

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0586**

State of Minnesota,
Respondent,

vs.

James Antrquier Thomas,
Appellant.

**Filed April 19, 2021
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CR-19-22963

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this direct appeal from final judgments of conviction for domestic assault by strangulation and child endangerment, appellant argues that his convictions must be reversed because the district court prejudicially erred by allowing the state to introduce the

victim's prior out-of-court statements under Minn. R. Evid. 801(d)(1)(B) when appellant did not challenge her credibility. Because the statements were either (1) not objected to and thus forfeited; (2) admissible under a hearsay exception; or (3) not hearsay, the district court did not abuse its discretion by admitting them and, therefore, we affirm appellant's convictions.

FACTS

Appellant James Antrquier Thomas was convicted by a jury of assaulting his 18-year-old girlfriend (the victim) and endangering their three-month-old son. The following facts are testimony and evidence introduced at trial.

During his opening statement, defense counsel admitted that the photographs of the victim's injuries were "pretty bad" and "hard to see," and that the state would try to use them to prove Thomas assaulted the victim. But, counsel continued "relationships are not always as they appear. A lot goes on in relationships, a lot of different sides. There are many layers that we're not privy to in a person's relationship." Counsel concluded by telling the jury that "while you might think maybe the situation wasn't handled perfectly, you'll also agree that [Thomas] is not guilty of the charges the state wants you to believe he's guilty of."

The victim testified that Thomas had been out at clubs with his work friends. When he returned to the apartment, the victim was making him food. Then, "[f]or absolutely no reason," Thomas "grab[bed] [the victim] by [her] throat and just shove[d] [her] up against the fridge." Thomas let the victim go and went to sleep in the bedroom. A short time later, the victim woke Thomas up to eat.

After Thomas ate and fell back to sleep, the victim went through his phone because she suspected that he was seeing other women. Having confirmed her suspicions, she woke Thomas up and asked him to leave. Thomas began to punch her and choke her. The victim testified that she could not breathe.

When Thomas momentarily let her go, she picked up their three-month-old son, who was asleep in a crib in the same room, to take him out of the room. Thomas told the victim to put the infant down and hit the infant in his back while attempting to punch her. Thomas started to punch the victim again, so she set the infant down on the bed. The victim tried screaming to wake up her mother who was in the next room, but she was unable to get her mother's attention. The victim testified that for the next hour and a half, Thomas punched her in the face and genitals, choked her, strangled her, bit her, and poured hot wax on her. Eventually Thomas fell asleep. When Thomas began to snore, the victim picked up the infant, woke her mother, and called 911. The victim, the infant, and the victim's mother went downstairs to wait for the police.

Shortly thereafter, the investigating officer and her partner arrived at the apartment complex. The investigating officer testified that the victim was "very frantic and upset" and had a "very swollen left cheek that was bruised, and she was talking very fast about the assault that occurred." The victim told the officer that "it was her boyfriend" who committed the assault.

The officer's partner testified that during her initial interactions with the victim, she was "okay," but then "she broke down in tears, saying that her boyfriend had assaulted her." When the prosecutor asked the officer to explain what the victim told her had

physically happened to her, Thomas's counsel objected. The district court held an off-the-record bench conference with the lawyers. Following the bench conference, the state asked the officer to explain generally the nature of the incident. The officer said that "[the victim] had discovered that her boyfriend was cheating, who is the defendant, and she confronted him on it. He became angry with her for going in his phone, and then the assault started to take place. She stated that he punched her, kicked her." At this point in the testimony, Thomas's counsel renewed her objection. The district court overruled the objection, explaining that the evidence was "not offered for the truth and therefore non-hearsay."

The paramedic who responded to the victim's 911 call and transported her to the emergency room testified that the victim told him that "she had been assaulted by her boyfriend." Defense counsel objected. The district court overruled the objection, explaining that "my understanding is this is not offered for the truth." The district court instructed the jury that "this next piece is going to not be offered for the truth, but just to, I think, move the matter of what this witness needed to do next." The state continued the examination and asked the paramedic what he learned from the victim about the incident. The paramedic responded that "[the victim] told [him] that her boyfriend had assaulted her and that it had been going on for a few hours and that her son that she was holding had also been assaulted."

The treating emergency-room physician testified to the victim's medical treatment and her injuries, stating that she had

a lot of pain in her face, a lot of pain in her neck, and just kind of generalized pain all over. She said that was due to numerous

hits throughout the body, particularly aimed at the face and the jaw, and the neck pain was largely due to strangulation.

He explained that the victim's face was "very significantly swollen and bruised. She had a lot of bruising around her neck and kind of the clavicular region on both sides. She had bruises all over her body, too numerous to count." He also testified that the victim had two bite marks and swelling.

The sexual-assault nurse (nurse examiner) who examined the victim at the hospital testified, as part of the historical information gathered by the emergency department's staff, "[t]hat [the victim] had been assaulted by her boyfriend earlier that morning, and she had come to the hospital because of injuries she obtained from that."

Finally, the sergeant investigator (the sergeant) with the domestic-assault special-crimes unit testified about his interview with the victim the day after the assault. Immediately prior to the sergeant's testimony, the state asked the district court to reconsider its earlier bench ruling that the victim's prior consistent statements could not be offered as evidence because the victim's credibility had not been challenged. Thomas's counsel renewed her objection and stated that she had not "done anything to [the victim's] credibility." The district court determined that the victim's credibility had been challenged, stating "if the defense is challenging the credibility of the witness even if they didn't directly impeach the witness on a particular topic, that makes sense to me that that would meet the threshold requirement for Rule 801(d)(1)(B)." The district court allowed the sergeant to testify to the "very narrow issues . . . for which there [was] foundation that [was] consistent with the testimony of the witness who previously testified."

The sergeant testified that the victim reported that “she had been hit, kicked, punched, bitten, and had some hot wax poured on her” and made allegations of being strangled. The sergeant also testified that the victim identified the assailant as Thomas. On cross examination, Thomas’s counsel asked the sergeant if there was any physical evidence connecting Thomas to the assault aside from the victim’s testimony. The sergeant said that there was not.

During closing arguments, defense counsel argued that Thomas was not the cause of the victim’s injuries. Counsel told the jury that the bruises observed on the victim were at different stages of healing, “yet [the victim] testified that all but one—only one of those bruises—occurred from a different incident.” Counsel also pointed out that “[the victim] did not appear emotional . . . She was not upset, wasn’t scared. She was laughing. Sometimes she was smiling at [Thomas].” Counsel encouraged the jury to use “all observations to determine the veracity of what, and more importantly, when this assault occurred. Or if it even was in Hennepin County.” Counsel went on to criticize the lack of physical evidence linking Thomas to the crime, and stated “[l]iterally the only evidence relied upon by the state is the report of a woman scorned.” Counsel concluded by telling the jury that justice would not be served by convicting Thomas to “appease an angry girlfriend.”

This appeal follows.

DECISION

“Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855

N.W.2d 235, 249 (Minn. 2014). “A defendant claiming error in the district court’s reception of evidence has the burden of showing both the error and the prejudice resulting from the error.” *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (quotation omitted).

Thomas argues that he did not challenge the victim’s credibility and, therefore, the district court erred by admitting under Minn. R. Evid. 801(d)(1)(B) the victim’s prior out-of-court statements identifying her assailant and describing the assault made to five witnesses. These witnesses included the two responding officers, the paramedic, the nurse examiner, and the investigating sergeant. Thomas asserts that the district court initially ruled that the state was only offering the statement “for the effect on the listener,” not for the truth, but then the district court “inexplicably changed its mind,” finding that Thomas had challenged the victim’s credibility and, therefore, the victim’s prior out of court statements were admissible under Minn. R. Evid. 801(d)(1)(B).

Hearsay evidence is defined as an out-of-court statement that is offered to prove the truth of the matter asserted in the statement. Minn. R. Evid. 801(c); *State v. Litzau*, 650 N.W.2d 177, 182-83 (Minn. 2002). Hearsay evidence is inadmissible as substantive evidence unless it is within an exception to the hearsay rule. Minn. R. Evid. 802; *State v. Greenleaf*, 591 N.W.2d 488, 502 (Minn. 1999). But some out-of-court statements are not considered hearsay. Minn. R. Evid. 801(d). Minn. R. Evid. 801(d)(1)(B) provides: “A statement is not hearsay if . . . [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant’s testimony and helpful to the trier of fact in evaluating the declarant’s credibility as a witness. . . .” *Id.*

I. Unobjected-to statements

Thomas did not object to either the nurse examiner's testimony or the first responding officer's testimony of the victim's description of what happened during the assault and identification of Thomas as her assailant. We will review forfeited issues, such as when a defendant fails to object to the state's admission of evidence, for plain error. *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). But when issues are inadequately briefed, we deem them forfeited on appeal. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. August. 5, 1997); *see also State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (stating that arguments are forfeited if the "brief contains no argument or citation to legal authority in support of the allegations").

Here, Thomas's brief to this court provides no argument or analysis of the unobjected-to statements he contends are inadmissible hearsay. Further, our review of the record does not lead us to conclude that any prejudicial error occurred by the district court's admission of these statements. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.") Therefore, because Thomas failed to adequately brief these issues, they are forfeited, and we will not consider them.

II. Objected-to statements

Thomas objected when the paramedic and the second responding officer testified to the victim's statements identifying Thomas as her assailant and describing the assault.

Although Thomas argues that it was error to admit these statements under rule 801(d)(1)(B), the district court admitted them to show their effect on the listener, and not to prove the truth of the matter asserted. Thus, by definition, the statements are not hearsay. See Minn. R. Evid. 801(c) (defining hearsay); *State v. Stillday*, 646 N.W.2d 557, 563-64 (Minn. App. 2002) (stating that an out-of-court statement offered to show why a listener called the police was not hearsay), *review denied* (Minn. Aug. 20, 2002). Given our review of the trial transcript, which supports the district court's reasoning for allowing this testimony, and this court's deferential review of the district court's evidentiary rulings, the district court did not abuse its discretion by allowing these statements.

III. Sergeant's testimony

Thomas also objected to the sergeant's testimony of the victim's statements identifying Thomas as her assailant and describing the assault as impermissible hearsay. An out-of-court statement may be admitted as non-hearsay pursuant to rule 801(d)(1)(B) only if the district court makes a threshold determination that the witness's credibility has been challenged. *State v. Fields*, 679 N.W.2d 341, 347-48 (Minn. 2004); *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *review denied* (Minn. Feb. 24, 2000). The purpose of rule 801(d)(1)(B) is to allow a party "to enhance the credibility of a witness." *State v. Farrah*, 735 N.W.2d 336, 344 (Minn. 2007) (quotations omitted). "[T]he [out-of-court] statement must bolster the witness' credibility with respect to that aspect of the witness' credibility that was challenged." *State v. Nunn*, 561 N.W.2d 902, 909 (Minn. 1997).

Thomas argues that he did not challenge the victim's credibility; therefore, "there was no need for the state to enhance or bolster [the victim's] testimony with her prior out-of-court statements." The state responds that Thomas attacked the victim's credibility (1) during opening statements, by implying that she was angry and jealous; (2) during the victim's cross examination, by casting doubt on the description of the assault and the extent of her injuries; (3) during the sergeant's cross examination, by challenging the lack of physical evidence and independent direct witnesses; and (4) during closing arguments, by attacking the victim's testimony as incredible because no one heard the assault, arguing there was no physical evidence and her injuries were not consistent with the timing of the assault, and describing her as "a woman scorned."

Prior to the sergeant's testimony, the district court determined, in response to the state's motion, that the victim's credibility had been challenged, stating: "[I]f the defense [was] challenging the credibility of the witness even if they didn't directly impeach the witness on a particular topic, that makes sense to me that that would meet the threshold requirement for Rule 801(d)(1)(B)." Therefore, the district court concluded that the threshold requirement had been met to allow the statements under rule 801(d)(1)(B). We agree.

Based on our review of the record, we conclude that the statements at issue in this case fall squarely within Rule 801(d)(1)(B). The defense theory of the case was that Thomas did not assault the victim. The defense strategy, then, was to convince the jury that the victim was not telling the truth about what happened to her and did not truthfully identify Thomas as her assailant. The defense challenged the victim's credibility by

disputing the victim's recollection of the night of the assault on cross examination. The sergeant's testimony with respect to the victim's recollection of the assault was thus helpful to the trier of fact in evaluating the victim's credibility. Furthermore, the victim was the only witness presenting firsthand evidence against Thomas. As such, the victim's credibility was central to the case. *See Bakken*, 604 N.W.2d at 109 (determining that a witness's credibility was central to the case when only that witness presented firsthand evidence). Therefore, the district court did not abuse its discretion by ruling that the victim's credibility was challenged even though Thomas's counsel did not explicitly accuse her of lying or of misperceiving events.

Because we determine there was no error in the admission of the contested statements, we need not address whether the statements substantially influenced the jury's verdict.

Affirmed.