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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0011**

State of Minnesota,
Respondent,

vs.

Jesse Romeo Singh,
Appellant.

**Filed December 24, 2018
Affirmed
Florey, Judge**

Anoka County District Court
File No. 02-CR-17-1810

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Reilly, Judge; and Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant Jesse Romeo Singh appeals his conviction of possession of a firearm or ammunition by an ineligible person, in violation of Minnesota Statutes section 609.165,

subdivision 1b(a) (2016). Singh argues that a 911 call used as evidence against him at trial was hearsay, and the district court erred by admitting it without considering whether a hearsay exception applied. Singh also contends that his *Miranda* waiver was not knowing, intelligent, and voluntary due to the impact of his bipolar symptoms. We affirm.

FACTS

In March 2017, police responded to a 911 call in which a woman, N.B., stated that her boyfriend, Jesse Singh, had threatened her with a gun. N.B. further stated that she had escaped Singh's home and was hiding nearby because she feared Singh would come after her with the gun. Police arrived within two minutes. One officer observed a man walking nearby who he recognized as Singh from previous interactions. The responding officers initiated a pat search and discovered a loaded handgun magazine in the left outside pocket of Singh's jacket. Another officer removed a black metal handgun from Singh's left inside jacket pocket. The officer familiar with Singh knew he was ineligible to possess ammunition or a firearm, so he arrested Singh.

At the police station, two detectives interviewed Singh. One detective read Singh a *Miranda* warning, and, in response to each question in the warning, Singh answered affirmatively that he understood. Singh then gave a statement in which he admitted to possessing the gun and disclosed his bipolar condition.

The state charged Singh with possession of a firearm by an ineligible person and second-degree assault. At a contested omnibus hearing, Singh challenged the initial stop, his arrest, and the validity of his *Miranda* waiver. The district court denied all of Singh's motions.

A jury trial was held in August 2017. Outside the presence of the jury, Singh challenged the admissibility of the 911 tape as a violation of the Confrontation Clause because N.B. was “unavailable.” The trial began after the district court found that the 911 call was admissible as nontestimonial and that there was “no hearsay issue.” The state presented witness testimony from the four responding police officers and a 911 dispatch supervisor. After the state rested, Singh moved for acquittal on the second-degree assault charge, and the district court granted the motion. Singh called his mother to testify in his defense. The jury found Singh guilty of possession of a firearm by an ineligible person.

Singh appeals.

D E C I S I O N

I. The district court did not plainly err by admitting N.B.’s 911 call into evidence.

Under Minnesota law, “to properly preserve a claim that evidence should be excluded under the Minnesota Rules of Evidence, a defendant must timely object and state the specific ground of objection.” *State v. Mosley*, 853 N.W.2d 789, 797 n.2 (Minn. 2014) (quotations and emphasis omitted). “Rulings on evidentiary matters rest within the sound discretion of the trial court, and [appellate courts] will not reverse a trial court’s evidentiary ruling absent a clear abuse of discretion.” *State v. Nunn*, 561 N.W.2d 902, 906-07 (Minn. 1997). However, “[i]n the absence of an objection, [an appellate court] may review the admission of evidence for plain error.” *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006) (citing Minn. R. Crim. P. 31.02).

Here, Singh argues that the hearsay issue was properly preserved through his objection to the admission of N.B.'s 911 call under the Confrontation Clause.¹ Singh contends that he mentioned the hearsay nature of the call by reference to the state's argument that N.B. was unavailable. Based on this reference and the district court's later statement that there was "no hearsay issue," Singh argues that the district court was clearly aware of the hearsay concerns, and therefore the issue must be reviewed for an abuse of discretion under *State v. Guzman*. 892 N.W.2d 801, 812 (Minn. 2017). Alternatively, Singh argues that, if the issue was not properly preserved, we should review for plain error under *State v. Griller*. 583 N.W.2d 736, 740 (Minn. 1998).

In analyzing the record, Singh did not object on hearsay grounds at trial, but rather used the word "unavailable" in reference to his Confrontation Clause objection, without any further discussion of hearsay. Therefore, Singh did not properly preserve the hearsay issue, and we review for plain error. *See Mosley*, 853 N.W.2d at 797; *see also State v. Hull*, 788 N.W.2d 91, 100 (Minn. 2010) (applying plain-error review to confrontation-clause issue where appellant only objected on hearsay grounds).

The three-prong plain-error standard requires the defendant to show (1) error; (2) that was plain; and (3) that affected the defendant's substantial rights. *Manthey*, 711 N.W.2d at 504; *see also Griller*, 583 N.W.2d at 740. In order to satisfy the third prong, "a defendant must show prejudice that forms the basis for a reasonable likelihood the error

¹ On appeal, Singh does not challenge the district court's conclusion that the 911 call was non-testimonial or that playing the recording at trial did not violate his rights under the Confrontation Clause.

substantially affected the verdict.” *Manthey*, 711 N.W.2d at 504. If the three-prong test is met, this court determines whether it is necessary to address the error to ensure the fairness and integrity of the judicial proceedings. *Id.*; *see also Griller*, 583 N.W.2d at 740.

Here, Singh argues that the district court plainly erred by reaching the conclusion that there was “no hearsay issue” without any analysis. However, the district court was under no obligation to provide reasoning on hearsay, because there was no hearsay objection to analyze. *See, e.g., Manthey*, 711 N.W.2d at 505 (noting that courts are not advised to make affirmative intrusions into proceedings and concluding that plain error did not occur); *State v. Washington*, 693 N.W.2d 195, 205 (Minn. 2005) (disagreeing with the proposition that the district court must or should interfere with potential trial strategies by acting *sua sponte* because it would risk highlighting or enforcing rights the defendant chose to waive). Singh further urges this court to review the hearsay exceptions to determine if the 911 call fits within any of them, but provides no authority to support such an exercise.

Singh claims that the state, as the proponent of the statement of N.B. who was unavailable, failed to meet its burden to provide evidence that any of the hearsay exceptions were satisfied. This argument fails because there was no clear objection made by Singh on hearsay grounds. There are numerous exceptions to the hearsay rule in Minnesota, therefore the law requires objection to potential hearsay at trial in order to create “a record of the district court’s decision-making process in either admitting or excluding a given statement.” *See State v. Smith*, 825 N.W.2d 131, 138 (Minn. App. 2012) (quotation omitted) (concluding that the district court did not commit plain error by admitting potential hearsay statements because counsel failed to object at trial and, as a result, the

prosecutor did not have the opportunity to argue for the admissibility of the statements under several hearsay exceptions), *review denied* (Minn. Mar. 19, 2013). It is the responsibility of counsel to object to potential hearsay evidence, because absent such an objection, the state does not have the opportunity to argue for the admissibility of the statement under hearsay exceptions. *See State v. Banks*, 875 N.W.2d 338, 346 (Minn. App. 2016) (quotation omitted), *review denied* (Minn. Sept. 28, 2016). Under Minn. R. Evid. 803(2), a statement is not excluded as hearsay if it relates “to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” Minn. R. Evid. 803(2); *see also State v. Edwards*, 485 N.W.2d 911, 914 (Minn. 1992). Had Singh objected to the 911 call on hearsay grounds, the district court could have heard arguments from both parties and analyzed the nature of the call against the hearsay exceptions, including the excited utterance exception. Given the facts in the record and Singh’s lack of a clear hearsay objection, the district court was not required to apply any exception and did not commit plain error by admitting N.B.’s 911 call or failing to provide analysis regarding potential hearsay issues.

II. The district court did not err in admitting Singh’s confession into evidence because his *Miranda* waiver was knowing, intelligent, and voluntary.

We review findings of fact surrounding a claimed *Miranda* waiver for clear error, and legal conclusions based on those facts de novo. *State v. Anderson*, 789 N.W.2d 227, 233 (Minn. 2010). Singh argues that his bipolar illness substantially interfered with his ability to validly waive his rights under *Miranda*.

Under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), prior to custodial interrogation police must warn individuals of their Fifth Amendment right to remain silent and to have counsel present during such an interrogation. *State v. Camacho*, 561 N.W.2d 160, 168 (Minn. 1997). However, individuals may waive those rights as long as they do so knowingly, intelligently, and voluntarily. *State v. Burrell*, 697 N.W.2d 579, 591 (Minn. 2005). The state has the burden to prove that the defendant's waiver was valid. *State v. Fox*, 868 N.W.2d 206, 213 (Minn. 2015). The state usually carries this burden by showing that police gave the *Miranda* warning, the defendant said that he understood the warning, and the defendant gave a statement. *Id.* "When an appellant contends that credible evidence supports a finding that his *Miranda* waiver was ineffective, an appellate court will make a subjective factual inquiry to determine whether under the totality of the circumstances the waiver was valid. Despite this inquiry, the standard of review remains whether the district court's finding is clearly erroneous." *Burrell*, 697 N.W.2d at 591 (quotation omitted).

Here, Singh responded affirmatively when asked if he understood each specific *Miranda* right. Singh never asked any questions about his rights or requested an attorney before making a statement to police.

Singh argues that his confused and unresponsive answers, coupled with his bipolar illness, indicate that his *Miranda* waiver was involuntary. However, the interrogation transcript shows that while Singh's answers were evasive and wandering, they were consistently responsive, especially during the *Miranda* warning in which Singh repeatedly answered "ya" and "yep" when asked whether or not he understood his rights. When a

detective asked Singh if he was willing to talk, he responded, “Ya I’m willing to talk, but I would like to at least know like you know what is going on.” The detective sought to verify Singh’s answer by asking, “So you’re willing to talk is that right?” to which Singh replied, “I mean to a point because of the fact”

The district court noted that any hesitation on Singh’s part in answering questions appeared to stem from his attempts to figure out what the detectives knew. This analysis is supported by the record. On numerous occasions, Singh tried to get detectives to tell him what N.B. had already told them regarding the events in question. At one point, Singh remarked that the detectives were trying to trick him through their questioning, a sign that he was aware of the adversarial nature of the interrogation. Singh also said that he was “just trying to figure out a way not to go to jail.” This statement indicates that Singh was aware of the consequences of providing an incriminating statement, but simply trying to navigate the detectives’ questions in a way that would protect him. Based on these conclusions, drawn from the record, the district court did not commit clear error in finding that Singh validly waived his *Miranda* rights.

Affirmed.