MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

R. Brian Woodward
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Myriam Serrano
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Joshua Ptak,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 1, 2022

Court of Appeals Case No. 21A-CR-2386

Appeal from the Lake Superior Court

The Hon. Samuel L. Cappas, Judge

Trial Court Cause No. 45G04-1902-F3-27

Bradford, Chief Judge

Case Summary[1]

[1] On February 20, 2019, Dymond Quinones drove with Joshua Ptak and two others to cash an insurance check she had just received. After cashing the check, Ptak and the others stole Quinones's purse using force, causing her bodily injury. When police arrived at the scene, she identified her assailants to one of the officers. The State charged Ptak with, *inter alia*, Level 3 felony robbery resulting in bodily injury. At trial, Quinones testified that Ptak had been one of her assailants, and a police officer testified that she had told him the same thing at the scene, shortly after the robbery. The jury found Ptak guilty of Level 3 felony robbery resulting in bodily injury, and the trial court sentenced him to eleven years of incarceration. Ptak argues that the trial court abused its discretion in admitting the police officer's testimony regarding Quinones's identification of him and that the State produced insufficient evidence to sustain his conviction. We affirm.

Facts and Procedural History

[2] On the morning of February 20, 2019, Quinones called Angel Salazar from Portage and asked if he could take her to cash a $2287.66 insurance check she had recently received. (Tr. Vol. II p. 139). Salazar agreed to help Quinones and arrived with Ptak and Robinson Mora, both of whom were also friends with Quinones, around 4:00 p.m. (Tr. Vol. II p. 140). The quartet drove to

[1] We held oral argument in this case on May 18, 2022, at Speedway High School in Speedway, Indiana. We would like to commend counsel on the quality of their presentations and thank the staff, faculty, and students of Speedway High School for their hospitality and assistance.

Hammond to cash the check and eventually made their way to an alley behind Bishop Noll Institute, ostensibly to purchase marijuana. (Tr. Vol. II p. 147).

[3] After arriving at Bishop Noll and waiting for approximately fifteen minutes, Ptak announced that he needed to check the tires on the vehicle and left his front passenger-side seat to do so. (Tr. Vol. II p. 149). As Ptak was coming around the rear of the vehicle, Salazar, seated next to Quinones in the backseat, grabbed her purse. (Tr. Vol. II p. 151). Around this time, Ptak opened the rear passenger door and began pulling on Quinones's legs. (Tr. Vol. II p. 151). Mora, apparently concerned that Quinones was resisting and making too much noise, put a gun to the back of her head. (Tr. Vol. II p. 152). Mora told Quinones to "run all [her] s[***] or [he was] going to blow [her] head off." Tr. Vol. II p. 153. After struggling for a while longer, Quinones eventually let go of her purse when Mora hit her on the upper lip with his gun, and Mora, Ptak, and Salazar fled in Mora's vehicle. (Tr. Vol. II p. 156). Quinones, who had managed to keep her mobile telephone, called 911. (Tr. Vol. II p. 164). When police arrived approximately seven minutes later, Quinones was still upset, crying, and bleeding from her nose, lip, and ears. (Tr. Vol. II p. 164). Police asked Quinones to identify her assailants, and she did. (Tr. Vol. II p. 164).

[4] On February 26, 2019, the State charged Ptak with Level 3 felony armed robbery, Level 3 felony robbery resulting in bodily injury, and Level 5 felony battery by means of a deadly weapon. (Appellant's App. Vol. II p. 21). On July 27, 2021, Ptak's jury trial was held. (Appellant's App. Vol. II p. 115). Quinones testified and identified Ptak, Mora, and Salazar as the three

individuals who had robbed her. (Tr. Vol. II pp. 149–64). East Chicago Police Officer Joseph Kelnhoffer testified that he had responded to the scene of the robbery to find Quinones "screaming and crying" with items in disarray on the ground around her. Tr. Vol. II p. 217. Officer Kelnhoffer testified that Quinones's clothing had also been in disarray and that she had been bleeding from lacerations on her nose and head. (Tr. Vol. II p. 217). Officer Kelnhoffer testified, over a hearsay objection that the trial court overruled, that Quinones had told him at the scene that she had been robbed by Ptak, Salazar, and a male named "Robert. [A]lso known as Robbie." Tr. Vol. II p. 218. At the conclusion of trial, the jury found Ptak guilty of robbery resulting in bodily injury and acquitted him of the other charges. The trial court sentenced Ptak to eleven years of incarceration, with nine to be served in the Department of Correction and two in community corrections. (Appellant's App. Vol. II pp. 112–16, 133).

Discussion

I. Admission of Evidence

[5] Ptak contends that the trial court abused its discretion in admitting Officer Kelnhoffer's testimony regarding Quinones's statement to him about the identity of her assailants. A trial court has broad discretion in ruling on the admissibility of evidence. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). We will reverse a trial court's ruling on the admissibility of evidence only when it constitutes an abuse of discretion. *Id*. An abuse of discretion occurs only where the trial court's ruling is clearly against the logic

and effect of the facts and circumstances and the error affects the party's substantial rights. *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013).

[6] Ptak argues that Officer Kelnhoffer's testimony was hearsay and that no exception or exclusion to the hearsay rule rendered it admissible. The State argues that the testimony was admissible as an excited utterance. 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. Evid. R. 802. As an initial matter, the trial court gave no rationale for overruling Ptak's hearsay objection to Officer Kelnhoffer's testimony, so there is no basis for Ptak's contention that it was admitted as "course of the investigation" evidence. Moreover, as the State points out, "a trial court's hearsay ruling will be affirmed on any legal basis apparent in the record." *Jones v. State*, 800 N.E.2d 624, 629 (Ind. Ct. App. 2003). So, if the testimony regarding Quinones's statements qualifies as an excited utterance, the trial court did not abuse its discretion in admitting it.

[7] An excited utterance, which is a "statement relating to a startling event or condition, made while the declarant was under the stress or excitement that it caused," is not excluded by the rules against hearsay. Ind. Evid. R. 803. To qualify as an excited utterance, there are three elements that 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 statements must have been made while the declarant was "under the stress or 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." *Ramsey*, 122 N.E.3d at 1032 (citing *Jones*, 800 N.E.2d at 627). 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*.

[8] Here, Ptak has failed to establish that it would have been an abuse of discretion to conclude that Quinones's statements were excited utterances. Quinones's statements were made following a violent robbery during which her life was threatened at gunpoint and she was beaten, Officer Kelnhoffer testified that she was screaming and crying when he arrived at the scene, and her statements were directly related to the robbery. Under the circumstances and despite the passage of approximately seven minutes, the record supports a conclusion that Quinones was not yet capable of thoughtful reflection when she identified her assailants to Officer Kelnhoffer. *See, e.g.*, *id.* at 1032 (concluding that identification of defendant to police officer was an excited utterance when victim made identification shortly after being rescued from defendant's apartment after being confined and beaten for four days and was described as

inconsolable, visibly shaken, nervous, very tearful, anxious, frightened, tense, and restless).

[9] In any event, even if we had determined that Quinones's statement did not qualify as an excited utterance, its admission, even if erroneous, could only be considered harmless. It is well-settled that "[e]rrors in the admission of evidence are to be disregarded as harmless unless they affect the substantial rights of the defendant." *Goudy v. State*, 689 N.E.2d 686, 694 (Ind. 1997). "The erroneous admission of evidence is harmless error where a guilty finding is supported by substantial independent evidence of guilt." *Bates v. State*, 495 N.E.2d 176, 178 (Ind. 1986). "However, reversal is warranted if the record as a whole reveals that the improper evidence was likely to have had a prejudicial impact on the average juror such that it contributed to the verdict." *Sundling v. State*, 679 N.E.2d 988, 994 (Ind. Ct. App. 1997). Here, Quinones testified at trial and identified Ptak, a person she had known for several years, as one her assailants. Consequently, Officer Kelnhoffer's testimony regarding Quinones's identification was, at most, cumulative of her trial testimony, which would render its admission nothing more than harmless error.

II. Sufficiency of the Evidence

[10] Ptak contends that the State failed to produce sufficient evidence to sustain his conviction for Level 3 felony robbery resulting in bodily injury. When evaluating a challenge to the sufficiency of the evidence to support a conviction, we do not "reweigh the evidence or judge the credibility of the witnesses," nor do we intrude within the factfinder's "exclusive province to weigh conflicting

evidence." *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001). Rather, a conviction will be affirmed unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000). The evidence need not exclude every reasonable hypothesis of innocence, but instead, "the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001). When we are confronted with conflicting evidence, we must consider it "most favorably to the [factfinder's] ruling." *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005).

[11] In order to prove that Ptak committed Level 3 felony robbery causing bodily injury, the State had to prove that he knowingly or intentionally took a purse or money from Quinones by using or threatening the use of force, which resulted in bodily injury. (Appellant's Appx. Vol. 2, pp. 21, 84). Here, Ptak seems to argue only that the State produced insufficient evidence to establish that he was one of Quinones's assailants, pointing to what he alleges are inconsistencies in her testimony sufficient to render it incredible. As Ptak acknowledges, however, it is well-settled that a victim's uncorroborated testimony is sufficient to sustain a robbery conviction. *See, e.g.*, *Lott v. State*, 485 N.E.2d 886, 887 (Ind. 1985). Even if we discount Officer Kelnhoffer's testimony about Quinones's identification of Ptak, Quinones identified Ptak as one of her assailants at trial, which is sufficient to establish his identity. Ptak's argument amounts to nothing more than an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. *See, e.g.*, *Alkhalidi*, 753 N.E.2d at 627. The

State has met its burden to prove that Ptak knowingly or intentionally aided, induced or caused Mora or Salazar to commit robbery of Quinones. (Appellant's App. Vol. II p. 104).

[12] We affirm the judgment of the trial court.

Robb, J., and Molter, J., concur.