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ATTORNEY FOR APPELLANT:

MARK SMALL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

YUSUF FIELDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-1012-CR-815
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0905-FA-73

October 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Yusuf Fields appeals his convictions for attempted murder as a class A felony[1] and carrying a handgun without a license as a class A misdemeanor.[2] Fields raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion in admitting certain evidence; and

II. Whether the evidence is sufficient to support his conviction for attempted murder.

We affirm.

The relevant facts follow. Fields and Melissa West have one child together and "dated on and off for seven or eight years." Transcript at 329. Two days before April 30, 2009, Fields threatened West while she was away from home, and when West returned home her house "was destroyed." Id. at 345. On April 30, 2009, West met Eric Anderson at Club 765 in Anderson, Indiana. When the club closed at around 3:00 a.m. or 3:30 a.m., West left with Anderson in his burgundy Hummer. Anderson drove the vehicle and West sat in the passenger seat. Anderson and West stopped at a Speedway gas station, and Anderson went inside while West waited in the passenger seat of the Hummer.

While West was waiting in the Hummer, a red pickup truck pulled up next to her. West looked up, saw a gun, and ducked down under the dashboard. The shooter shot toward the passenger compartment of the Hummer directly into the driver's side door, and the bullet struck the door approximately three inches below the window, which

[1] Ind. Code § 35-42-1-1 (Supp. 2007); Ind. Code § 35-41-5-1 (2004).

[2] Ind. Code § 35-47-2-1 (Supp. 2007) (subsequently amended by P.L. 164-2011, § 1 (eff. July 1, 2011).

shattered the window and created a bullet hole in the door approximately one-half of an inch in diameter.

Anderson and the gas station attendant, Paul Phillipe, "heard a bang" and exited the gas station. Id. at 301. Anderson discovered West "crouched down up underneath the dash board." Id. at 302. West "jumped out of the car screaming and stuff" and was "just screaming and scared. . . . She was like frantic." Id. at 302-303. Paul called 911 and reported that a shooter in a pickup truck had shot at West and the following exchange occurred:

OPERATOR:	Did you get a plate?
CALLER:	[] Did you get a plate? [] No we didn't get one. It's a red Chevrolet pickup truck but it's heading East on 38th Street.
OPERATOR:	You said a red or a white?
CALLER:	It was red.
OPERATOR:	Okay. East bound on 38th. Okay, we'll get that in. And what's your name, sir?
CALLER:	Paul.
OPERATOR:	Do you work at the Speedway?
CALLER:	Yes. And the window on the driver's side is gone.
OPERATOR:	Okay, well we'll get someone out, okay?
CALLER:	Okay.
OPERATOR:	All right.
CALLER:	Thank you.

END OF THAT CALL/NEW CALL COMES INTO SPEEDWAY

PERSON ANSWERING: Speedway.

CALLER: Yes, is this Paul?

PAUL: Yes.

CALLER: Okay, this is the police department.

PAUL: Okay.

CALLER: Was he shooting at someone?

PAUL: Yes, yes, ma'am. He shot at somebody that sitting in this um, um, um, Hummer. There was a lady that was sitting in the . . .

CALLER: Is she still out there?

PAUL: She's inside the store now. Do you want to talk to her?

CALLER: Yes, can I talk to her?

PAUL: You want to talk to her?

CALLER: Yes, please.

PAUL: The police want to talk to you.

* * * * *

FEMALE: Hello.

CALLER: Okay, what's your name, Ma'am?

FEMALE: My name is Melissa West.

CALLER: Okay, and do you know the guy who was shooting at you?

FEMALE: Yusuf Ali Fields

CALLER: What's his name?

FEMALE: Yusuf Ali Fields. He's calling on my phone now.

CALLER: Say his name for me again.

FEMALE: Yusuf. Y-U-S-U-F.

CALLER: Y-U-S-U-F.

FEMALE: Uh-huh.

CALLER: And what's his last name?

FEMALE: Fields. F-I-E-L-D-S.

CALLER: Okay, and why was he shooting at you?

FEMALE: Uh, I haven't, I mean other than he's my ex, I have no idea. But I should have been dead. The driver's side window is gone, Ma'am.

CALLER: On the car?

FEMALE: Yes, I was sitting in the passenger seat.

CALLER: Okay.

FEMALE: I just should have been dead.

Id. at 337-339.

Anderson Police Detective Bill Richardson arrived at the gas station, documented the scene and took a number of photographs, observed the bullet hole in the driver's door of the Hummer and the shattered glass of the window of the driver's door, and recovered the projectile from the door and a .40-caliber brass shell casing located underneath the Hummer.

On May 4, 2009, the State charged Fields with Count I, attempted murder as a class A felony; Count II, attempted aggravated battery as a class B felony; Count III, attempted battery by means of a deadly weapon as a class C felony; Count IV criminal recklessness as a class C felony; and Count V, carrying a handgun without a license as a class A misdemeanor.[3] Fields filed an initial notice of alibi in July 2009, which he later withdrew, and a second notice of alibi in December 2009. At Fields's jury trial, the State presented the testimony of West and the court admitted into evidence a recording of West's phone conversation with police following the shooting as admissible hearsay under the excited utterance exception. The jury found Fields guilty of Counts I through V, and the court merged Counts II, III, and IV into Count I. The court sentenced Fields to forty years for attempted murder and one year for carrying a handgun without a license and ordered the sentences to be served concurrently with each other.

I.

The first issue is whether the trial court abused its discretion in admitting certain evidence. The admission and exclusion of evidence is a matter within the sound discretion of the trial court, and we will review only for an abuse of discretion. Wilson v. State, 765 N.E.2d 1265, 1272 (Ind. 2002). "An abuse of discretion occurs when the trial court's ruling is clearly against the logic, facts, and circumstances presented." Oatts v. State, 899 N.E.2d 714, 719 (Ind. Ct. App. 2009). We will not reweigh the evidence, and

[3] The State also filed an information for Count VI for an enhancement of its charge of carrying a handgun without a license from a class A misdemeanor to a class C felony, which was later dismissed.

we consider any conflicting evidence in favor of the trial court's ruling. Lindsey v. State, 916 N.E.2d 230, 238 (Ind. Ct. App. 2009), trans. denied.

Fields argues that the recording of the phone conversation between police and West following the shooting was inadmissible hearsay because it did not conform to the excited utterance exception. Hearsay is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Hearsay is inadmissible unless admitted pursuant to a recognized exception. Ind. Evidence Rule 802. An excited utterance is such an exception and is defined as "[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." Ind. Evidence Rule 803(2). Application of this rule is not mechanical and admissibility should generally be determined on a case-by-case basis. Palacios v. State, 926 N.E.2d 1026, 1031 (Ind. Ct. App. 2010) (citing Love v. State, 714 N.E.2d 698, 701 (Ind. Ct. App. 1999), reh'g denied). Thus, the heart of the inquiry is whether the statement is inherently reliable because the declarant was incapable of thoughtful reflection. Id. (citing Yamobi v. State, 672 N.E.2d 1344, 1346 (Ind. 1996)). The statement must be trustworthy under the specific facts of the case at hand. Id. The focus is on whether the statement was made while the declarant was under the influence of the excitement engendered by the startling event. Id. The amount of time that has passed between the event and the statement is not dispositive; rather, the issue is whether the declarant was still under the stress of excitement caused by the startling event when the statement was made. Mathis v. State, 859 N.E.2d 1275, 1279 (Ind. Ct. App. 2007).

Here, while West was sitting in the passenger seat of the Hummer in the parking lot of a gas station, Fields pulled his pickup truck next to the Hummer, pointed a gun directly into the passenger compartment of the vehicle where West was seated, and shot toward West. Immediately upon seeing the gun, West ducked down under the dashboard. The bullet struck the driver's door of the Hummer approximately three inches below the window and the glass of the driver's door shattered. Anderson testified that West "jumped out . . . just screaming and scared. . . . She was like frantic." Transcript at 303. West testified that right after the shooting she thought she cried and that she "was a little scared." Id. at 335. The gas station attendant called 911 and the police called back, asked to speak with West, and West identified Fields as the man who had shot at her and stated that Fields was "calling my phone now," that "I should have been dead," and that "I just should have been dead." Id. at 339. The shooting qualifies as a startling event, the phone conversation was made a short time after the shooting, West's activity and comments following the shooting show that she was under the influence of the excitement engendered by the startling event at the time of the conversation, and the conversation related to the shooting. Based upon the record, we cannot say that the trial court abused its discretion in admitting into evidence the recording containing West's phone conversation with police following the shooting. See Palacios, 926 N.E.2d at 1031 (finding that an objection to testimony of a victim's comments would not have been sustained where the officer arrived at the victim's house "shortly after" the victim called 911 and noting that while the victim may not have been crying and was able to answer the officer's questions, the record indicated that she "still hurt a little bit" and that "she

didn't seem normal"); Yamobi, 672 N.E.2d at 1346 (noting that "[a] declaration does not lack spontaneity simply because it was an answer to a question"). In addition, although West may have testified at trial that she did not know who was inside the pickup truck at the time of the shooting, that she did not see Fields, and that she did not really recall speaking with the police following the shooting, we note that this testimony does not affect our conclusion as we will not reweigh the evidence when reviewing an evidentiary ruling. See Lindsey, 916 N.E.2d at 238.[4]

II.

The next issue is whether the evidence is sufficient to support Fields's conviction for attempted murder. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the

[4] Fields also argues that the State was not permitted "to call West as a witness simply as a vehicle to introduce otherwise inadmissible evidence" and that "West did not recant unexpectedly and for the first time at trial." Appellant's Brief at 6-7. The State argues that it "had a legitimate basis to call [West] as a witness, i.e., to elicit probative evidence, not merely to impeach her." Appellee's Brief at 5. A party is "forbidden from placing a witness on the stand when the party's sole purpose in doing so is to present otherwise inadmissible evidence cloaked as impeachment." Appleton v. State, 740 N.E.2d 122, 125 (Ind. 2001). However, West testified to a number of details involving the shooting, including among other things the circumstances of her rocky relationship with Fields, the events of the day before and just prior to the shooting, that she cried and was a little scared after the shooting, and that she had a conversation with police by phone following the shooting. We cannot say that the State placed West on the stand for the sole purpose of impeaching her and admitting otherwise inadmissible evidence. We cannot say the court abused its discretion in admitting the testimony of West. See Kendall v. State, 790 N.E.2d 122, 126-127 (Ind. Ct. App. 2003) (noting that in addition to the allegedly inadmissible evidence of a prior statement, the witness also testified regarding the vehicle that the suspects were driving, how the suspects were dressed, and the suspects' actions and holding that consequently the court could not say that the State placed the witness on the stand for the sole purpose of impeaching her and admitting otherwise inadmissible evidence), trans. denied.

conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of attempted murder is governed by Ind. Code § 35-42-1-1 and Ind. Code § 35-41-5-1. To convict a defendant of attempted murder, the State must prove beyond a reasonable doubt that the defendant, acting with the specific intent to kill, engaged in conduct which constitutes a substantial step toward the commission of murder. Mitchem v. State, 685 N.E.2d 671, 676 (Ind. 1997).

According to Fields, the evidence is insufficient to demonstrate that he had the specific intent to kill West. Fields also argues that "West was the only eye-witness to the incident," that she "had a lot to drink that night," that a witness testified that she overheard a conversation in which West stated she lied to police and misidentified Fields, and that another witness testified that Fields was with her during the time the shot was fired. Appellant's Brief at 15.

The Indiana Supreme Court has "unequivocally determined that the requisite intent to kill may be inferred from the use of a deadly weapon in a manner likely to cause death or great bodily harm." Maxwell v. State, 731 N.E.2d 459, 462 (Ind. Ct. App. 2000) (citing in part Bartlett v. State, 711 N.E.2d 497, 500 (Ind. 1999), and Wilson v. State, 697 N.E.2d 466, 475 (Ind. 1998), reh'g denied), trans. denied.

The evidence favorable to the conviction reveals that while West was waiting in the Hummer in the parking lot of the gas station, Fields pulled a red pickup truck next to her, pointed a gun into the passenger compartment of the vehicle where West was seated, and shot toward West. The bullet struck the driver's door of the Hummer approximately

three inches below the window, which created a bullet hole approximately one-half of an inch in diameter, and the glass of the driver's door shattered. The evidence also included images from a surveillance camera which showed the Hummer in the parking lot of the gas station and the Chevrolet pickup truck as it went through the parking lot. Firing a shot in the direction of West, who was seated in the passenger seat of the Hummer, as revealed by the evidence "undoubtedly constitutes using a deadly weapon in a manner likely to cause death." See Cook v. State, 675 N.E.2d 687, 692 (Ind. 1996). Based upon the record, we conclude that the State presented evidence of probative value from which a reasonable jury could have found that Fields had the specific intent to kill West and that Fields was guilty beyond a reasonable doubt of attempted murder. See id. (holding that the evidence was sufficient to sustain the defendant's conviction for murder despite the defendant's argument that he did not intentionally shoot at the victim); Maxwell, 731 N.E.2d at 462-463 (holding that the evidence was sufficient to sustain the defendant's conviction for attempted murder where he pointed and shot his .44 caliber handgun at two victims at close range). Fields's other arguments amount to an invitation to reweigh the evidence or judge the credibility of witnesses, which we cannot do. See Jordan, 656 N.E.2d at 817.

For the foregoing reasons, we affirm Fields's convictions for attempted murder as a class A felony and carrying a handgun without a license as a class A misdemeanor.

Affirmed.

BAKER, J., and KIRSCH, J., concur.