

*This opinion is nonprecedential except as provided by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
A20-0595**

State of Minnesota,
Respondent,

vs.

Joseph Benjamin Stuckey,
Appellant.

**Filed March 22, 2021
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-18-29029

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REILLY, Judge

Two victims called 911 after appellant pistol-whipped them. The state charged
appellant with unlawful possession of a firearm, second-degree assault with a dangerous

weapon, and misdemeanor domestic assault. Before appellant's jury trial, the district court admitted the victims' 911 calls into evidence as nontestimonial excited utterances. In this appeal, appellant challenges the admission of the 911 calls on the ground that it violated the Sixth Amendment's confrontation clause. We affirm.

FACTS

In November 2018, Hennepin County 911 received two emergency phone calls about an incident at a Brooklyn Park apartment complex. The first caller, later identified as J.S., immediately asked the 911 dispatcher (the dispatcher) to send police to her apartment unit. In response to the dispatcher's questioning, J.S. explained that she and her daughter had just been "pistol whipped" by appellant Joseph Benjamin Stuckey.¹ When the dispatcher asked J.S. where appellant was, J.S. stated that he was "running now," with guns. And while J.S. did not know where appellant was headed, she explained that officers could apprehend appellant in a "brown Trailblazer." The dispatcher then assured J.S. that officers were on their way and asked if she was injured and needed an ambulance. J.S. told the dispatcher that her head was bleeding but declined an ambulance. The dispatcher again assured J.S. that officers were on their way and asked for a description of appellant's clothing. J.S. stated that appellant was "in a white shirt with grey jogging pants" and then the call ended.

The second caller, J.P., is J.S.'s daughter. After answering J.P.'s call, the dispatcher immediately confirmed J.P.'s address and then asked her what happened. J.P. told the

¹ Pistol whipping is the act of using a handgun as a blunt weapon.

dispatcher that appellant had just hit her on her head and then asked the dispatcher, “Can you send police?” The dispatcher told J.P. to “[s]low down a second” and again asked J.P. what happened. In response to the dispatcher’s questions, J.P. stated that “[appellant] just assaulted [her] with a gun” and that it happened in her apartment. The dispatcher then asked J.P. if appellant was still in the apartment, and J.P. told the dispatcher that she believed appellant went to an apartment nearby. J.P. asked the dispatcher to send help for the second time and the dispatcher confirmed J.P.’s apartment unit number. The dispatcher then asked J.P. if appellant hit her and she responded, “He hit my mama in the head with a gun. She bleeding out her head.” But when the dispatcher asked J.P. if J.S. needed medical attention, J.P. stated that J.S. said she did not. The dispatcher then put J.P. on hold and the call ended.

Officers responded to the calls and located appellant hiding underneath bedsheets in the bedroom of an apartment unit located near J.S.’s apartment. L.S., the resident of the apartment where appellant hid, was inside the apartment when officers arrived. L.S. consented to a search of her apartment and officers located a firearm in the water reservoir tank of the toilet. Officers placed appellant under arrest and transported him to jail.

Respondent State of Minnesota charged appellant with unlawful possession of a firearm, Minn. Stat. § 624.713, subd. 1(2) (2018); second-degree assault with a dangerous weapon, Minn. Stat. § 609.222, subd. 1 (2018); and misdemeanor domestic assault, Minn. Stat. § 609.2242, subd. 1(2) (2018). Before trial, respondent moved to admit the statements J.S. and J.P. made during their respective 911 calls. Appellant objected, arguing that the statements, if admitted, would violate the confrontation clause of the Sixth Amendment

because neither J.P. nor J.S. would testify. The district court disagreed and found the 911 calls were nontestimonial and excited utterances, and admitted the portions of the calls relevant and intended to meet an ongoing emergency.

At appellant's jury trial, the state called seven witnesses: a public safety answering point manager, two law enforcement officers, a paramedic, L.S., a DNA analyst, and a firearms examiner. Appellant neither testified on his own behalf nor called any witnesses. The jury found appellant guilty of unlawful possession of a firearm and second-degree assault with a dangerous weapon, and not guilty of misdemeanor domestic assault. The district court sentenced appellant to 60 months in prison. This appeal followed.

DECISION

Appellant argues that we must reverse his convictions because the district court violated his Sixth Amendment right to confront his accusers by admitting the 911 calls into evidence. We generally will not reverse an evidentiary ruling absent a clear abuse of discretion. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). But whether the admission of evidence violates a defendant's rights under the confrontation clause is a question of law we review de novo. *Id.*

The confrontation clause of the Sixth Amendment to the United States Constitution guarantees that every criminal defendant "shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. This clause prohibits the "admission of testimonial statements of a witness" when the witness does not testify at trial unless they were unavailable to testify, and the defendant had a prior chance to cross-examine them. *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 1365 (2004). The

confrontation clause, however, does not bar the admission of nontestimonial statements. *Davis v. Washington*, 547 U.S. 813, 840, 126 S. Ct. 2266, 2284 (2006). Whether a statement is testimonial depends on its “primary purpose.” *Id.* at 822, 126 S. Ct. at 2273.

Statements are testimonial “when the circumstances objectively indicate that there is no [] ongoing emergency, and [] the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.” *Id.* at 822, 126 S. Ct. at 2273-74. On the other hand, “[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.” *Id.* at 822, 126 S. Ct. at 2273. In *Davis*, the Supreme Court noted that a 911 call “is ordinarily not designed primarily to establish or prove some past fact, but to describe current circumstances requiring police assistance.” *Id.* at 827, 126 S. Ct. at 2276 (quotation omitted). The Court held that four objective factors showed that the victim made the statements during a 911 call to meet an ongoing emergency including: (1) the victim described events as they happened, rather than past events; (2) any reasonable listener would have recognized that the victim faced an ongoing emergency; (3) the questions and answers given were necessary to resolve a present emergency; and (4) the victim’s answers were not provided in a tranquil environment. *Id.* at 827, 126 S. Ct. at 2276-77; *see also State v. Warsame*, 735 N.W.2d 684, 690 (Minn. 2007) (applying the *Davis* factors).

Appellant argues that the first and third *Davis* factors are not satisfied here and thus the 911 calls were testimonial. We disagree. The objective circumstances surrounding the

911 calls show that J.S. and J.P. made the statements to enable police to meet an ongoing emergency, and the questions asked were necessary for this purpose.

The first *Davis* factor is satisfied when victims describe events as they happen. *Davis*, 547 U.S. at 827, 126 S. Ct. at 2276-77. Here, after appellant pistol-whipped J.S. and J.P. and fled their apartment, they called 911. Appellant's assault of J.S. and J.P. was thus a past event. The *Davis* factors, however, require us to analyze the totality of the circumstances and determine whether the primary purpose of the statements during a 911 call was to enable police to meet an ongoing emergency. And the confrontation clause does not automatically bar a statement during a 911 call simply because it describes some past events. *State v. Wright*, 726 N.W.2d 464, 474 (Minn. 2007) (concluding that statements made after an assault were nontestimonial). J.S. and J.P., moreover, did describe some events while they happened. J.S. told the dispatcher that appellant was "running now," armed, wearing a white shirt and grey jogging pants, and that police could apprehend him in a "brown Trailblazer." J.P. similarly told the dispatcher that appellant was headed to a nearby apartment unit and that J.S. was "bleeding out [of] her head." The primary purpose of the statements by both J.S. and J.P. was to enable police to meet an ongoing emergency.

The third *Davis* factor examines whether the declarants made the statements to resolve a present emergency. Appellant argues that because both J.S. and J.P. "said no one needed medical assistance . . . any emergency had passed." Respondent cites *Wright*, and argues that an emergency was still underway when J.S. and J.P. called 911. Our review of

Wright supports the determination that J.S. and J.P. made their statements during an ongoing emergency.

In *Wright*, the defendant pulled a gun on his girlfriend and her sister in the apartment that the girlfriend and the defendant shared and then fled. 726 N.W.2d at 467-68. After the defendant fled, the girlfriend called 911 and told the dispatcher that the defendant had pulled a gun on her and her sister and that she was scared. *Id.* In response to the dispatcher's questioning, the girlfriend told the dispatcher the defendant's name, described his actions and physical appearance, and answered the dispatcher's questions regarding how officers could gain entrance to the building once they arrived. *Id.* at 468. After the dispatcher informed the victim that the police had arrived on the scene, the victim put her sister on the phone. *Id.* The dispatcher comforted the girlfriend's sister and informed her that police had the defendant in custody. *Id.* At trial, the district court admitted the 911 call into evidence and the defendant appealed. *Id.* at 471.

On appeal, the Minnesota Supreme Court held that the statements that the girlfriend and her sister made to the dispatcher were nontestimonial under the *Davis* factors because it could not "be said that the primary purpose of any part of the 911 call was to establish or prove past events potentially relevant to later criminal prosecution." *Id.* at 475. Instead, the primary purpose was "to enable police assistance to meet an ongoing emergency." *Id.* at 474 (quotation omitted).

The facts in *Wright* are analogous to the facts here. After appellant assaulted J.S. and J.P. with a gun, he fled J.S.'s apartment but remained in the general area. Both J.S. and J.P. called 911 after appellant assaulted them. In response to the dispatcher's

questions, J.S. told the dispatcher appellant's name, described his actions and physical appearance, and told the dispatcher where she believed appellant was currently located. J.P. similarly described appellant's actions, and told the dispatcher where she believed appellant was currently located in response to the dispatcher's questions. Both victims explicitly asked the dispatcher to send help.

Because the circumstances surrounding the 911 calls objectively show that the primary purpose of the statements was to describe the circumstances requiring police assistance, the statements were nontestimonial. We thus conclude that the district court did not violate appellant's rights under the confrontation clause by admitting the 911 calls into evidence.

Affirmed.