MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Christopher J. Petersen
Goshen, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Michael E. Hawkins, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 20, 2023

Court of Appeals Case No. 22A-CR-2058

Appeal from the Elkhart Superior Court

The Honorable Kristine A. Osterday, Judge

Trial Court Cause No. 20D01-2111-F5-253

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Michael E. Hawkins, Jr., appeals his convictions, following a jury trial, for level 5 felony domestic battery and class A misdemeanor interfering with reporting of a crime. He asserts on appeal that the trial court abused its discretion and/or committed reversible error in admitting certain evidence at trial. Finding no abuse of discretion or reversible error, we affirm.

Facts and Procedural History

[2] In November 2021, Hawkins lived in a residence with C.A. The couple had a romantic and sexual relationship. On November 22, Elkhart County emergency services received a "hang up" call from C.A. during which she yelled, "Please. I'm at 430 Jackson Place, Apartment B. No, no, no, no. I ain't talking to police, I ain't talking to police[,]" before the call ended. State's Ex. 1. Hawkins had forced his way into the bedroom where C.A. barricaded herself and struck her in the face with a gun and then smashed her phone. Officers arrived at the apartment within five minutes of the call and made contact with Hawkins at the front door. Hawkins refused to give his name or exit the residence, and he told police that everything was fine.

[3] Elkhart County Police Department Officer Kenneth Ulanowicz investigated a thumping noise coming from a side window of the residence and observed that C.A. was hiding inside a bathroom. Her face was bloody, her hands were shaking, and she appeared scared. C.A. tried to mouth words to Officer Ulanowicz, but he could not tell what she was saying. She then made a

"praying hands" gesture and "a handgun motion" to communicate with the officer. *Id*. at 58. Officers removed the bathroom window and pulled C.A. outside. She was barefoot and wearing only a t-shirt. She had also urinated on herself. C.A. was "very upset," "borderline crying," and talking "very fast." *Id*. at 152-53. After she was rescued, C.A. made three statements regarding the incident to Officer Jeremy Snow. One statement was made in Officer Snow's patrol vehicle immediately after the rescue; a second statement was made in an ambulance within minutes of the first; and a third statement was made later in a different officer's patrol vehicle.

[4] After police were able to secure the scene, C.A. was transported to the hospital by ambulance. She had a head laceration that required three stitches and was consistent with being struck by an object. C.A. told the treating physician that she had been "pistol whipped." *Id.* at 200-03. Officers recovered a loaded handgun and a sawed-off shotgun from the residence.

[5] The State initially charged Hawkins with level 5 felony domestic battery with a deadly weapon and class A misdemeanor interference with reporting of a crime. The State later added a count for level 6 felony battery resulting in moderate bodily injury. A jury trial was held in July 2022. During trial, the State called Officer Snow to testify regarding the statements C.A. made to him. The State also offered Officer Snow's bodycam footage, which recorded those statements. Hawkins objected on hearsay and confrontation grounds. The State conceded that the third statement to Officer Snow was inadmissible. The trial court overruled Hawkins's objection as to the first and second statements and

admitted both Officer Snow's testimony and the bodycam footage. C.A. did not testify at trial. The jury found Hawkins guilty as charged. The trial court thereafter merged the battery counts and sentenced Hawkins to concurrent sentences of six years with one year suspended for level 5 felony domestic battery and one year for the class A misdemeanor, for a total executed sentence of five years. This appeal ensued.

Discussion and Decision

[6] Hawkins challenges the trial court's admission of evidence. "Our standard of review for the admissibility of evidence is well established." *Housand v. State*, 162 N.E.3d 508, 513 (Ind. Ct. App. 2020) (quoting *Whiteside v. State*, 853 N.E.2d 1021, 1025 (Ind. Ct. App. 2006)). "The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal." *Id*. "We will reverse the trial court's ruling on the admissibility of evidence only for an abuse of discretion." *Id*. "An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it." *Id*.

[7] Here, the trial court admitted evidence of two statements C.A. made to Officer Snow immediately after she had been beaten in the head with a gun, barricaded herself in the bathroom, and was rescued by being pulled out the window by police officers. The first statement was made in Officer Snow's patrol car, and the second statement was made in the ambulance shortly thereafter. Hawkins objected at trial to the admission of both statements on hearsay and

constitutional grounds, but he concedes on appeal that C.A.'s first statement to Officer Snow falls within the excited utterance exception to the hearsay rule, and he further acknowledges in his brief that the first statement was taken for the purposes of addressing an ongoing emergency which, in our opinion and as we explain more fully below, eliminates his constitutional claim as to that statement. However, we will address Hawkins's claims that the second statement made by C.A. in the ambulance did not qualify as an excited utterance, and further that the admission of that statement violated his Sixth Amendment right to confrontation.

[8] Hearsay is an out-of-court statement offered for the "truth of the matter asserted." Ind. Evidence Rule 801(c). Hearsay statements are typically not admissible during trial. Ind. Evidence Rule 802. An excited utterance, which is a "statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused," is not excluded by the rules against hearsay. Ind. Evidence Rule 803. To qualify as an excited utterance, three elements must be present. *Ramsey v. State*, 122 N.E.3d 1023, 1032 (Ind. Ct. App. 2019), *trans. denied*. First, a "startling event or condition" must have occurred. *Id*. Second, the statement must have been made while the declarant was "under the stress of excitement caused by the event or condition." *Id*. Finally, the statement must be "related to the event or condition." *Id*. The test to determine admissibility is "not 'mechanical' and admissibility turns 'on whether the statement was inherently reliable because the witness was under the stress of the event and unlikely to make deliberate falsifications.'" *Id*.

(quoting *Sandefur v. State*, 945 N.E.2d 785, 788 (Ind. Ct. App. 2011)). "The heart of the [excited utterance] inquiry is whether the declarant was incapable of thoughtful reflection." *Id*. The rationale behind allowing the admission of "excited utterances is that startling events and absence of opportunity for reflection vest the statements with reliability and reduce the likelihood of falsification." *Id*.

[9] The record reveals that C.A. was very much still under the stress or excitement of the beating by Hawkins when Officer Snow spoke to her a second time in the ambulance. Officer Snow testified that the second statement occurred within minutes of the first and that C.A. was "still very upset" and was actively bleeding from the laceration on her head when he spoke to her in the ambulance. Tr. Vol. 2 at 165. The substance of the statement was essentially a reiteration of the first. Specifically, C.A. told Officer Snow that she heard Hawkins arguing with someone earlier that evening and that she barricaded herself in the bedroom after she heard a gunshot. Hawkins then forced his way into the bedroom, struck her in the head with a gun, and smashed her phone with the gun. The record supports the trial court's conclusion that C.A. was still not yet capable of thoughtful reflection when she made her second statement in the ambulance. C.A.'s ambulance statement was an excited utterance, and therefore it was not excluded by the rule against hearsay.

[10] Hawkins suggests that, even assuming the ambulance statement was an excited utterance, admission of the statement violated his Sixth Amendment right to confrontation. However, as noted above, he essentially concedes that he does

not have a viable claim in this regard to Aitken's first statement to Officer Snow.[1] Accordingly, we conclude that if there were any error in the admission of the ambulance statement, it would have been harmless beyond a reasonable doubt. It is well settled that violations of the right to confront and cross-examine witnesses are subject to a harmless-error analysis. *Koenig v. State*, 933 N.E.2d 1271, 1273 (Ind. 2010). "Our analysis for such questions requires this Court to assess 'whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.'" *Mack v. State*, 23 N.E.3d 742, 756 (Ind. Ct. App. 2014) (quoting *Chapman v. California*, 386 U.S. 18, 23 (1967)). "That is, we consider whether the jury would have found [Hawkins] guilty without the improper evidence." *Id*. Here, considering the plethora of admissible and unchallenged evidence, which includes C.A.'s first statement to Officer Snow, we have little difficulty concluding that the jury would have found Hawkins guilty as charged even without the second statement. Accordingly, we affirm his convictions.

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[1] The Confrontation Clause of the Sixth Amendment provides in relevant part that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." *See Crawford v. Washington*, 541 U.S. 36, 42 (2004) ("We have held that this bedrock procedural guarantee applies to both federal and state prosecutions."). The Confrontation Clause applies to an out-of-court statement if it is testimonial, the declarant is unavailable, and the defendant had no prior opportunity to cross-examine the declarant. *Crawford*, 541 U.S. at 59. To determine whether the statements are testimonial, we look at the primary purpose of the interrogation. *Turner v. State*, 953 N.E.2d 1039, 1055 (Ind. 2011). If the circumstances objectively indicate that "the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency[,]" then the statements are non-testimonial. *Young v. State*, 980 N.E.2d 412, 418 (Ind. Ct. App. 2012) (citation omitted). However, if "circumstances objectively indicate" the primary purpose is to "prove past events potentially relevant to later criminal prosecution[,]" then statements are testimonial. *Id*. Hawkins essentially concedes that C.A.'s first statement to Officer Snow was not testimonial because he clearly acknowledges that the primary purpose of Officer Snow's questioning was to enable police assistance to meet an ongoing emergency.

[11] Affirmed.

Robb, J., and Kenworthy, J., concur.