STATE'S MOTION TO ADMIT EXCITED UTTERANCES

An excited utterance is an exception to the general rule that hearsay is inadmissible. For a statement to be admissible as an excited utterance, three elements have to be proven: (1) a startling event; (2) a statement made soon after the event to ensure the declarant has no time to fabricate, and (3) a statement which relates to the startling event. The Arizona Supreme Court also requires the hearsay declarant to have observed the matter of which he speaks.

The State of Arizona, by and through undersigned counsel, hereby moves to admit the excited utterance of the victim. This motion is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Facts:

The victim was sexually assaulted and stabbed by the defendant on January 31, 1996. The victim was somehow able to get the knife away from the defendant and escape to some nearby residences. She was found by Jason Schroeder and Jerry Joaquin. The victim was bleeding and told them that she had been stabbed and raped. The State asserts that any of the victim's statements made to these witnesses are admissible, because the statements were made just minutes after the crimes were committed, and were made immediately upon the victim's coming upon these witnesses, while the victim was still under the stress of the startling events. Finally, the events which prompted the statements were startling, i.e. being stabbed and sexually assaulted, and the victim herself experienced these startling events.

Law:

Rule 803(2) of Arizona Rules of Evidence states that excited utterances are an exception to the general rule that hearsay is inadmissible. That Rule provides:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
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> * * *
>
> > (2) Excited Utterance. 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.

The Arizona Supreme Court has stated that for this exception to apply, three things must be proven:

> The exception requires proof of three elements: (1) a startling event, (2) a statement made soon after the event to ensure the declarant has no time to fabricate, and (3) a statement which relates to the startling event. … Additionally, we require that the hearsay declarant personally observe the matter of which he speaks.

State v. Bass, 198 Ariz. 571, 577, ¶ 20, 12 P.3d 796, 802 (2000), *citing State v. Dixon,* 107 Ariz. 415, 418, 489 P.2d 225, 228 (1971). In *Bass*, the Arizona Supreme Court held that because the hearsay declarants did not personally observe an automobile accident, their statements about the accident were not admissible as excited utterances. By contrast, here the victim personally suffered the sexual assault and stabbing, and spoke to the witnesses immediately upon meeting them, while she was still under the stress of those startling events. Therefore, the victim's statements to the witnesses here fall within the excited utterance exception and are admissible.

CONCLUSION

Therefore, the State respectfully requests this Court to grant its Motion and rule that the victim's statements are admissible at trial as excited utterances.