2012 IL App (2d) 110340-U
No. 2-11-0340
Order filed April 3, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellant,	)	
v.	)	No. 10-CM-2934
MATTHEW HICKS,	)	Honorable Gordon E. Graham,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The trial court abused its discretion in excluding a domestic-battery victim's statements on the ground that they were not excited utterances: although the State did not show exactly how much time had elapsed between the event and the statements, an exact time frame was unnecessary, as the totality of the circumstances, including the victim's physical and emotional condition, demonstrated that the event had recently occurred and that the victim was still affected by the excitement of it.

¶ 1 Defendant, Matthew Hicks, was charged with two counts of battery (720 ILCS 5/12-3(a) (West 2010)), two counts of domestic battery (720 ILCS 5/12-3.2(a) (West 2010)), and one count of interfering with the reporting of domestic violence (720 ILCS 5/12-6.3(a) (West 2010)). The

charges included allegations that defendant "grabbed" the victim, "struck" the victim, and "grabbed" the victim's hair. Defendant and the State each filed a motion *in limine* regarding the admissibility of statements made by the victim, Caroline Hicks, to Village of Huntley police officer Sean Halik. Defendant argued that Hicks' statements were testimonial under *Crawford v. Washington*, 541 U.S. 36 (2004), and thus barred by the "confrontation clause" (U.S. Const., amend. VI). The State argued that Hicks' statements were "nontestimonial" (see *People v. Chmura*, 401 Ill. App. 3d 721 (2010); *People v. Sutton*, 233 Ill. 2d 89 (2009)). Further, the State maintained that, if the statements were considered hearsay, the statements were nevertheless admissible under the excited-utterance exception to the hearsay rule. Following a hearing, the court held that the statements were nontestimonial but that they were hearsay and did not fall under the excited-utterance exception to the hearsay rule. The State filed a certificate of impairment and timely appealed. For the reasons that follow, we reverse and remand.

¶ 2 The following testimony was presented at the hearing on the motions. Halik testified that, in the early morning of April 18, 2010, he responded to a call concerning people fighting and yelling. When he arrived at the location, he did not see anything. Other officers, who had responded as backup, "cleared the call." Halik parked his squad car and began to prepare an incident report. While writing the report, he saw Hicks, who was running toward the squad car and yelling for help. According to Halik, Hicks was crying and visibly upset. Halik noticed that Hicks had a large mark on her forehead. In addition, Halik observed that, after Hicks ran her fingers through her hair, there were some hairs on her palm. Hicks told Halik that her husband had hit her, that she was scared, and that her husband was not acting like his usual self. Halik asked Hicks if her husband had any

firearms at their house. Hicks told Halik that her husband did have firearms and that he was a police officer. At that point, Halik called for backup.

¶ 3 While Halik was waiting for backup to arrive, he asked Hicks to tell him what had happened. According to Halik:

> "She advised that she and her husband had been at Buffalo Wild Wings, an argument had occurred. As they were driving home, her husband was driving through red lights and going through stop signs without stopping. She advised she had tried to get out of the vehicle but she was afraid and her husband would not let her get out of the vehicle. She tried to engage the emergency brake. She also said that her husband had got ahold of her cell phone at the time and her husband had went and hit her in the side of the face. She advised that she was eventually able to make her way out of the vehicle. She then proceeded to walk home."

While Hicks was telling Halik what had happened, she was upset and crying. Halik was able to calm her down a little bit by talking with her. When additional officers arrived, Halik went to Hicks' home, where he found defendant sitting at a table, smoking a cigarette.

¶ 4 On cross-examination, Halik testified that, when he responded to the initial incident call, he had not been given an exact residence. His squad car was parked about 5 or 10 houses away from the Hicks' residence. Buffalo Wild Wings was about two or three miles away. Halik did not recall seeing blood on Hicks' mouth. He indicated in his report that Hicks had smelled heavily of alcohol and that she had reported to him that she had been drinking. Halik had no idea how much time it took Hicks to walk home after she had exited defendant's car.

¶ 5 The court held that the statements were nontestimonial but that they were hearsay and did not fall under the excited-utterance exception to the hearsay rule. The court found that, while the

State established two of the three requisite elements to qualify under the exception, it failed to present sufficient evidence indicating the necessary time frame. The court stated:

> "In this case, we don't have any kind of time frame, which is an issue. I mean it weakens whatever these statements are because we just don't know.
>
> Now, can we assume because she was crying a [*sic*] because she was upset and because she had a mark on her head that those were recent. I don't necessarily feel that comfortable in doing so without more testimony at this point in time."

¶ 6 The State filed a certificate of impairment and timely appealed.

¶ 7 The State argues that the trial court's ruling was an abuse of discretion, because the court disregarded the totality of the circumstances in finding that the State failed to prove the second factor required under the excited-utterance exception—an absence of time to fabricate. According to the State, even though Hicks did not state how long it had been since defendant had struck her, the surrounding facts and circumstances indicated that the battery was recent and that Hicks was still under the influence of the startling event. We agree.

¶ 8 "Hearsay evidence is an out-of-court statement offered to prove the truth of the matter asserted, and is generally inadmissible unless it falls within a recognized exception." *People v. Cloutier*, 178 Ill. 2d 141, 154 (1997). At issue here is whether the evidence was admissible under the "excited utterance" exception to the hearsay rule. As this court has noted:

> "Three factors have been deemed necessary to lay the foundation for the admission of a statement under the excited utterance exception to the hearsay rule. [Citation.] They are: (1) an occurrence sufficiently startling to produce a spontaneous and unreflecting statement; (2) an absence of time to fabricate; and (3) a relation of the statement to the

> circumstances of the occurrence. [Citation.] In determining whether a hearsay statement is admissible under this exception, courts use a totality of the circumstances analysis. [Citation.] 'This analysis involves the consideration of several factors, including time, "the nature of the event, the mental and physical condition of the declarant, and the presence or absence of self-interest." ' [Citations.] No one factor is determinative, as each case must rest on its own facts. [Citation.] Whether a statement qualifies as an excited utterance is within the trial court's discretion." *People v. Gwinn*, 366 Ill. App. 3d 501, 517 (2006).

¶ 9 The rationale for admitting an excited utterance has been explained as follows:

> " 'The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him.' " *People v. Damen*, 28 Ill. 2d 464, 471 (1963) (quoting *Keefe v. State*, 72 P.2d 425, 427 (Ariz. 1937)).

"[T]he critical inquiry with regard to time is whether the statement was made while the declarant was still affected by the excitement of the event." *People v. Connolly*, 406 Ill. App. 3d 1022, 1025 (2011).

¶ 10 The trial court held that the State failed to present sufficient evidence establishing the necessary time frame. While it is true that there was no evidence establishing the exact amount of time that had elapsed between the incident and the statements, this alone does not render the statements inadmissible. See *People v. Stiff*, 391 Ill. App. 3d 494, 502 (2009); *People v. Parisie*, 5 Ill. App. 3d 1009, 1028-31 (1972). Rather, the spontaneity of Hicks' statements must be judged in light of the totality of the circumstances. Here, the facts establish that Hicks' statements were spontaneous and that the battery had just recently occurred. Hicks claimed that, at some point during the incident, she had jumped out of defendant's vehicle and walked home. When Halik first saw Hicks, she was running toward his car and yelling for help. Halik observed a mark on Hicks' forehead, and he also observed strands of hair on Hicks' palm after Hicks ran her fingers through her hair. She was visibly upset and crying. It is evident that Hicks, when speaking to Halik, was still affected by the event. Therefore, we find that the trial court, in focusing mainly on the absence of evidence to establish a definite time frame, abused its discretion in concluding that Hicks' statements did not fall under the excited-utterance exception to the hearsay rule.

¶ 11 In light of the foregoing, the judgment of the circuit court of McHenry County, granting defendant's motion *in limine*, is reversed, and the case is remanded for further proceedings.

¶ 12 Reversed and remanded.