

Cite as 2022 Ark. App. 418

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-22-107

JOHNNY FRANKLIN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 26, 2022

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17CR-20-387]

HONORABLE MICHAEL MEDLOCK,
JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

Appellant Johnny Franklin appeals the revocation of his suspended sentence. His sole argument on appeal is that the circuit court erred by permitting the State to introduce hearsay evidence over his objection. We affirm.

In March 2021, Franklin pleaded guilty to second-degree domestic battery, aggravated assault on a family or household member, and second-degree endangering the welfare of a minor. In exchange for his plea, he was given an effective five-year suspended sentence. Among the conditions of his suspended sentence, Franklin was ordered not to commit a criminal offense punishable by imprisonment. In June 2021, the State filed a petition to revoke alleging that he had committed a new offense, aggravated assault on a family or household member based on an alleged physical altercation between Franklin and his girlfriend, Krystal Gray.

At the hearing, Gray testified they were both intoxicated that night when they got back to her house. They were arguing and got into an altercation because she wanted to go back out with her brother, but Franklin did not want her to go. She recalled that Franklin “ripped” her hair straightener out of the wall. Gray did not remember exactly what happened due to her intoxication, but she knew she blacked out and woke up on her bed with her throat hurting. Gray was scared, so she ran to her neighbor, who set a series of phone calls in motion that summoned the police, Gray’s aunt, and Gray’s mother. Gray said her hand was red, her throat had marks on it, and her head was hurting. She acknowledged that she hit Franklin. The hospital records noted that Gray had a small hematoma on her head and fingernail marks on her throat. Photographs substantiated the marks on her neck.

Officer Emily Phelps, who responded to the domestic-battery call that night, testified that she encountered Gray, who was upset, crying, and coughing. Phelps was about to testify to what Gray said, but this drew defense counsel’s hearsay objection. The circuit court told the officer to “just tell us what you saw.” Phelps testified that Gray had been upset, had bruises and scratches on neck, and was coughing. Phelps added that Gray said, “[H]e attempted to choke her unconscious[.]” Defense counsel again objected to hearsay, and the circuit court reminded Phelps that “seeing is one thing and hearing is something else. So just tell us what you saw.” Phelps said she saw a very upset, pink-faced woman with bruises on her neck, crying and making statements. At that point, the circuit court overruled the hearsay objection. When asked how the officer determined that Franklin was the “aggressor,” Phelps testified that “the neighbor was out in the front yard as well and they

were pointing out and saying that it was her boyfriend.” On this evidence, the circuit court revoked Franklin’s suspended sentence, a judgment of conviction was entered for the underlying crimes to which Franklin had earlier pled guilty, and this appeal followed.

Franklin argues on appeal that the circuit court abused its discretion in permitting Officer Phelps to give hearsay testimony about what Gray said that night. We disagree. The rules of evidence, including the hearsay rule, are not strictly applicable in revocation proceedings. See Ark. R. Evid. 1101(b)(3) (2021); *Bohanon v. State*, 2020 Ark. App. 22, 594 S.W.3d 92. Moreover, pursuant to the “excited utterance” exception, “a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition” is not excluded by the hearsay rule. Ark. R. Evid. 803(2) (2021).

Affirmed.

GLADWIN and HIXSON, JJ., agree.

The Lane Firm, by: *Jonathan T. Lane*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Clayton P. Orr*, Ass’t Att’y Gen., for appellee.