

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

UNITED STATES OF AMERICA : **Case No. 2021 CF1 007103**
: **The Honorable Robert Okun**
v. :
: **Motion Hearing: June 30, 2023**
JALEN BROWNE, :
Defendant. :

**GOVERNMENT'S MOTION IN LIMINE SEEKING ADMISSION OF RECORDED
STATEMENTS FROM A 911 CALL**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this motion *in limine* seeking admission of a 911 call. The admission of these statements is permissible under *Crawford* and its progeny because the declarant provides a present sense impression.

BACKGROUND

Defendant Jalen Browne is charged by indictment with two counts of First Degree Murder While Armed (Premeditated), four counts of Assault with Intent to Kill While Armed, and six counts of Possession a Firearm During a Crime of Violence.

On July 25, 2021, Defendant Jalen Browne drove his silver Infiniti G37 to the area of 3rd and Bates Streets, NW, Washington, DC. Defendant parked his car on the east side of that intersection, got out of his vehicle, and walked north through an alley to get to the 100 block of Q Street, NW. After walking around the area for several minutes, Defendant fired at six men who were congregated in the 100 block of Q Street, NW, striking three of them; two of those victims, Jovan Hill and Tyriq Riley, died as a result of their injuries inflicted by Defendant. After firing, Defendant fled the area, returning to his car by running back through the alley connecting Q and Bates Streets, NW.

Police investigated the double homicide; detectives obtained footage from various cameras capturing Defendant's aforementioned actions. Video also captured Defendant driving his silver Infiniti G37 away from 3rd and Bates Streets, NW, after the shooting. Other footage from after the shooting captured Defendant's silver Infiniti G37 driving into his gated residential community in Maryland. On October 8, 2021, Police recovered Defendant's silver Infiniti G37 from alongside his Maryland residence. Police also recovered car parts that fit Defendant's silver Infiniti G37 from Defendant's residence.

While investigating this case, police learned that Defendant was present in 100 block of Q Street, NW, Washington, DC, on May 9, 2021. In addition to a witness reporting that Defendant was present in the 100 block of Q Street, NW, that day (Mother's Day), police obtained a 911 call from May 9, 2021, in which a caller reported that a man in a silver Infiniti was getting robbed at gun point.

The government seeks to admit this evidence of this robbery at trial. The government seeks to introduce the witness's brief 911 call which constitutes a present sense impression; the United States seeks to introduce the following 911 call as an exception to the hearsay rule.¹

911 call – Call placed on May 9, 2021, at 8:18:32pm²

Dispatch: What is the location?
CALLER: Uh, Q and 1st, somebody's getting robbed at gun point out the car, right now.
Dispatch: What section of the city--
CALLER: On the lefthand side. On the lefthand side. Q and First.
Dispatch: What section of the city? Northeast? Northwest? Southwest?
CALLER: Northeast by Rhode Island Avenue. The guy just pulled up beside, uh, pulled the gun on him, he's fighting him right now. [unintelligible] the righthand—the lefthand side. It's the--
Dispatch: What's the make and model of the vehicle?

¹ A copy of the sixty-nine-second-long audio clip will be provided to Court (a copy was previously provided to Defendant).

² The following is an unofficial transcription of the recording.

CALLER: It's a silver Infiniti on the lefthand side of the apartments.
Dispatch: What's the tag number?
CALLER: I don't know ma'am.
Dispatch: Was it DC, Maryland, or Virginia?
CALLER: DC. DC.
Dispatch: Is the vehicle still there?
CALLER: I left. I was just calling out of courtesy.
Dispatch: Alright, no problem.
CALLER: Ok, thank you.
Dispatch: I am calling now for dispatch.
CALLER: Ok. Alright.
Dispatch: Ok.
CALLER: Good luck.
Dispatch: Thank you.

Office of Unified Communications records relating to this call reveal that the caller, despite reporting that he is at 1st and Q Streets, NE, was actually located at roughly 117 Q Street, NW, Washington, DC. Relatedly, historical information about the intersection of 1st and Q Streets, NE, reveals that in May 2021, no buildings were in the area that resembled apartments buildings. By comparison, the 100 block of Q Street, NW, has several apartment buildings on the north side of the street.³

ARGUMENT

The United States seeks to introduce the 911 call pursuant to a hearsay exception. The circumstances of this call establishes that its admission would offend neither the Confrontation Clause nor the rules against hearsay.⁴

³ Notably, as mentioned above, Defendant is a Maryland resident. Defendant's silver Infiniti G37 is registered in Maryland with a Maryland license plate.

⁴ The party seeking admission of evidence bears the burden of establishing its admissibility. *Jones v. United States*, 17 A.3d 628, 634 (D.C. 2011) (citing *Odemns v. United States*, 901 A.2d 770, 775–76 (D.C. 2006)). The proponent must establish, by a preponderance of the evidence, that the evidence is admissible. See *United States v. Woodfolk*, 656 A.2d 1145, 1150 n.14 (D.C. 1995). Questions of admissibility are generally distinguished from questions of credibility and evidentiary weight. *McCorkle v. United States*, 100 A.3d 116, 126 (D.C. 2014) (Fisher, J., concurring).

I. The Recorded Statement is Admissible Because it is a Present Sense Impression.

It is axiomatic that out-of-court statements providing information about events happening in real time are admissible as an exception to the rules against hearsay. In *Hallums*, this Court expressly recognized the present sense impression exception to the rule against hearsay, that is, “statements describing or explaining events which the declarant is observing at the time he or she makes the declaration or immediately thereafter;” that exception is “well rooted in our common law.” 841 A.2d at 1275-76 (citing *Burgess v. United States*, 608 A.2d 733, 738 (D.C. 1992) (Rogers, C.J., concurring)). “Hearsay statements of identification [may] be[] admitted under the exception for present sense impressions.” *Id.* at 1277.

“[T]he present sense impression exception to the hearsay rule is based on the theory that the ‘substantial contemporaneity of [the] event and statement [negates] the likelihood of deliberate or conscious misrepresentation.’” *Hallums*, 841 A.2d at 1276 (quoting Fed. R. Evid. 804, Advisory Committee Note to Paragraphs (1) and (2)). A further safeguard is that “the in-court witness relaying the statement . . . may be cross-examined on the statement.” *Id.*; see Fed. R. Evid. 804, Advisory Committee Note to Paragraphs (1) and (2) (“Moreover, if the witness is . . . not the declarant, he may be examined as to the circumstances as an aid in evaluating the statement”). The declarant need not be identified, but in such cases, the court will likely require more than the statement alone to admit the statement as a present

sense impression. *See* Fed. R. Evid. 804, Advisory Committee Note to Paragraphs (1) and (2); *Hallums*, 841 A.2d at 1278-79 (noting that “a shrinking minority” of courts require corroborating evidence for admission of present sense impressions; declining to resolve issue for this jurisdiction).

Preponderance of the evidence is the standard of proof for the factual predicates underlying the admissibility of a present sense impression. *Cf. United States v. Woodfolk*, 656 A.2d 1145, 1150 (D.C. 1995) (“[P]reponderance of the evidence is the proper standard of proof for determining the admissibility of an excited utterance. Preponderance of the evidence is the most commonly accepted standard in determining the admissibility of evidence.” (internal citation omitted)).

Here, the 911 call includes details that reveal the declarant is describing an incident “at the time he [made] the declaration or immediately thereafter.” *See Hallums*, 841 A.2d at 1275-76. Indeed, the robbery appears to be still in progress at least at the start of the call: the declarant says, “somebody’s getting robbed at gun point” and twice describes things as happening “right now.” These phrases, particularly given the brevity of the call, reveal that the report occurs without the opportunity for deliberate or conscious misrepresentation. Accordingly, the 911 call is admissible pursuant to the present sense impression exception to the rule against hearsay.

CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court grant the government's motion *in limine* seeking admission of the above-referenced statements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CaseFileXpress and electronic mail on counsels for Defendant, Douglas Wood and Brian McDaniel, on February 17, 2023.

/s/ Jeffrey A. Wojcik
Jeffrey A. Wojcik
Assistant United States Attorney

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PROPOSED ORDER

Upon consideration of the Government's motion *in limine* to admit a 911 call pursuant as a present sense impression, it is this _____ day of _____, 2023, hereby:
ORDERED, that Government's motion is GRANTED.

HONORABLE Robert Okun
ASSOCIATE JUDGE

Copies via e-service to:

Jeffrey A. Wojcik
Lauren Galloway
U.S. Attorney's Office

Douglas Wood, Esq.
Brian McDaniel, Esq.
Defense counsel