

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK YASONI,

Defendant-Appellee.

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UNPUBLISHED  
February 26, 2002

No. 227419  
Wayne Circuit Court  
LC No. 99-500010

ON REMAND

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

On remand from the Supreme Court,<sup>1</sup> plaintiff appeals as on leave granted the trial court's order affirming the district court's decisions denying the admission of complainant's hearsay statement and denying a request for a material witness detainer. In light of its decisions, the district court dismissed the charges against defendant for felonious assault, MCL 750.82, felony-firearm, MCL 750.227b, possession with intent to deliver less than fifty grams, MCL 333.7401(2)(a)(iv), possession of marijuana, MCL 333.7403(2)(d), and domestic assault, MCL 750.81(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At the preliminary examination, the prosecutor sought to introduce the complainant's statement to police under the excited utterance exception to the hearsay rule, MRE 803(2). The officer testified that complainant was upset, and her hair and clothes were messy and dirty. The officer arrived on the scene at 9:30 a.m., and other officers were already present. Complainant stated that the event occurred either 15 or 20 minutes prior to the officer's arrival, or sometime during the night. Complainant's statement was made in response to the officer's questions. The district court found that the statement did not constitute an excited utterance, and it granted defendant's motion to dismiss. Plaintiff then sought a material witness bond for complainant. The court also denied this request, as the case was no longer pending. The circuit court affirmed the decision on appeal.

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<sup>1</sup> 462 Mich 862 (2000).

We review a trial court's determination of an evidentiary issue for an abuse of discretion. *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998). The trial court's decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *Id.*

MRE 803(2) 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.” Thus, we have opined that there are two primary requirements for excited utterances: a startling event, and “a resulting statement made while under the excitement caused by the event.” *Smith, supra* at 550. The lack of capacity to fabricate, rather than the lack of time to fabricate, is the focus. *Id.* at 551. Although the amount of time that passes between the event and the statement is an important factor to consider in determining whether the declarant was still under the stress of the event when the statement was made, it is not dispositive. *Id.* Whether a statement made in response to questioning should be admitted under MRE 803(2) depends on the circumstances of the questioning and whether it appears that the statement was the result of reflective thought. *Id.* at 553.

Here, the prosecution failed to develop a sufficient foundation to allow the court to determine whether the complainant was still under the stress of the event. First, it is unclear at what point in time the assault occurred. The officer testified that complainant indicated that the event had occurred approximately 15 to 20 minutes prior to his arrival. However, he also testified that complainant indicated that the event occurred “during the night” and the officer arrived at 9:30 a.m. Moreover, the circumstances under which the statement was made and the content of the statement are unknown. Thus, we are not persuaded that plaintiff has established that the district court abused its discretion in excluding the statement or that the trial court erred by affirming the district court's ruling.

Plaintiff also challenges the denial of its request for a material witness detainer. By its terms, the material witness detainer statute, MCL 767.35, only applies to pending criminal cases. The district court dismissed the case before the request was made. Consequently, plaintiff's request was properly denied, and its challenge to the decision is essentially moot.

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin D. Doctoroff

/s/ Donald S. Owens