COURT OF APPEALS OF VIRGINIA

Record No. 2103-25-3

WILMA JEAN JONES
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Athey, Ortiz and Causey
Argued at Lexington, Virginia

Opinion Issued September 22, 2026[*]

FROM THE CIRCUIT COURT OF THE CITY OF SALEM
David B. Carson, Judge

Scott E. Gardner (Law Office of Scott E. Gardner, on brief), for appellant.

Craig W. Stallard, Senior Assistant Attorney General (Jay Jones, Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE DANIEL E. ORTIZ

Following a jury trial, Wilma Jean Jones was convicted of second-degree murder under Code § 18.2-32 for fatally shooting her on-and-off boyfriend, Joshua Dickson. At trial, Jones presented testimonial evidence to establish a self-defense argument. Over the Commonwealth's objection, she attempted to admit two recordings: one of the 911 call she placed following the shooting, and one of the lengthy interview she gave to police after her arrest. Jones argues that the trial court erred in denying her request to admit those recordings. Finding no abuse of discretion in the trial court's evidentiary exclusion, we affirm the trial court's judgment.

[*] This opinion is not designated for publication. *See* Code § 17.1-413(A).

BACKGROUND[1]

On the night of September 27, 2024, the Salem Police Department responded to a "shots fired" 911 call placed by Jones from a residence in Salem. Dispatch advised officers that Jones had reported that she shot her boyfriend three times. Before calling emergency services, Jones placed calls to two friends for advice on how to "cover it up." Both friends advised her to call the police, and ten minutes later, she did.

Jones was still on the phone with the 911 operator when Officers Logan Linkous and Brendan Carroll arrived at the scene. After multiple commands to exit the house from both the 911 dispatcher and the responding officers, Jones did so. When she did, she was crying and smelled of alcohol. She had her cellphone in her hand and told officers that she had attempted CPR. Jones was clothed in only jeans and underwear and was barefoot. Officer Carroll entered the house and located Dickson lying on the floor in the hallway near the front bedroom, covered in a large amount of blood. Despite officers' attempts to revive him, Dickson was pronounced dead upon the arrival of EMS. Meanwhile, Officer Linkous handcuffed Jones before placing her in the back seat of his vehicle and informing her of her *Miranda* rights.[2] Jones then told Officer Linkous that Dickson had come to the house to see their dog, Loki, and that Dickson had broken her nose twice in the week prior. At some point, Jones fell asleep in the cruiser.

Later that night, police transported Jones to the Salem Police Department, where Lieutenant Phillip Weddle interviewed her. Jones told Lt. Weddle that she was staying in her sister's house to

[1] Under familiar principles, we recite the evidence "in the 'light most favorable' to the Commonwealth, the prevailing party in the trial court." *Commonwealth v. Cady*, 300 Va. 325, 329 (2021) (quoting *Commonwealth v. Hudson*, 265 Va. 505, 514 (2003)). In doing so, we "discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and all fair inferences to be drawn therefrom." *Id.* (quoting *Commonwealth v. Perkins*, 295 Va. 323, 324 (2018)).

[2] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

help care for her sister's husband, who was ill. Jones was not allowed male visitors, but she had invited Dickson over to the house for dinner and to spend time with their dog. Jones told Lt. Weddle that, after dinner, Loki and another dog had gotten loose in the yard, so Jones went out to retrieve them. She said that while she did so, Dickson came outside, which "aggravated" her because she was worried that neighbors would see him and report his visit to her sister. They went back inside and argued in the hallway. Jones told Lt. Weddle that the argument progressed until

> [Dickson] put his hand around her neck and then removed his hand and smacked her in the face. That is when she stated that she ran into her sister's bedroom where she knew there would be a gun, shut the door and locked it, retrieved the gun. It got quiet outside of the door. At that time, she left the room to confront [him] because she thought that he was either tearing up her house -- the house, or going to steal her dog. So she went out to confront him after that.

Jones admitted that she then shot Dickson three times in the chest: first with a singular shot, and then with a "double tap."[3] Forensic analysis of the scene revealed blood spatter consistent with gunshot wounds and bloody footprints left by the shoes of responding officers. The autopsy exam of Dickson's body revealed three apparent gunshot wounds to the chest. At least one of those shots was inflicted within contact range, meaning "[the gun] was at least in contact [with] or very, very close to the skin." Jones's later statements, combined with an analysis of her call log, revealed that at least ten minutes elapsed between the shooting and Jones's eventual 911 call. Following the third shot, Jones spent a "minute, minute and a half tops" pacing. Then, at 9:00 p.m., she placed a 43-second call to Steven Fisher, a friend, asking for help to "cover it up." At 9:04 p.m., Jones called another friend, Donna Stanley, for 50 seconds, asking for similar advice. At 9:06 p.m., Jones received an incoming call from Fisher which lasted two minutes. Finally, at 9:09 p.m., Jones placed the call to 911.

[3] A double tap is "two consecutive rounds [shot] in fast firing order."

Jones was arrested following her interview with Lt. Weddle. She was then indicted for use of a firearm in the commission of a felony (Code § 18.2-53.1), possession of a firearm by a non-violent felon (Code § 18.2-308.2), and first-degree murder (Code § 18.2-32).

Prior to trial, Jones moved *in limine* to play a recording of the 911 call placed on the night of the shooting. At the evidentiary hearing, Jones argued that, although the call was hearsay, it was nevertheless relevant to her theory of self-defense and that it was admissible as either an excited utterance or present sense impression. The trial court denied her motion and excluded the recording, citing the "passage of time" between the shooting and Jones's eventual 911 call, which was "interrupted by admitted calls to individuals . . . to allow or assist with a coverup." The trial court held that the "admission by the defendant creates a solid wall which makes this by definition not an excited utterance and instead a contrived self-serving event."

At trial, Officer Linkous testified that, when asking Jones what had happened, "everything kept reverting back to the dog," Loki. Lt. Weddle testified that Jones gave "several different versions of what happened" on the night of the shooting. He also testified that during the interview, he checked Jones over for injuries and noticed discoloration on her neck that "almost looked like a bruise or an older bruise," but with straight lines. Jones indicated in response that "she had had a collar on earlier in the night," and Lt. Weddle noted that, in fact, "it appear[ed] that leather dye maybe had soaked out of the collar and gotten onto her skin. But [she had] no injuries." He testified that he had also noticed that Jones, who was given a shirt to wear once at the station, had no blood on her body, nor on her feet, despite indicating that she had been wearing only underwear at the time of the shooting.

Testifying in her own defense, Jones described the escalation of the argument and told the jury: "[Dickson] put his hand around my throat and put me against the wall. He slapped me down. I hit the ground, and that's when I retreated to my sister's room." She admitted that Dickson was

unarmed but stated that he "was a weapon." Jones testified that when she re-emerged from the bedroom, Dickson "chest checked" her, walked back down the hallway, and then began to approach her again, at which point she fired the first shot. She stated that Dickson began to come at her again, so she fired the last two shots. She admitted that after Dickson fell, she called two friends for help. When questioned about the reason for placing those calls, Jones stated, "I don't really have an answer for that. I just did. I panicked. I was scared."

At the conclusion of Jones's testimony, she sought to admit the full statement given to Lt. Weddle. The trial court denied her motion, stating that playing the full statement was both cumulative in light of Jones's testimony and that it "would be very difficult to get around the objectionable material, hearsay and otherwise." However, the trial court allowed her to present all portions of the interview that, "in light of the cross-examination and in fairness to the defense, . . . the defense thought was appropriate to bring to the jury's attention."

The jury returned guilty verdicts for use of a firearm in the commission of murder (Code § 18.2-53.1), possession of a firearm as a non-violent convicted felon (Code § 18.2-308.2),[4] and second-degree murder (Code § 18.2-32). The trial court subsequently sentenced Jones to pay restitution and to serve 38 years in prison, with 17 years suspended. She now appeals.

ANALYSIS

On appeal, Jones challenges the trial court's denial of her motions to play two audio recordings[5] for the jury: the recording of the 911 call she placed after the shooting and the

[4] At trial, Jones admitted to a prior conviction for drug possession in the state of Florida. Although her conviction under Fla. Stat. Ann. § 893.13 named her as "Wilma Gunthrie," she admitted that she was convicted of that statute during the relevant time period, and she does not challenge the sufficiency of the possession charge on appeal. This conviction is not at issue on appeal.

[5] The Court assumes that in moving "to allow the playing of [the] audio record[ings]," Jones intended to admit the recordings into evidence.

recording of her interview with police that same night.[6] As an initial matter, the Commonwealth notes that the audio recordings at issue were not made part of the record on appeal. They argue that Jones's appeal is therefore procedurally defaulted. We will assume without deciding that other portions of the trial transcript represent a sufficient proffer of the contents of the recordings. Therefore, we turn to the merits of Jones's hearsay arguments.

I. Standard of Review

"Decisions regarding the admissibility of evidence 'lie within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of discretion.'" *Blankenship v. Commonwealth*, 69 Va. App. 692, 697 (2019) (quoting *Michels v. Commonwealth*, 47 Va. App. 461, 465 (2006)). "An abuse of discretion occurs 'when a relevant factor that should have been given significant weight is not considered' or 'when an irrelevant or improper factor is considered and given significant weight.'" *Diaz v. Commonwealth*, 80 Va. App. 286, 304 (2024) (quoting *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352 (2011)). "In evaluating whether a trial court abused its discretion, . . . '[this Court] does not substitute [its] judgment for that of the trial court. Rather, [this Court] consider[s] only whether the record fairly supports the trial court's action.'" *Id.* at 304-05 (alterations in original) (quoting *Carter v. Commonwealth*, 293 Va. 537, 543 (2017)). "Only when reasonable jurists could not differ can we say an abuse of discretion has occurred." *Id.* at 305 (quoting *Lambert v. Commonwealth*, 70 Va. App. 740, 749 (2019)).

[6] Jones also asserts that it was error for the trial court to deny her motion to strike and several proffered jury instructions. But she inadequately briefed those arguments, and her counsel conceded at oral argument that the corresponding assignments of error were entirely waived, so we decline to reach them. *See Church Mut. Ins. Co. v. Ephesus Richmond Seventh-Day Adventist Church*, 84 Va. App. 371, 381-82 (2025) (holding that when "'a party fails to develop an argument . . . or merely constructs a skeletal argument,' the court may treat the issue[s] as waived" (quoting *Harless v. Nicely*, 80 Va. App. 678, 691 (2024))); Rule 5A:18 ("A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.").

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Va. R. Evid. 2:801(c). "As a general rule, hearsay evidence is incompetent and inadmissible." *Wilder v. Commonwealth*, 55 Va. App. 579, 587 (2010) (quoting *Caison v. Commonwealth*, 52 Va. App. 423, 431 (2008)). Virginia does, however, recognize a number of exceptions to the hearsay rule. *See* Va. R. Evid. 2:803. Jones, as the party seeking to have both recordings admitted into evidence, "had the burden of showing that the declaration[s] fell within an exception to the rule against hearsay." *Foley v. Commonwealth*, 8 Va. App. 149, 161 (1989) (quoting *Arnold v. Commonwealth*, 4 Va. App. 275, 281 (1987)), *aff'd on reh'g en banc*, 9 Va. App. 175 (1989)).

II. The trial court properly excluded the recording of Jones's 911 call.

Jones argues that the trial court erred in excluding the recording of her 911 call, suggesting that this denial prevented her from showing her demeanor and prior consistent statements shortly after the incident, which was necessary to establish her defense. She claims that the trial court should have used "the lapse of time test" to evaluate the admissibility of her 911 call. But her reliance on the timing of her call is misplaced, and the trial court did not err in finding that the call did not satisfy a hearsay exception.[7]

When a statement is offered against the defendant in their own criminal prosecution, it may be admissible as a statement by a party-opponent. Va. R. Evid. 2:803. But if offered under other circumstances (for example, when offered *by* the defendant), that statement must satisfy a different

[7] Although Jones references the Confrontation Clause in her brief, "[o]ne of the tenets of Virginia's jurisprudence is that trial counsel must timely object with sufficient specificity to an alleged error at trial to preserve that error for appellate review." *Perry v. Commonwealth*, 58 Va. App. 655, 666 (2011) (applying Rule 5A:18). The contemporaneous objection rule applies to constitutional arguments in exactly the same manner as it does to other arguments on appeal. We thus decline to reach the merits of Jones's Confrontation Clause argument because she failed to raise it below.

hearsay exception. Jones suggests that the recording of her 911 call is admissible as either an excited utterance or a present sense impression.

"There is no fixed rule by which the question whether [a] statement is admissible as an excited utterance can be decided." *Esser v. Commonwealth*, 38 Va. App. 520, 525 (2002) (quoting *Braxton v. Commonwealth*, 26 Va. App. 176, 184 (1997)). Generally, though, a statement falls under the excited utterance exception "and is admissible to prove the truth of the matter stated when the statement is spontaneous and impulsive, thus guaranteeing its reliability." *Id.* (quoting *Braxton*, 26 Va. App. at 184). "The statement must be prompted by a startling event and be made at such time and under such circumstances as to preclude the presumption that it was made as the result of deliberation." *Hicks v. Commonwealth*, 60 Va. App. 237, 245-46 (2012) (quoting *Caison*, 52 Va. App. at 431); *see also* Vir. R. Evid. 2:803(2) (codifying the exception using similar language). In evaluating whether a statement qualifies as an excited utterance, "[t]he circumstances surrounding the declaration govern," *Martin v. Commonwealth*, 4 Va. App. 438, 441 (1987), with the final determination "l[ying] within the discretion of the trial court," *Goins v. Commonwealth*, 251 Va. 422, 460 (1996) (citing *Clark v. Commonwealth*, 235 Va. 287, 292 (1988)).

Pointing to the lapse in time between the shooting and the placement of the call to emergency services, the trial court refused to admit the recording of Jones's 911 call, finding that it was "by definition not an excited utterance and instead a contrived self-serving event." Jones argues that the "lapse of time" made her call reliable because, despite making two calls prior to calling 911, both calls were "less than a minute" and the 911 call was made mere minutes afterward.

But the trial court must consider *all* circumstances surrounding the proffered statements; "[w]hether a hearsay statement is an excited utterance is not determined solely by the lapse of time

between the 'startling event' and the declaration." *Braxton*, 26 Va. App. at 184 (citing *Doe v. Thomas*, 227 Va. 466, 471-72 (1984)); *see also Hicks*, 60 Va. App. at 246-47 (discussing *Clark* and *Doe*, and noting that "neither time nor distance from the exciting event" are controlling factors). Further, this characterization of her calls is misleading. Jones testified that after shooting Dickson the third time, she spent a "minute, minute and a half tops" pacing the kitchen while she thought. Then, Jones placed her first call to her friend, Steven Fisher, at 9:00 p.m. At 9:04 p.m., Jones called another friend, Donna Stanley. While each outgoing call placed by Jones was under one minute in length, she accepted an incoming call from Fisher at 9:06 p.m. that lasted two minutes, and then did not call emergency services until 9:09 p.m. At least ten minutes, and three discrete advice-seeking conversations, took place between the time Dickson fell to the ground after being shot and her call to emergency services. It was not error for the trial court to exclude the 911 call because we can't "preclude the presumption that it was made as the result of deliberation." *Esser*, 38 Va. App. at 525 (quoting *Braxton*, 26 Va. App. at 184).

The 911 call does not qualify as a present sense impression for the same reason. Present sense impressions are "statement[s] accompanying and characterizing an act." *Clark v. Commonwealth*, 14 Va. App. 1068, 1070 (1992). A hearsay statement must satisfy three factors to be admissible as a present sense impression: "(1) the declaration must have been contemporaneous with the act; (2) it must explain the act; and (3) it must be spontaneous." *Id.* (quoting *Foley*, 8 Va. App. at 161-62). "'The "circumstantial guarantee of trustworthiness" of this exception is found in the contemporaneousness and spontaneousness of such statements.' 'The trustworthiness of the assertion arises from its timing. The requirement of contemporaneousness, *or near contemporaneousness*, reduces the chance of premeditated prevarication or loss of memory.'" *Wilder*, 55 Va. App. at 588 (2010) (citation omitted) (first quoting Charles E. Friend, *The Law of Evidence in Virginia* § 18-20 (6th ed. 2003); and then quoting *Foley*, 8 Va. App. at 161-62). We

have previously held that statements made in a 911 call are admissible under this exception when "it is clear that these statements accompanied the acts they described, satisfying the contemporaneous requirement." *Id.*

While we do not have the audio or transcript of the 911 call on appeal, the timing of the call itself precludes the statements from coming in as present sense impressions. Even assuming that her statements explained "the act" (i.e., the shooting), they were made *at least* ten minutes after the shooting, and were therefore not contemporaneous with the act itself. These intervening conversations, though brief, gave Jones the opportunity to deliberate and calculate her next steps. Her subsequent actions were no longer contemporaneous or spontaneous, destroying "[t]he 'circumstantial guarantee of trustworthiness' of this [present sense impression] exception." *Id.* (quoting Friend, *supra*, § 18-20). This is especially true where, as here, the very purpose of the calls was to seek counsel from multiple sources about attempting to conceal what she had done. Therefore, we cannot say that the trial court committed an abuse of discretion by excluding the recording of Jones's 911 call.

III. The trial court also properly excluded Jones's police interview.

On appeal, Jones argues that the trial court erred by prohibiting her from introducing the *entirety* of the recorded police interview that contained her own prior consistent statements because the prosecution suggested at trial that Jones had made "inconsistent or fabricated statements." She argues that in so prohibiting, the trial court stripped the jury of its fact-finding and credibility-determining roles. The Commonwealth asserts that the trial court acted within its discretion in allowing Jones to present, as desired, specific statements to the jury. We agree.

Lt. Weddel's interview of Jones after her arrest was two hours long. The trial court denied Jones's motion to play the interview in its entirety because it found that doing so would be "largely accumulative in light of the testimony [given] . . . [and] the defendant's cross-examination," and

that "it would be very difficult to get around the objectionable material, hearsay and otherwise." The trial court also noted for the record:

> I did advise the defense that if there were portions . . . of the interview that, in light of the cross-examination and in fairness to the defense, that [sic] the defense thought was appropriate to bring to the jury's attention, I would allow the defense to do that. I would also allow the defense during the redirect of the defendant to try and address the matters as well.

Generally, courts exclude a witness's own prior consistent statements when "offered for the purpose of buttressing his testimony at trial." *Anderson v. Commonwealth*, 282 Va. 457, 464 (2011) (citing *Faison v. Hudson*, 243 Va. 397, 404 (1992)). But "a defendant may introduce his or her own prior consistent statements when the prosecution suggests that the defendant has a motive to falsify, alleges that the defendant's testimony is a recent fabrication, or attempts to impeach the defendant with a prior inconsistent statement." *King v. Commonwealth*, 18 Va. App. 57, 59 (1994) (first citing *Faison*, 243 Va. at 404-05; and then citing *Manetta v. Commonwealth*, 231 Va. 123, 128 n.3 (1986)). A "prior consistent statement may be admissible to rehabilitate the witness . . . as long as a party confronting a witness with an allegedly prior inconsistent statement challenges the credibility of that witness in any significant way," even if that credibility challenge is unsuccessful. *McLean v. Commonwealth*, 32 Va. App. 200, 214-15 (2000).

Jones's assignment of error conflates the two distinct exceptions. Citing *Faison v. Hudson*, she argues that she should have been permitted to introduce her own prior consistent statements because the Commonwealth suggested at trial that she had a motive to falsify (i.e., that her account of self-defense was untrue). 243 Va. at 404-05. It is true that we recognize an exception for prior consistent statements offered after a suggestion is made by the opposing party "that the declarant had a motive to falsify his testimony and the consistent statement was *made prior to the existence of that motive*." *Mitchell v. Commonwealth*, 25 Va. App. 81, 84 (1997) (emphasis added); *see also Anderson*, 282 Va. at 464. Besides the isolated case citation, Jones presented no argument on the

motive-to-falsify exception for prior consistent statements, neither on brief nor at oral argument. Her argument, to the extent it relies on the motive-to-falsify exception, is therefore waived under Rule 5A:20(e). *See Jay v. Commonwealth*, 275 Va. 510, 518 (2008) (listing cases wherein this Court held that an appellant waived certain arguments under Rule 5A:20(e) by failing to adequately address them on brief).

Moving on to Jones's impeachment-exception argument, we find it unpersuasive. "When offered for the more limited purpose of rehabilitating the credibility of a witness who has been impeached, a prior statement that is consistent with the trial testimony may sometimes be used." *Ruhlin v. Samaan*, 282 Va. 371, 380 (2011) (citing Friend, *supra*, § 4-14). This exception allows a testifying defendant to introduce their own prior consistent statements when the prosecution "attempts to impeach the defendant with a prior inconsistent statement." *King*, 18 Va. App. at 59 (first citing *Faison*, 243 Va. at 404-05; and then citing *Manetta*, 231 Va. at 128 n.3). This includes a prior consistent statement offered after "a witness has been impeached by a prior inconsistent statement." *Ruhlin*, 282 Va. at 381 (citing *Anderson*, 282 Va. 457).

Here, the Commonwealth's case-in-chief was replete with evidence of the inconsistencies between Jones's various accounts of the shooting. Lt. Weddle testified at trial that Jones told him "several different versions of what happened" during the interview. At one point, Jones told Lt. Weddle that "[Dickson] put his hand around her neck and then removed his hand and smacked her in the face." At trial, Jones testified that the slapping occurred in the hallway and "was more of a one motion action." She continued, "As he hit me, I went to the floor. I got up and retreated to my sister's room." The Commonwealth then impeached her by playing portions of the recording of her interview, wherein she said that the slapping had occurred while both she and Dickson were inside the bathroom, that they then "had some conversation," and only *then* did she run to her sister's room.

In so doing, the Commonwealth opened the door for Jones to introduce prior consistent statements to rehabilitate her credibility in relaying what occurred that night. The trial court allowed Jones to do just that: Jones was permitted to introduce any portion of the interview which she considered to be "appropriate to bring to the jury's attention."[8] That she failed to do so has no bearing on our decision.

Finally, the hearsay exception is not the only evidentiary consideration at play in determining whether declining to admit Jones's interview in its entirety was erroneous. As a threshold matter, a trial court has the discretion to exclude evidence if its probative value is substantially outweighed by the "likelihood of confusing or misleading the trier of fact" or for being "needlessly cumulative." Va. R. Evid. 2:403. Here, Jones's request to play the entire interview was made after the conclusion of her testimony on re-direct examination, near the end of the defense's presentation of evidence. She had already testified at length and had been subject to cross-examination. As discussed above, the defense was expressly permitted to bring any "appropriate" portion of the recording to the jury's attention. The trial court was within its discretion to decide not to subject the jury to a two-hour audio recording in addition to the portions the defense already chose to present. To do otherwise could have confused the jury or have been needlessly repetitive, and for this reason, the trial court did not exclude the interview in error.

[8] Jones also had the opportunity on re-direct examination to explain the alleged inconsistencies. Jones testified at trial that her interview was only inconsistent with her trial testimony because she "was in shock" and "under a tremendous amount of stress." She further insisted on cross-examination that each retelling of the events of the shooting was "[a]ll the same version[, she was] just remembering different parts of it at different times."

CONCLUSION

Jones's arguments on appeal are not persuasive. The trial court was within its discretion to exclude the recordings of the 911 call and police interview made in connection with the shooting. We therefore affirm her convictions.

Affirmed.