that Bright had beaten and threatened her, and that he kept her in the house and would not let her out. She said that she had to sneak her keys before fleeing, and she was clearly agitated. Edwards told Bright that she would come back in if he did not hit her, and she indicated in an investigative report that she had been injured. Viewed in the light most favorable to the prosecution, this evidence is sufficient to support the trial court's conclusion that Bright used physical force to prevent Edwards from leaving her house and thus committed the crime of unlawful imprisonment.

Uncorroborated Hearsay Evidence

Finally, Bright argues that the only evidence supporting his convictions is Edwards's uncorroborated hearsay statement to the 911 operator and that such uncorroborated hearsay should be insufficient, as a matter of law, to support his convictions. We need not proclaim that uncorroborated hearsay is insufficient to sustain a conviction because Washington law already so holds. Even where there is sufficient corroboration to render an excited utterance admissible, that admission alone does not establish that the underlying crime occurred. *Young*, 160 Wn.2d at 813. Rather, it merely permits the admitted statements to be considered in conjunction with the other evidence presented at trial. *Young*, 160 Wn.2d at 813. Here, the additional evidence included testimony from Officer Smith and from Bright himself. This testimony was sufficient to provide the necessary corroboration and, in conjunction with the 911 tape, to sustain Bright's convictions.

We affirm Bright's convictions of unlawful imprisonment and fourth degree assault.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

HUNT, P.J.

VAN DEREN, J.