

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2003-KA-1216**
VERSUS * **COURT OF APPEAL**
SAMUEL S. MURRAY * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 429-147, SECTION "F"
Honorable Dennis J. Waldron, Judge
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Judge Patricia Rivet Murray
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(Court composed of Judge Patricia Rivet Murray, Judge Dennis R. Bagneris, Sr., Judge David S. Gorbaty)

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AFFIRMED

The defendant Samuel Murray appeals his conviction and sentence for second-degree murder. For the reasons that follow, we affirm.

STATEMENT OF THE CASE

On April 1, 2002, Mr. Murray was charged by bill of indictment with one count of second-degree murder in violation of La. R.S. 14:30.1. On April 5, 2002, he was arraigned and pleaded not guilty. On January 28, 2003, a twelve-person jury found him guilty as charged. On February 4, 2003, the trial court sentenced him to life in prison without benefit of parole, probation or suspension of sentence. This appeal followed.

FACTS

On January 24, 2002, at about 7:00 a.m., a blue, four-door 1996 Chevrolet Corsica pulled up the ambulance ramp near the emergency room entrance at Methodist Hospital. At that time, Captain Rose Duryea of the New Orleans Police Department (“NOPD”) was finishing an overnight detail in the hospital emergency room. Alerted by the loud noise the vehicle made, she looked up at the monitor and observed the vehicle with three men inside. She then went to the ramp to investigate. Two of the men exited the vehicle; they were yelling, carrying on, and screaming for a stretcher for the third

man who had been shot. The third man was in the rear of the car, bleeding profusely, and did not appear to be conscious. The car was unusual in that it no longer had a right rear tire; that tire was completely worn away. The loud noise that alerted Captain Duryea's attention was the car pulling up onto the ramp on the metal rim instead of on a tire.

After emergency medical personnel removed the victim from the car, Captain Duryea asked the two men for some identification (*i.e.*, their driver's licenses). After obtaining their identification, she had them move the car to a secure place off the emergency room ramp until the other officers she had called arrived. The driver was Craig Maurice; the front seat passenger was Michael Hart; and the victim, whose lifeless body was in the back seat, was Joseph Henry. Captain Duryea testified that Mr. Maurice was the most excited and that he kept yelling different things about the shooting such as: "I don't know why he shot him, it was \$5.00" and "Sam shot him, he just shot him." She further stated that he was on his cell phone calling people; he was yelling into the phone and saying the same thing: "that Sam had shot Joe for \$5.00." She stated that she tried to get him to calm down so that she could get a statement from him because she realized he was a witness to the shooting.

As to Mr. Hart, Captain Duryea stated that he was also excited, but he

was not nearly as hysterical as Mr. Maurice. Nonetheless, she stated that Mr. Hart kept talking about the shooting and saying: “I could have been shot” and that “I thought I was going to be shot. I can’t believe it happened.” She further stated that Mr. Hart had blood on his shirt. She could not recall whether he named anyone who fired the shots.

Ultimately, NOPD Detective Carlton Lawless came to the hospital to meet with Captain Duryea, the doctor, and the witnesses, Mr. Maurice and Mr. Hart. At that point, he took over the matter.

Detective Lawless testified that at about 7:00 a.m. that morning Captain Duryea, through the NOPD, had broadcast that there was a possible murder victim at Methodist Hospital and that the original crime scene was near Elysian Fields Avenue and Abundance Street. He then went to that area and located the original crime scene in the 2100 block of Abundance Street. As lead detective, he called the crime lab to process that crime scene.

The Crime Scene Technician, Thomas Kennedy, testified that he processed the Abundance Street crime scene, *i.e.*, he photographed it, collected evidence, and prepared diagrams. He found six spent nine-millimeter cartridge casings lying in the street near the curb and one spent bullet. On cross-examination, he testified that the bullet casings were spread over an area and some of them were as far as six or seven feet apart.

Firearms Examiner Kenneth Leary testified that he performed ballistics testing, which revealed that the projectiles and shell casing retrieved from the victim's body, the crime scene, and the vehicle all were fired from the same gun.

After spending about an hour at the initial crime scene, Detective Lawless relocated to Methodist Hospital where he met with Captain Duryea, who was preserving the secondary crime scene: the shot up 1996 Chevy Corsica. The vehicle was parked in the rear parking lot of the hospital near the emergency room. The right rear tire of the vehicle was worn off the rim. The vehicle had bullet strike marks on the exterior passenger side, the back seat had bullet holes and was covered with blood, and a spent nine-millimeter shell casing was found on the front windshield, resting on the driver's side of the windshield wiper.

Detective Lawless further testified that Captain Duryea informed him that she was detaining two witnesses who were present at the time of the shooting, Mr. Maurice and Mr. Hart. According to Detective Lawless, these two witnesses were still upset and nervous when he interviewed them at the hospital. He stated that they informed him who shot the victim. As a result of his investigation, Detective Lawless arrested Mr. Murray for the shooting.

Dr. James Trayler of the Louisiana State University Health Sciences

Center Pathology Department was qualified as an expert in forensic pathology. Although he did not personally perform the autopsy of the victim, Dr. Trayler testified that he reviewed the autopsy report his department prepared regarding that autopsy. He testified that the victim sustained a total of eight gunshot wounds. The fatal wounds were the two shots in the victim's neck, which severed a portion of the victim's aorta. The majority of the wounds were on the left hand side of the body. Finally, he testified that the toxicological testing that was done by the laboratory revealed the presence of cocaine in the victim's system.

Mr. Hart testified at trial that he was an eyewitness to the shooting. He testified that he spent the entire night before the shooting together with Mr. Maurice and the victim, Mr. Henry, at Mr. Maurice's house. In the early morning on January 24, 2002, the trio went to Home Depot to purchase supplies for the job they were going to do that day; they were going to build a shed. Mr. Maurice and Mr. Hart went into Home Depot; Mr. Henry stayed in the car. While they were in Home Depot, Mr. Maurice received a call on his cell phone from Mr. Murray. Mr. Murray indicated that he needed a ride to pick up his car. When the trio left Home Depot, they stopped to pick up Mr. Murray and gave him a ride to his desired destination, which was in the 2100 block of Abundance Street near Elysian Fields.

In route, Mr. Henry and Mr. Murray argued over money. When they arrived at the desired destination, Mr. Murray, who was seated in the front passenger seat, exited the car, walked around the rear of the vehicle, opened the door, and opened fire on Mr. Henry. Mr. Hart saw Mr. Henry get shot and saw Mr. Maurice duck down in the driver's seat. Mr. Hart then saw Mr. Murray run down Elysian Fields. According to Mr. Hart, Mr. Maurice then drove off fast because his car had a bullet hole in the tire. Mr. Hart attempted to stop Mr. Henry's bleeding while Mr. Maurice drove to the hospital. In route to the hospital, Mr. Maurice called Mr. Henry's parents on his cell phone to inform them of the shooting. When asked how long after the shooting this cell call was made, Mr. Hart answered that "[i]t was a couple of minutes, actually, because once we got on the interstate he --- he made the call."

Three Abundance Street residents testified at trial that they heard the shooting.

Oscar Chaney testified that he was awakened that morning by gunshots. He testified he never looked outside; he simply heard the shots. Although on cross and re-cross examination he estimated that it was about 4:30 or 5:30 a.m. when this occurred, he estimated on re-direct that this occurred around 5:30 or 6:00 a.m. and added that it was "getting day about

that time.”

Percy Knox testified that he heard shots early that morning as he was going out to his detached garage to wash laundry. He stated that he went out front to see what had happened, but he did not see anyone. He was unsure of the exact time, but he stated it was early morning.

Troy Simmons (Percy Knox’s grandson) testified that he heard the shots between 6:00 and 6:30 a.m. He stated that he looked out his window and observed a man wearing a painter’s uniform get out the front passenger side and come around the car and open the back driver’s side door and look inside. The man then put his head out, slammed the door and came back around and got in the passenger side. Once the man got back in the car, the car pulled off in an unremarkable manner. He only saw one other person in the vehicle, the driver. He did not see anybody running from the car. Mr. Simmons testified that he did not think anything was wrong; rather, he just thought that the car had pulled over on its way to work or whatever it was going. On cross-examination, he clarified that he thought it was “like somebody was just pulling over and, you know, maybe getting something from out the back seat or checking on something” and that he saw “no reason for suspicion.” When shown a picture of the blue Corsica taken at Methodist Hospital, Mr. Simmons positively identified it as the car he saw

that morning.

Michael Louisville, Mr. Murray's uncle, testified that at about 7:10 a.m. that morning his nephew arrived at his work site on Elysian Fields. Mr. Louisville stated that his nephew asked him to borrow his car so that he could go pick up some auto parts for his own car that Mr. Louisville was working on for him. He stated that his nephew did not appear any different than he usually appeared.

The victim's parents, Jacqueline and Darryl Henry, testified that when they were getting ready for work at about 7:00 a.m. on January 24, 2002, they received a frantic phone call from Mr. Maurice. He told them that their son had been shot several times by Mr. Murray, that his car had been shot up, and that he was trying to get their son to the hospital. Mr. Henry asked Mr. Maurice why he did not try to move his car when the shooting occurred; he responded that "he had gotten afraid and tried to get under the steering wheel to get . . . out of the shots line of fire." Mrs. Henry asked Mr. Maurice when the shooting occurred; he responded that it had "just happened." Mrs. Henry told Mr. Maurice that they would meet him at the hospital.

Mr. and Mrs. Henry also both testified regarding the close, longstanding relationship they had with Mr. Maurice. Mr. Henry testified

that his son and Mr. Maurice had been friends since they were six years old and that he had known Mr. Maurice for at least twenty years. Mrs. Henry testified that she had known him for at least twenty-four years, that he lives around the corner from her house, and that he was like a son.

ERROR PATENT

A review of the record for errors patent reveals none.

DISCUSSION

Mr. Murray's sole assignment of error is that the trial court erred in admitting Mr. Maurice's accusatory hearsay statements. The hearsay statements that he complains about were admitted during the testimony of the victim's parents (Mr. and Mrs. Henry) and Captain Duryea. In overruling the defense objections to these statements, the trial court relied primarily on the excited utterance exception to the hearsay rule.

Louisiana Code of Evidence Article 803(2) codifies the "excited utterance" exception to the hearsay rule and permits admission of an out-of-court statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. La. C.E. art. 803(2). The underlying premise for this exception is that the excitement caused by the event temporarily suspends the declarant's capacity for reflection and conscious fabrication. 2 John Strong, *McCormick*

on Evidence §272 (2nd ed. 1992).

Although there are numerous formulations of the exception, the courts all agree on two basic requirements: (1) an occurrence or event sufficiently startling to render the declarant's normal reflective thought process inoperative; and (2) the declarant's statement must have been a spontaneous reaction to the occurrence or event and not the result of reflective thought process. *State v. Henderson*, 362 So.2d 1358 (La.1978); *see also State v. Reaves*, 569 So.2d 650 (La.App. 2 Cir.1990).

The sufficiency of the startling nature of the event itself is seldom disputed; rather, the dispute is almost always over whether the statement was the result of reflective thought or whether it was a spontaneous reaction to the startling event. *McCormick, supra*. "Because of the wide variety of factual situations, appellate courts have recognized substantial discretion in trial courts to determine whether a declarant was still under the influence of an exciting event at the time of an offered statement." *Id.*

In determining whether the declarant remained under the stress of the startling event, the time span between the event and the offered statement is considered the most important factor. *Reaves, supra*. The trial court must determine whether the interval between the startling event and the offered statement was of sufficient duration to permit a subsidence of emotional

upset and a restoration of a reflective thought process. *State v. Dalton*, 99-0902, p. 4 (La.App. 4 Cir. 3/29/00), 759 So.2d 180, 183 (citing *Henderson, supra*). Other factors that may indicate that a statement was the result of reflective thought process, as opposed to a spontaneous reaction, but which do not automatically justify exclusion, include: (1) evidence that the statement was self-serving or made in response to an inquiry; (2) an expansion of the excited utterance beyond a declaration of the event and into past or future facts; and (3) proof that between the event and the making of the statement the declarant performed tasks requiring reflective thought processes. *Dalton, supra; State v. Baker*, 582 So. 2d 1320, 1331 (La. App. 4 Cir. 1991)(citing *Henderson, supra*).

Despite Mr. Maurice's outward excited appearance, Mr. Murray argues that the passage of time, Mr. Maurice's self-serving behavior, his demonstrated capacity for reflective thought, his age, and the substantial evidence of collusion between him and Mr. Hart render his out-of-court statements unreliable. Mr. Murray thus argues that the admission of Mr. Maurice's accusatory hearsay statements violated his constitutional right of confrontation.

The state counters that immediately after the shooting Mr. Maurice instinctively called the victim's parents as opposed to thinking about calling

911. The state stresses that there was virtually no lapse of time and that the shooting took place only inches away from Mr. Maurice. The state further stresses the lifelong friendship between the victim and Mr. Maurice. That friendship, the state argues, supports the spontaneity of Mr. Maurice's statements and belies Mr. Murray's suggestion of fabrication or collusion between Mr. Maurice and Mr. Hart.

A trial court's evidentiary ruling will not be overturned on appeal absent a clear abuse of discretion. *State v. Richardson*, 97-1995, p. 14 (La. App. 4 Cir. 3/3/99), 729 So. 2d 114, 122 (citing *State v. Mosby*, 595 So. 2d 1135, 1139 (La. 1992)). Applying the standards enumerated above, we conclude that the evidence reasonably supports the trial court's admission of the statements as excited utterances.

As even Mr. Murray acknowledges, the shooting was a startling event sufficient to deprive Mr. Maurice of his reflective thought process. Mr. Maurice not only witnessed the fatal shooting of his lifelong friend, but also had to duck down under the steering wheel to avoid being shot himself. The sole issue is whether Mr. Maurice remained under the influence of the startling event when he made the statements.

As noted, in determining whether a statement was made while the declarant remained under the influence of the startling event, the most

important factor is the time interval between the event and the making of the statement. According to Mr. Hart's testimony, the time span between the shooting and Mr. Maurice's call to the victim's parents (Mr. and Mrs. Henry) was a matter of minutes. Likewise, Mrs. Henry testified that Mr. Maurice told her the shooting had "just happened." Mr. and Mrs. Henry also testified that the phone call was made at about 7 a.m. The sequence of events indicates that probably less than thirty minutes elapsed between the time of the shooting, the call to the victim's parents, and the arrival at the hospital. We thus find that there was no appreciable lapse of time between the shooting and Mr. Maurice's making the complained of statements.

At trial, the victims' parents (Mr. and Mrs. Henry), Captain Duryea, and Detective Lawless all described Mr. Maurice's demeanor as very upset and nervous. Describing Mr. Maurice's demeanor on the phone, Mr. Henry testified that he was really upset and that he was talking real loud, screaming and hollering; Mrs. Henry testified that he was frantic. Captain Duryea described Mr. Maurice's demeanor at the hospital as almost hysterical. She testified that he could not stand still and kept pacing; he was literally running back and forth in the parking lot; he was breathing fast, rapidly, and kind of heavily; and he kept uttering things about the shooting. On cross-examination, she testified that he was very distraught and acting in a manner

consistent with someone who had witnessed a traumatic event. According to Detective Lawless, Mr. Maurice was still upset and nervous when he interviewed him at the hospital over an hour later (some time after 8 a.m.).

Although Mr. Maurice was able to drive his disabled car on the interstate and simultaneously to place calls on his cell phone, neither of these activities necessarily evidence reflective thought process. As noted, his cell phone call to the victim's parents can be viewed as an instinctive reaction given the close relationship between him and the victim's family. Indeed, as the state contends, it was more instinctive, under the circumstances, for him to call the victim's parents than it would have been for him to call 911. Similarly, his attempt to drive his disabled car to the hospital to get help for his friend who was dying in the back seat can be viewed as an instinctive reaction to the startling event.

We also find significant that the trial court distinguished Mr. Maurice's initial statements that were made in the phone call to the victim's parents and upon his arrival at the hospital to Captain Duryea from his later statements. The trial court excluded two later statements on the grounds that Mr. Maurice had calmed down and was no longer under the influence of the startling event when he made them. Particularly, the trial court ruled that Mrs. Henry could not testify as to what Mr. Maurice told her when she

arrived at the hospital that morning. The trial court also ruled that Captain Duryea could not testify as to what Mr. Maurice told him in his subsequent oral statement, which admittedly was made after he had calmed down. *See Henderson*, 362 So. 2d at 1362 (citing similar reasoning by trial court in excluding later statements as “inspir[ing] further confidence in [trial court’s] decision”).

In sum, we find that the record amply supports the trial court’s conclusion that Mr. Maurice’s reflective thought processes were rendered inoperable by the shooting and that the complained of statements were spontaneous reactions to that starting event. Although we acknowledge, as Mr. Murray argues, that Mr. Maurice’s statements could be considered self-serving, when all the relevant factors are taken into consideration, we cannot say the trial court abused its discretion in finding the complained of statements were excited utterances.

DECREE

For the foregoing reasons, the defendant’s conviction and sentence are affirmed.

AFFIRMED