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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0209**

State of Minnesota,
Respondent,

vs.

Brielynn Monee Jefferson,
Appellant.

**Filed March 11, 2019
Affirmed
Worke, Judge**

Ramsey County District Court
File Nos. 62-CR-17-672, 62-CR-17-6412

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Smith,

Tracy M., Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges her assault convictions, arguing that the district court abused its discretion by admitting an out-of-court statement, and that the evidence is insufficient to support her convictions. We affirm.

FACTS

Appellant Brielynn Monee Jefferson and her sister, B.N.J., have a history of engaging in verbal and physical fights with one another. On January 20, 2017, an officer responded to a report made by Jefferson that B.N.J. threatened her with a gun and shot two rounds. When the officer advised Jefferson to refrain from contacting B.N.J., Jefferson responded that she “would take matters into her own hands.”

On January 27, 2017, officers were dispatched to a shots-fired call. 911-callers reported seeing two females fighting in an apartment complex’s parking lot, hearing several gun shots, and seeing people running and two cars fleeing. Officers aired a description of one of the cars, which belonged to B.N.J. Not far from the complex, an officer saw B.N.J. and two other individuals pushing the car.

An officer who responded to the complex saw Jefferson exit one of its buildings. Jefferson reported that B.N.J. shot at her once inside her apartment and three times in the parking lot. Officers searched Jefferson’s apartment, but did not find bullet holes or casings. When officers found four casings in the parking lot, they determined that the evidence did not corroborate Jefferson’s story.

Officer Kempe responded to the location of B.N.J.'s car. While trying to identify the shooter, Officer Kempe placed B.N.J. and her other sister in the back of his squad car. The squad video recorded B.N.J.'s statement. B.N.J. stated that Jefferson called her over to fight. When B.N.J. and Jefferson "square[d] up" to fight, B.N.J. saw a figure come around the building. Someone stated that the figure was W.D. who was there to make sure that the fight was fair. B.N.J. then "beat [Jefferson's] ass." Jefferson told W.D. that B.N.J. beat her up and he handed her a gun. B.N.J., her other sister, and her cousin ran to B.N.J.'s car. Jefferson shot one round at the front of the car and then fired at the driver's side. Officer Kempe asked B.N.J. who shot at her and she replied: "[W.D.] And . . . Jefferson. . . [Jefferson's] the one who shot the gun" Officers found evidence of four bullet impacts on B.N.J.'s car.

Jefferson was charged with three counts of aiding and abetting second-degree assault with a dangerous weapon. At Jefferson's court trial, B.N.J. testified that she did not remember everything from the night of the shooting because she was "under the influence," has short-term memory loss, and was upset and in "the heat of the moment." The district court permitted the state to treat B.N.J. as a hostile witness. B.N.J. admitted that she and Jefferson got into a fight, but claimed that she did not recall Jefferson shooting a gun. B.N.J. testified: "It's apparent that my car was shot at. But I didn't see who . . . shot at my car."

The district court found Jefferson guilty of two counts of aiding and abetting second-degree assault, but dismissed the third count because the state misidentified the third

victim. The district court sentenced Jefferson to 45 months in prison on one count and to a concurrent 36 months in prison on the second count. This appeal followed.

DECISION

B.N.J.’s statement

Jefferson argues that the district court abused its discretion when it admitted B.N.J.’s statement to police because it was inadmissible hearsay. The district court ruled that B.N.J.’s statement was admissible as an excited utterance and as substantive evidence. This court reviews the district court’s ruling on the admission of evidence for an abuse of discretion. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). Jefferson must show that the district court abused its discretion and that she was prejudiced as a result. *See State v. Ahmed*, 782 N.W.2d 253, 259 (Minn. App. 2010).

Hearsay is an out-of-court statement offered “to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is inadmissible unless an exception applies. Minn. R. Evid. 802. One exception is for an excited utterance. Minn. R. Evid. 803(2). An excited utterance is “[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.” *Id.*; *see also State v. Davis*, 820 N.W.2d 525, 536 (Minn. 2012). Three requirements must be met in order for a statement to be an excited utterance—a startling event, a statement related to that event, and a declarant “under a sufficient aura of excitement caused by the event.” Minn. R. Evid. 803 1989 comm. cmt.

Jefferson concedes that the shooting was a startling event and that B.N.J.’s statement related to the shooting. Jefferson argues only that B.N.J. was not under an aura of

excitement caused by the shooting when she made the statement; rather, Jefferson claims that B.N.J. was upset because she had been initially detained as the shooter.

The record shows that B.N.J. was immediately upset after being placed in the back of the squad car. B.N.J. stated that she was “irritated” and that law enforcement “need to be trying to find the people.” B.N.J.’s sister, who was in the squad car with her, told B.N.J. to calm down, and B.N.J. replied: “No, I’m not gonna [sic] be satisfied until f-cking somebody gets.” Officer Kempe explained that law enforcement was working out the identity of the shooter and was uncertain if B.N.J. was a suspect. B.N.J. stated: “That’s a f-cking lie. I just left the scene.” Officer Kempe stated that officers were figuring out how B.N.J. was involved. B.N.J. stated: “Why don’t you go . . . see who called and hung up the phone on the police? It was me. Said I just got shot at.” B.N.J. said: “I’m the one who got shot at. And my car is the one that’s not working now because it got shot at.” B.N.J. said that she was “very angry” because she was being accused of the shooting. And Officer Kempe testified that B.N.J. was “upset as to why she was being stopped.”

But officers soon suspected that Jefferson was the shooter. Officer Kempe asked B.N.J. who shot at her and she stated, “[W.D.] And . . . Jefferson. . . [M]y sister. [coughs] My asthma’s acting up now.” She later stated: “[Jefferson] wanted to fight so I pulled up and I beat her ass. And then she . . . shot at me.” The record shows that B.N.J. made the statement while she was upset about the shooting, and the district court did not abuse its discretion by admitting B.N.J.’s statement as an excited utterance.

The district court also determined that B.N.J.’s statement was admissible under the catch-all exception to the hearsay rule. A statement that does not fall under a recognized

exception is not excluded as inadmissible hearsay if a district court determines that it has circumstantial guarantees of trustworthiness. Minn. R. Evid. 807. A district court may admit such a statement if it determines that it is “offered as evidence of a material fact,” it “is more probative on the point for which it is offered than any other evidence” obtainable through reasonable efforts, and “the general purposes of these rules and the interests of justice will best be served by admission of the statement.” *Id.*

The district court determined that the statement was evidence of a material fact regarding who shot the gun, was the most probative evidence regarding that fact because B.N.J. was an eyewitness, and the purpose of the rules and the interests of justice would be served by admission of the statement because B.N.J. testified that she could not remember who shot the gun.

A determination of whether a statement is admissible under rule 807 requires consideration of the totality of the circumstances to verify that the statement has guarantees of trustworthiness equivalent to the other hearsay exceptions. *State v. Robinson*, 718 N.W.2d 400, 408 (Minn. 2006). Relevant factors include whether: (1) the declarant testified and was available for cross-examination; (2) there is a dispute that the declarant made the statement or concerning its contents; (3) the statement was against the declarant’s penal interest; and (4) other evidence shows the defendant’s guilt. *State v. Martinez*, 725 N.W.2d 733, 737 (Minn. 2007) (citing *State v. Ortlepp*, 363 N.W.2d 39, 44 (Minn. 1985)).

Here, B.N.J. testified and Jefferson had the opportunity to cross-examine her. Additionally, there is neither a dispute that B.N.J. made the statement nor its contents because it was recorded. Further, while the third factor generally considers whether a

statement is against the declarant's "penal interests," this court has held that this factor may be satisfied when the declarant is hostile to the state and supportive of the defendant. *See State v. Plantin*, 682 N.W.2d 653, 659 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). B.N.J. stated that her sister shot at her, but she testified that she did not know who shot at her. Thus, she was supportive of her sister and was treated as a hostile witness. Accordingly, the statement was against B.N.J.'s relationship interest with her sister. *See id.* (considering whether a statement is against a declarant's relationship interests).

Finally, the state introduced evidence consistent with B.N.J.'s statement tending to show Jefferson's guilt. Jefferson told an inaccurate story to officers and there were bullet impacts on B.N.J.'s car and shell casings in the parking lot. Evidence also showed that the sisters fought days earlier and Jefferson told the police that she was going to take matters into her own hands. Thus, even if B.N.J.'s statement was not admissible as an excited utterance, the district court did not abuse its discretion in determining that B.N.J.'s statement was sufficiently trustworthy and admitting it under the residual exception to the hearsay rule.

Sufficiency of the evidence

Jefferson also challenges the sufficiency of the evidence. When reviewing a claim for sufficiency of the evidence, this court "ascertain[s] whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a [fact-finder] could reasonably conclude that the defendant was guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004). This court "views the evidence in a light most

favorable to the verdict and assume[s] the [fact-finder] believed the state’s witnesses and disbelieved contrary evidence.” *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998).

Jefferson argues that the state failed to prove that she committed the offense when the evidence shows that W.D. committed the offense.

Direct evidence is “based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Bernhardt*, 684 N.W.2d at 477 n.11 (quotation omitted). Eyewitness testimony is direct evidence. *See State v. Olson*, 887 N.W.2d 692, 700 (Minn. App. 2016) (stating that the state presented direct evidence in the form of eyewitness testimony). Circumstantial evidence, while entitled to the same weight as direct evidence, warrants a higher level of scrutiny. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). If a conviction is based in part on circumstantial evidence, this court must identify the circumstances proved and then determine whether they are “consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.*

B.N.J. stated that after she and Jefferson fought, W.D. handed Jefferson a gun and Jefferson fired it. The district court found the majority of B.N.J.’s statement to be credible. The district court found that B.N.J. stated that W.D. handed Jefferson a gun and Jefferson fired shots at B.N.J.’s vehicle. This is direct evidence that Jefferson committed the offense. This evidence, that the district court found credible, sufficiently supports the conclusion that Jefferson shot the gun.

Additionally, circumstantial evidence supports Jefferson’s convictions. An officer testified that a week prior to the incident, Jefferson reported that B.N.J. shot at her, and that

she would “take matters into her own hands.” Further, when officers arrived at the apartment complex, Jefferson reported that B.N.J. shot the gun at her—once in her apartment and three times in the parking lot. The evidence did not support Jefferson’s story. There were no bullet holes or casings in Jefferson’s apartment, casings were only found in the parking lot, and B.N.J.’s car had bullet impacts. If W.D. was the shooter, Jefferson could have identified him as the shooter instead of blaming B.N.J. Jefferson’s statement that she would “take matters into her own hands” and her false report of the shooting are circumstances proved that are consistent with the hypothesis that she was the shooter. These legitimate inferences drawn from the facts in the record support the district court’s determination that Jefferson was guilty of the offenses. *See Bernhardt*, 684 N.W.2d at 476.

Affirmed.