

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Appellant,

vs.

AARON S. NEIL,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
Maureen A. Bell, County Court Judge

Jeffrey Ashton, State Attorney
Tatiana Cordner, Assistant State Attorney
for Appellant

Robert Wesley, Public Defender
Matthew E. Baker, Assistant Public Defender
for Appellee

Before J. KEST, MYERS, WHITEHEAD, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant, the State of Florida, appeals a ruling of the county court excluding the admission of a hearsay statement the State wanted to introduce at trial. A trial court's ruling on the admissibility of evidence is reviewed under an abuse of discretion standard. *State v. Gerry*, 855 So. 2d 157 (Fla. 5th DCA 2003). Under this standard, a ruling will be upheld unless it is "arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused

only where no reasonable person would take the view adopted by the trial court.” *Banks v. State*, 46 So. 3d 989, 997 (Fla. 2010).

Appellee was arrested for disorderly intoxication at a bus stop on December 6, 2013. Prior to trial, defense counsel filed a motion in limine to prevent one of the arresting deputies from testifying about a hearsay statement made by an unidentified person who had approached the deputy at the bus stop to volunteer information. The State argued that the statement was admissible under section 90.803(1), Florida Statutes (2013), as a spontaneous statement. The trial court found that there was insufficient evidence of reliability to allow the hearsay in. It also found that admitting the hearsay would violate Appellee’s constitutional right of confrontation. The Court finds that the matter can be resolved on the question of reliability and it does not address the confrontation issue.

The ‘spontaneous statement’ exception to the hearsay rule is separate and distinct from the “excited utterance” exception. Section 90.803(1) allows the admission of hearsay whether or not the declarant is available, if the statement meets this criteria:

(1) Spontaneous statement.--A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

Unlike the excited utterance exception, the spontaneous statement exception does not require that the statement relate to a startling or stressful event that causes some level of nervous excitement in the speaker. *Depravine v. State*, 995 So. 2d 351, 370 (Fla. 2008). Spontaneous statements are admissible when “made by those present when a thing took place, made about it, and importing what is present at the very time.” *Id.* at 363. Further, ‘it is important to note that Florida courts have made clear in both pre- and post-evidence code cases that a narrative of past events cannot qualify as spontaneous statements.’ *Id.* at 370.

The hearsay that the State wanted to put into evidence was a statement made by an unidentified bystander who approached a deputy and said, “The guy over there [namely, the Defendant/Appellee] is drunk and trying to fight people.” This would seem to be a statement of present events, as it was expressed in the present tense and was describing Appellee’s current condition, “drunk,” and ongoing behavior, “trying to fight.”

What is problematic is that the identity of the speaker is unknown. The deputy did not get the person’s name, have the opportunity to ask the person any questions about what he had observed, or find out if the person was reporting information passed on to him from others. On the problem of an anonymous spontaneous statement, the Florida Supreme Court noted that the trial court is in a position to reject its admissibility where its reliability is in question, citing Charles W. Ehrhardt, *Florida Evidence* § 803.1, at 843 (2007 ed.):

This provision [§ 90.803(1)] enables the judge to bar the admission of statements that lack sufficient reliability. The drafters were particularly concerned with statements by *unidentified bystanders*. The court should weigh any corroborating evidence together with all other factors in making this determination.

Deparvine, 995 So. 2d at 368. (Emphasis added). *Deparvine* also cited favorably to *Wal-Mart Stores, Inc. v. Jenkins*, 739 So.2d 171, 171–72 (Fla. 5th DCA 1999). In *Wal-Mart*, the purported statement of an unidentified shopper about a spill on the store’s floor should not have been admitted in the absence of any evidence that this person had first-hand knowledge of the condition at the relevant time.

The trial court could take into account any corroborating evidence to consider whether statement of the unidentified speaker should be deemed reliable. The State points out that the deputy observed Appellee yelling at persons at a bus stop prior to the speaker approaching him. It also notes that the deputy observed five other persons at the bus stop who also observed Appellee’s disorderly behavior (none of whom were willing to make a formal statement). The

State claims that the deputy's observations give reliability to the speaker's statement. The evidence certainly suggests that the speaker was at the bus stop at the same time as Appellee. But these factors do not necessarily establish that the speaker himself witnessed the fighting behavior or was in a position to personally know that Appellee was intoxicated. He would, instead, seem to be the very essence of the "unidentified bystander" that Ehrhardt and *Deparvine* were concerned about. While opinions could differ as to whether there was sufficient indicia of reliability to allow the hearsay in, the Court cannot find that no reasonable mind could agree with the trial court that it should be excluded. As there was no abuse of discretion,

It is hereby **ORDERED AND ADJUDGED** that the trial court's decision is **AFFIRMED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 9th day of October, 2014.

/S/
JOHN MARSHALL KEST
Presiding Circuit Judge

MYERS and WHITEHEAD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Tatiana Cordner, Assistant State Attorney**, 415 North Orange Avenue, Orlando, Florida 32801; and to **Matthew E. Baker**, Assistant Public Defender, 435 North Orange Avenue, Orlando, Florida 32801 this 9th day of October, 2014.

/S/
Judicial Assistant