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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1750**

State of Minnesota,
Respondent,

vs.

Lowrell Royal Anderson,
Appellant.

**Filed September 16, 2019
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CR-17-7925

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

Lyndsey M. Olson, St. Paul City Attorney, Lynel R. Nelson, Assistant City Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his conviction of gross misdemeanor domestic assault, arguing that he is entitled to a new trial because the district court abused its discretion by allowing the state to introduce hearsay statements regarding his prior acts of domestic abuse. We affirm.

FACTS

On September 3, 2017, A.J. called 911 to report that she was on her way to the emergency room to seek medical treatment for “marks and bruises” on her arm caused by her boyfriend, appellant Lowrell Royal Anderson. A.J. told the 911 dispatcher that Anderson “just keeps jumpin’ on me,” that he had hit and threatened her, and that she left the house because she was scared. A.J. also reported that Anderson had told her she “better not call the police” or he would “beat [her] until they got here.” A.J. provided the 911 dispatcher with her current location, and officers were sent to the scene.

Officer Lori Goulet of the St. Paul Police Department responded to the 911 call. A.J. told Officer Goulet that Anderson had become upset and hit her because he believed that she was “trying to meet up with another man.” Officer Goulet observed a scratch on A.J.’s arm that was dried over with blood but did not observe any other signs of injury at that time. Officer Goulet issued a “pickup and hold” for Anderson for suspicion of misdemeanor domestic assault. Officer Goulet then took A.J. to United Hospital because A.J. indicated that she was pregnant and not feeling well.

Officer Justin Tiffany of the St. Paul Police Department interviewed A.J. at the hospital. A.J. was “crying and very distraught.” She stated that she had been in a fight with Anderson and he had kneed her in the abdomen. Officer Tiffany then asked A.J. if she believed Anderson would ever seriously injure her, because the information would help him to address the severity of the situation and the urgency of law enforcement’s response. A.J. responded that in December 2016 Anderson had kneed her in the abdomen several times, which resulted in a lacerated liver that required emergency surgery.

A.J. was examined by several medical professionals. Whitney Ivancic, R.N., checked A.J. in at the emergency room and brought her to an examination room. A.J. was upset and indicated that she had been assaulted by her significant other. Ivancic paged a forensic-nurse service because the situation involved a potential domestic assault. Leah Gapinski, M.D., also conducted a brief examination. Dr. Gapinski observed bruising and swelling on A.J.’s arms and decided to order an x-ray to rule out fractures. Dr. Gapinski also ordered an ultrasound because A.J. was pregnant and reported that she had been hit in the abdomen. The x-rays were negative for fractures and the ultrasound did not reveal any injuries to A.J.’s abdomen or the fetus.

A.J. next spoke with Kimberly Farley, R.N., a forensic-nurse examiner. Farley conducted a domestic-violence examination of A.J. As part of the examination, Farley asked A.J. if she had experienced domestic violence in the past. She indicated that she had, and recounted the incident in December 2016 in which Anderson kneed her in the side, causing her to suffer a lacerated liver that required emergency surgery. A.J. then provided

an account of what had happened that night, and Farley photographed the bruising and swelling on her arms.

Respondent State of Minnesota charged Anderson with gross misdemeanor domestic assault, and the case was tried to a jury. A.J. testified and recanted her statements to law enforcement and medical professionals that Anderson had assaulted her. She testified that she made up the allegations because she was upset with Anderson because she believed that he was having an affair. Officer Goulet, Officer Tiffany, Ivancic, Dr. Gapinski, and Farley all testified that A.J. had reported that Anderson had assaulted her, and all but Ivancic testified that they observed injuries on A.J.'s arms. Over Anderson's objection, Officer Tiffany and Farley offered testimony regarding the December 2016 incident in which Anderson assaulted A.J. and caused a lacerated liver. At the close of its case, the state introduced the court file of a matter from 2005 into evidence. The 2005 court file contained an application and supporting affidavit for an order for protection (OFP) against Anderson filed by S.K. in a separate matter and a copy of the OFP that was subsequently granted. The state did not comment on the exhibit after introducing it.

The jury found Anderson guilty. The district court sentenced Anderson to 365 days in jail, ordered that he serve 180 days, stayed 185 days, and placed him on probation for two years. This appeal follows.

D E C I S I O N

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). The appellant bears the burden of establishing that the district court abused

its discretion and that he was thereby prejudiced. *Id.* The erroneous admission of evidence is harmless and therefore not prejudicial if “there is no reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Holliday*, 745 N.W.2d 556, 568 (Minn. 2008) (quotation omitted).

First, Anderson argues that the district court abused its discretion by admitting A.J.’s statements to Officer Tiffany and Farley regarding the December 2016 incident in which she suffered a lacerated liver that required emergency surgery. He argues that the statements are inadmissible hearsay because they do not meet the requirements of any of the exceptions to the hearsay rule. The district court determined that A.J.’s statement to Officer Tiffany was admissible under Minn. R. Evid. 803(3), which provides an exception to the hearsay rule for a “statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered.” The district court determined that A.J.’s statement to Officer Tiffany was admissible under rule 803(3) because the statement related to “current emotional, sensation, physical condition, [A.J.’s] state of mind in particular as it went to the threat that was posed to her while Mr. Anderson remained at large, and that it did constitute an emergency at that point.”

The state contends that the statement was admissible because it related to her existing mental state “insofar as it colors her existing mental and emotional state.” But rule 803(3) requires that the statement be “of” the declarant’s then-existing mental state, not one that provides context for it. Moreover, the statements were not spontaneous, but

rather in response to Officer Tiffany's questioning that was intended to help him assess the severity of the situation and determine the appropriate response for law enforcement. Accordingly, they were not made by A.J. to express her state of mind, but rather in the course of Officer Tiffany's questioning as part of his investigation. On this record, we conclude that the district court abused its discretion by admitting A.J.'s statement to Officer Tiffany under rule 803(3).

Second, Anderson argues that the district court abused its discretion by admitting A.J.'s statement to Farley regarding the December 2016 incident. The district court determined that A.J.'s statement to Farley was admissible under Minn. R. Evid. 803(4), which provides an exception to the hearsay rule for statements that are "made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Minn. R. Evid. 803(4).

Anderson contends that A.J.'s statement to Farley regarding the 2016 incident was not reasonably pertinent to diagnose or treat the injury she suffered on September 3, 2017—a scratch to the arm. We agree. When A.J. spoke with Farley, she had already been examined by Dr. Gapinski and undergone x-rays and an ultrasound to diagnose and treat the current injury. The statement regarding the December 2016 incident was made during the domestic-violence examination conducted by Farley, which involved answering general questions about past experience with domestic abuse. The statement was therefore not reasonably pertinent to diagnosing or treating the scratch on her arm. Accordingly, the

district court abused its discretion in determining that the statement was admissible under rule 803(4).

Third, Anderson argues that the district court abused its discretion in determining that a court file containing documents regarding a 2005 OFP issued against Anderson was admissible under Minn. R. Evid. 803(8). Rule 803(8) allows for the admissions of

records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases and petty misdemeanors matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings except petty misdemeanors and against the State in criminal cases and petty misdemeanors, factual findings resulting from an investigation made pursuant to authority granted by law.

The district court determined that the 2005 court file constituted a “certified public record” and therefore was admissible under rule 803(8). But rule 803(8) requires more than the fact that the documents constitute a “certified public record,” and we agree that the 2005 court file contains statements that exceed what is contemplated by the rule. The 2005 court file contains S.K.’s application for an OFP and supporting affidavit that make multiple allegations that Anderson had threatened and assaulted her. The district court reasoned that there had been a hearing on the application for an OFP, and therefore Anderson had the opportunity to confront and cross-examine S.K. about the statements. But he did not have the opportunity to do so in front of the jury in the present case.

On this record, we conclude that the district court abused its discretion by admitting into evidence A.J.’s statements to Officer Tiffany and Farley and the 2005 court file. But

that does not end our analysis. Because we have determined that the district court erred in admitting the evidence, we must next determine if the error was harmless. An error is harmless if “there is no reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Holliday*, 745 N.W.2d at 568 (quotation omitted). When determining whether erroneously admitted evidence substantially affected the jury’s verdict, “we consider whether the district court provided the jury a cautionary instruction, whether the State dwelled on the evidence in closing argument, and whether the evidence of guilt was strong.” *State v. Williams*, 908 N.W.2d 362, 365-66 (Minn. 2018) (quotation omitted).

Here, the district court provided the jury with a cautionary instruction before the introduction of both statements regarding the December 2016 incident and the 2005 court file. The state only made one reference to the December 2016 incident during the closing argument and did not comment on the 2005 court file, either at the time it was introduced or during closing argument. And the evidence against Anderson was strong. During the 911 call, A.J. reported that she was going to the emergency room because Anderson had hit her and caused scratches and marks on her arms. At trial, Officer Goulet, Officer Tiffany, Ivancic, Dr. Gapinski, and Farley all testified that A.J. had reported that Anderson had assaulted her, and all but Ivancic testified that they observed injuries on A.J.’s arms.

On this record, we conclude that the erroneously admitted evidence did not significantly affect the jury’s verdict. The error was therefore harmless, and Anderson is not entitled to a new trial.

Affirmed.