MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Juan Guerrero,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 18, 2022

Court of Appeals Case No. 21A-CR-2629

Appeal from the Lake Superior Court

The Honorable Samuel L. Cappas, Judge

Trial Court Cause No. 45G04-1905-MR-16

Najam, Judge.

Statement of the Case

[1] Juan Guerrero appeals his conviction for murder, a felony, following a jury trial. Guerrero presents a single issue for our review, namely, whether the trial court abused its discretion when it made certain evidentiary rulings at trial.

[2] We affirm.

Facts and Procedural History

[3] From 2000 until 2015, Guerrero and Sheri Czerwinski were in a romantic relationship. During that time, Czerwinski became guardian of her niece's young son, C.C., and Guerrero became a father figure to C.C. After Guerrero and Czerwinski ended their relationship in 2015, Guerrero continued to have visitation time with C.C.

[4] On May 14, 2019, during the early evening, Czerwinski and her boyfriend, Jermaine Salazar, were at a bar together, and C.C. was visiting with Guerrero. A little before 8:00 p.m., Czerwinski texted Guerrero to let him know that they would be by to get C.C. in fifteen or twenty minutes. A little later, Czerwinski texted Guerrero again to let him know that they would arrive at approximately 8:30 p.m. When they finally arrived at Guerrero's house, Czerwinski was driving, and Salazar was sitting in the front passenger seat of the vehicle. Guerrero and C.C. then exited Guerrero's house and approached Czerwinski's vehicle. C.C. got into the backseat of the vehicle, and Guerrero approached the front passenger seat. Guerrero mentioned to Czerwinski that she was "late" in picking up C.C. Tr. Vol. 2 at 219. In response, Salazar stated to Guerrero that,

in future, C.C. could stay at the after-school program at the YMCA rather than go to Guerrero's house after school. Guerrero "swore" in response. *Id.* at 220. Czerwinski "didn't want any conflict," so she just "drove away" at that point. *Id.*

[5] At approximately 9:00 p.m., after Czerwinski, Salazar, and C.C. were home, Guerrero called Czerwinski and said, "If that person wants to talk crap to me, he can come out and talk crap to me now." *Id.* at 222. Czerwinski had placed the call on the speaker function of her phone, so Salazar heard the remark by Guerrero. In response, Salazar exited the residence, and Czerwinski followed. Salazar had taken "one step down" the front steps outside when Czerwinski heard "gunshots" and saw a "flash from the street." *Id.* Czerwinski saw Guerrero's car parked in the street. Czerwinski and Salazar then ran behind her SUV in the driveway, but Guerrero had exited his car and was shooting at them as they tried to hide. Guerrero fired two or three bullets that struck Salazar, and he fell to the ground. As Czerwinski was kneeling next to Salazar, Guerrero approached Salazar and fired the gun two or three more times at Salazar's head. Guerrero then "threw [Czerwinski] into the gravel" before he got into his car and drove off. Tr. Vol. 3 at 2. Salazar died as a result of his injuries.

[6] Czerwinski called 9-1-1 and stated, "my ex came over here and shot my boyfriend." State's Ex. 16. Emergency medical technicians arrived at the scene first, followed by Lake County Sheriff's Deputies Timothy Heath and Cory House. Czerwinski, who was "crying hysterically," told the deputies that

Guerrero had shot Salazar, and she gave a description of Guerrero's car. Tr. Vol. 3 at 65. That description of Guerrero's car was disseminated to law enforcement agencies in the vicinity, including in New Lenox, Illinois.

[7] A few hours later, at approximately 2:00 a.m., an officer with the New Lenox Police Department saw a car fitting the description of Guerrero's car and executed a traffic stop. After Lake County Sheriff's Department Detective Esteban Carattini heard that Guerrero had been apprehended, he drove to New Lenox and talked to Guerrero, who consented to a search of his car. During the search, officers found a 9mm Taurus handgun on the front passenger floorboard. Subsequent ballistics testing revealed that the handgun was used to fire all nine bullets fired during the shooting at Czerwinski's house, including the five bullets that struck Salazar.

[8] The State charged Guerrero with murder. At his ensuing jury trial, Guerrero sought to admit evidence of "exculpatory" remarks he had made to police officers during an interrogation, but the trial court excluded that evidence. Appellant's Br. at 9. Guerrero also objected to certain evidence as hearsay, but the trial court allowed the testimony over his objection. The jury found Guerrero guilty of Salazar's murder. The trial court entered judgment of conviction and sentenced Guerrero to forty-seven years executed. This appeal ensued.

Discussion and Decision

[9] Guerrero contends that the trial court abused its discretion when it made certain evidentiary rulings during his trial. As our Supreme Court has stated:

> Generally, a trial court's ruling on the admission of evidence is accorded "a great deal of deference" on appeal. *Tynes v. State*, 650 N.E.2d 685, 687 (Ind. 1995). "Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion" and only reverse "if a ruling is 'clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights.'" *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014) (quoting *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013)).

Hall v. State, 36 N.E.3d 459, 466 (Ind. 2015).

[10] Guerrero challenges three of the trial court's rulings on the admission of evidence: (1) the exclusion of his alleged exculpatory statements to a police officer during an interrogation; (2) the admission of Officer Heath's testimony regarding what Czerwinski had told him at the scene; and (3) the admission of a police officer's testimony regarding the reason another officer had stopped Guerrero's car in Illinois. We address each contention in turn.

Exculpatory Statements

[11] Guerrero contends that the trial court abused its discretion when it excluded evidence that he had made unspecified "exculpatory" statements to a police officer during an interrogation after his arrest. Appellant's Br. at 9. Guerrero had sought to admit his statements to rebut certain testimony proffered by the

State. However, while Guerrero claims that the statements were relevant to his self-defense, he does not provide any information about what his statements were. And, as the State points out, Guerrero did not make an offer of proof at trial.

[12] Indiana Evidence Rule 103(a) provides in relevant part that a party may claim error in a ruling to exclude evidence only if the error affects a substantial right of the party and the party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

> The purpose of an offer of proof is to convey the point of the witness's testimony and provide the trial judge the opportunity to reconsider the evidentiary ruling. *Baker v. State*, 750 N.E.2d 781, 785-86 (Ind. 2001) (quoting 1 McCormick on Evidence § 51, at 217 (John W. Strong et. al., 5th ed. 1999)). Equally important, it preserves the issue for review by the appellate court. *Id.* To accomplish these two purposes, an offer of proof must be sufficiently specific to allow the trial court to determine whether the evidence is admissible and to allow an appellate court to review the correctness of the trial court's ruling and whether any error was prejudicial. 1 McCormick, supra, at 218.

State v. Wilson, 836 N.E.2d 407, 409 (Ind. 2005).

[13] Here, again, Guerrero did not make an offer of proof, and he has not given us any context for the alleged exculpatory statements. Without any way to know what evidence Guerrero was attempting to admit at trial, we cannot say that the trial court abused its discretion in excluding it. Guerrero has waived this issue for our review.

Officer Heath's Testimony

[14] Guerrero contends that the trial court abused its discretion when it permitted Officer Heath to testify, over his objection, regarding statements Czerwinski had made to him at the murder scene. In particular, during its direct examination of Officer Heath, the State asked him what Czerwinski had told him at the scene. Before Officer Heath could answer, Guerrero objected on hearsay grounds. During a sidebar, the following colloquy ensued:

> [State]: Your Honor, this is in the course of his investigation. He's arriving to a scene. He's been dispatched. He needs to find out what is going on so he knows how to proceed. So it's also an excited utterance. It's a present sense impression as well.
>
> [Defense]: Judge, it's neither [an] excited utterance [n]or a present sense impression. Ms. Czerwinski was here. She testified as to the things that she saw, and she said [sic] it's not appropriate to have this witness testify to what Ms. Czerwinski told him. It's an out-of-court statement being offered for the truth of the matter
> asserted.
>
> [State]: Your Honor, the State has just laid a foundation as to the demeanor and what he observed. He testified she was hysterical. She was upset. She was crying. So that is an excited utterance as to him asking her questions as to what happened.
>
> THE COURT: Well, it's not a present sense impression because it already happened. I'm going to overrule it.

Tr. Vol. 3 at 66. Officer Heath then testified that Czerwinski told him that she had witnessed Guerrero shoot Salazar.

[15] On appeal, Guerrero challenges the trial court's ruling on this evidence on a single ground, namely, its admissibility as "course-of-investigation" testimony, which is not hearsay. *See Blount v. State*, 22 N.E.3d 559, 565 (Ind. 2014). But, as the State points out, there's no indication that the trial court permitted the testimony as course-of-investigation testimony. Indeed, the trial court did not state a reason for its ruling, other than to state that it was not admissible under the present sense impression exception to hearsay.

[16] At trial, and on appeal, the State alleges that the testimony was an excited utterance, which is admissible as a hearsay exception. Ind. Evidence Rule 803(2). And this Court "may affirm the trial court's ruling if it is sustainable on any legal basis in the record[.]" *Scott v. State*, 883 N.E.2d 147, 152 (Ind. Ct. App. 2008). Officer Heath testified that he arrived at the scene approximately ten minutes after he "received the dispatch[.]" Tr. Vol. 3 at 64. And when he first met Czerwinski, she was "crying hysterically" and "couldn't control her emotions." *Id.* at 65.

[17] As this Court has stated:

> Statements made by a witness are admissible as substantive evidence pursuant to Indiana Evidence Rule 803(2) when the statements (a) pertain to a startling event or condition; (b) are made while the declarant was under the stress or excitement caused by the event or condition; and (c) are related to the event or condition. This test 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. The lapse of time is not dispositive, but if a statement is made long after a startling event, it is usually less

> likely to be an excited utterance. The heart of the inquiry is whether the declarant was incapable of thoughtful reflection.

Stinson v. State, 126 N.E.3d 915, 920-21 (Ind. Ct. App. 2019) (citations and quotation marks omitted).

[18] We hold that Czerwinski's statement to Officer Heath qualified as an excited utterance under Evidence Rule 803(2). Officer Heath met Czerwinski approximately ten minutes after he was dispatched to the scene, he observed her crying hysterically because she had just seen Guerrero kill Salazar, and her statement was directly related to that event. The trial court did not abuse its discretion when it admitted that testimony.[1]

Traffic Stop

[19] Finally, Guerrero contends that the trial court abused its discretion when it admitted testimony regarding the reason for the traffic stop of Guerrero's car in Illinois, over his objection. At the conclusion of Officer Andrew Johnston's testimony, a juror submitted a written question wanting to know whether Guerrero's car was stopped in Illinois because of the "BOLO" (be on the look out) information following the murder or due to a traffic infraction. Guerrero objected to Officer Johnston answering that question because he was not the

[1] Guerrero suggests that Officer Heath's testimony also violated his Sixth Amendment right of confrontation. However, he does not make cogent argument on this issue, and we do not address it. In any event, Czerwinski testified at trial, and Guerrero had the opportunity to cross-examine her about her statements to Officer Heath.

officer who had conducted the traffic stop of Guerrero. The trial court asked Officer Johnston whether he knew why the car had been stopped, and he replied, "Yes." Tr. Vol. 3 at 142. The trial court then asked the reason for the stop, and Officer Johnston stated that the vehicle "was stopped because our dispatch center" had given officers "information" regarding a "blue vehicle." *Id.* at 142-43.

[20] Guerrero asserts that that testimony was inadmissible because "no foundation was laid establishing the personal knowledge of the officer testifying." Appellant's Br. at 23. In support of this contention, Guerrero cites Evidence Rule 602, which provides in relevant part that "[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony." Guerrero maintains that, because Officer Johnston was not the officer who stopped Guerrero, he did not have personal knowledge of the reason for the stop and cannot testify thereto.

[21] However, even assuming Guerrero is correct, he has not shown that he was prejudiced by the challenged testimony. In his brief, Guerrero alleges that he was prejudiced because

> [t]he jury was left with the impression that in some manner Guerrero was trying to escape, when in fact he was heading toward the State of Indiana indicating that he was returning after consulting with his pastor. This implication arose when the

> officer testified the vehicle was traveling westbound, which it was not. This was significant because flight is indicative of guilt.

Appellant's Br. at 23. But Guerrero did not object to the testimony regarding his direction of travel,[2] and nothing in Officer Johnston's testimony about the reason for the stop made any reference to either his direction of travel or an attempt to escape. Guerrero's assertion of prejudice is without merit, and he has not shown reversible error. *See* Ind. Appellate Rule 66. We affirm Guerrero's conviction.

[22] Affirmed.

Bradford, C.J., and Bailey, J., concur.

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[2] Officer Johnston testified, without objection, that the blue car had been traveling westbound when it was stopped. However, as the State notes, officers were tracking Guerrero's cell phone coordinates which indicated that he was traveling eastbound prior to the stop.