

*This opinion is nonprecedential except as provided by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
A20-0784**

State of Minnesota,
Respondent,

vs.

Wayne Garrett Lee Rosebear,
Appellant.

**Filed May 3, 2021
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-CR-19-1980

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his convictions of second-degree criminal sexual conduct and domestic assault by strangulation, arguing that the district court (1) violated his rights under

the Confrontation Clause by admitting a body-camera recording of the police interviewing the complainant at the scene, and (2) abused its discretion by admitting the complainant's statements to a doctor and nurse under the medical-treatment hearsay exception. We affirm.

FACTS

On June 4, 2019, R.M.'s upstairs neighbor called 911 to report that R.M. "just came up here, she's beat up, her baby dad did it and he's downstairs and the kids are down . . . stairs." R.M. told the 911 dispatcher that she got into an argument with appellant Wayne Rosebear and that he "started beating me up." She said that Rosebear bit her, "beat [her] all over," choked her with a rope until she passed out, and digitally penetrated her. And R.M. stated that Rosebear was still downstairs in the apartment with her six children.

Multiple police officers arrived at the scene, including Officer Patrick McCormick. Officer McCormick initially made contact with R.M., but was unable to gather information from her "due to her crying and emotional state." He then went down to R.M.'s apartment and, after checking on one of the children, found Rosebear sleeping in the basement. Officer McCormick found a multi-strand rope near Rosebear.

While Officer McCormick was securing and arresting Rosebear, Officer Benjamin Nordskog approached R.M., who was naked and wrapped only in a blanket. The encounter that followed was recorded on his body camera. R.M. was visibly injured and upset. Officer Nordskog asked her about her injuries and need for medical care. The two discussed R.M.'s children and who was available to care for them while R.M. was at the hospital. R.M. told the officer that Rosebear bit, punched, kicked, and choked her twice with a rope until she passed out. And she stated that Rosebear said he would kill her and

“tried to stick his whole hand” into her vagina. When the officer suggested taking R.M. to the ambulance, she responded that she did not have any clothes on and expressed concern that Rosebear was “going to kill [her] and [her] kids.”

At the hospital, R.M. was treated by a doctor who noted significant bruising all over R.M.’s body along with derogatory words and symbols written in marker. X-rays showed three fractured ribs. R.M. told the doctor that she had been strangled with a rope.

R.M. was also examined by a sexual-assault nurse examiner. The nurse noted that R.M. was “crying and tearful,” and had bruises all over her body, bite marks on her left hand and right shoulder, and a tear on her labia minora. Throughout the examination, R.M. described how Rosebear hit her multiple times in the face and kicked and punched her in the ribs. She also told the nurse that Rosebear used a rope to choke her until she lost consciousness, and forced her legs apart and put his fingers in her vagina.

Rosebear was charged with two counts of first-degree criminal sexual conduct, two counts of second-degree criminal sexual conduct, two counts of domestic assault by strangulation, and one count of making threats of violence. Because R.M. was not available to testify, the state moved in limine to introduce the body-camera recording. Rosebear objected on the ground that it violated his right to confrontation under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004). The district court determined that the recording is nontestimonial—and thus, admissible—because the “officer’s primary purpose” in conducting the interview was “to address the ongoing situation.” The district court also admitted, over Rosebear’s objection, R.M.’s statements to the doctor and nurse identifying Rosebear as her assailant.

At trial, in addition to the witness testimony, the state introduced the 911 call, photographs depicting R.M.'s injuries, and the rope found near where Rosebear had been sleeping. And the state introduced DNA evidence that implicated Rosebear. Specifically, Rosebear could not be excluded as contributing to the DNA taken from R.M.'s left breast and the bite mark on her left hand, while 99.9% of the world's population could be excluded.

The jury found Rosebear not guilty of both first-degree criminal-sexual-conduct charges, and one of the domestic-assault-by-strangulation charges. But the jury found Rosebear guilty of both second-degree criminal-sexual-conduct charges, one domestic-assault-by-strangulation charge, and the threats-of-violence charge. Rosebear appeals.

DECISION

I. Admission of the body-camera recording did not violate Rosebear's right to confrontation.

The Confrontation Clause provides a criminal defendant the right "to be confronted with the witnesses against him." U.S. Const. amend. VI; see Minn. Const. art. I, § 6; see also *State v. Hull*, 788 N.W.2d 91, 100 (Minn. 2010) ("We apply an identical analysis under both the state and federal Confrontation Clauses."). Admission of an out-of-court statement violates the Confrontation Clause when "the statement in question was testimonial, the statement was admitted for the truth of the matter asserted, and the defendant was unable to cross-examine the declarant." *Andersen v. State*, 830 N.W.2d 1, 9 (Minn. 2013) (citing *Crawford*, 541 U.S. at 59 & n.9, 124 S. Ct. at 1369 & n.9). We review de novo whether the admission of evidence violates the Confrontation Clause. *State*

v. Caulfield, 722 N.W.2d 304, 308 (Minn. 2006). A violation does not require reversal if the error is harmless beyond a reasonable doubt. *Id.* at 314.

In determining whether a statement given to a police officer is testimonial, we consider the primary purpose of the interrogation. *State v. Wright*, 726 N.W.2d 464, 472 (Minn. 2007). When the “*primary purpose* of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution,” the statement is testimonial. *Id.* (quotation omitted). Conversely, “[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.* (quotation omitted). This is so if the police questioning “relate[s] directly to addressing the emergency.” *State v. Warsame*, 735 N.W.2d 684, 694 (Minn. 2007).

In *Davis v. Washington*, the Supreme Court relied on four factors when concluding that the victim’s statements were made to meet an ongoing emergency: (1) the victim described events as they actually happened and not past events; (2) any “reasonable listener” would conclude that the victim was facing an ongoing emergency; (3) the questions asked and answers given were necessary to resolve a present emergency, rather than only to learn what had happened in the past; and (4) there was a low level of formality in the interview because the victim’s answers were frantic and her environment was not tranquil or safe. 547 U.S. 813, 826-27, 126 S. Ct. 2266, 2276-77 (2006).

Lack of formality and the victim’s urgent need for medical care likewise guided the Supreme Court’s determination in *Michigan v. Bryant*, that a shooting victim’s statements related to an ongoing emergency. 562 U.S. 344, 349, 131 S. Ct. 1143, 1150 (2011). In

that case, police responded to a report of a shooting and found the victim bleeding on the ground. *Id.* During a five-to-ten-minute conversation, the victim gave police the assailant's name and told them when, where, and how he had been shot. *Id.* The victim was then taken to the hospital where he died within hours. *Id.* The Supreme Court reasoned that the informality of the interrogation and the potential threat the at-large assailant posed to the victim, the police, and the general public objectively indicated that the "primary purpose of the interrogation was to enable police assistance to meet an ongoing emergency." *Id.* at 375-78, 131 S. Ct. at 1165-67 (quotations omitted).

Rosebear contrasts *Bryant* and *Davis*, arguing that R.M.'s statements captured in the body-camera recording are testimonial because he had been arrested by the time she made the statements so there was "no ongoing emergency." We disagree. Although the record suggests that Rosebear was arrested just prior to or while Officer Nordskog interviewed R.M., we are not persuaded that this fact alone makes R.M.'s statement testimonial.

The overall circumstances demonstrate that the officer's primary purpose for questioning R.M. was to deal with an ongoing emergency. The body-camera recording depicts a chaotic scene. When Officer Nordskog located R.M., he asked about her injuries and need for medical treatment. He also asked about her children, including their status and where they were located. Because R.M. needed immediate medical care, the officer also asked who was available to care for her children. These questions were directed at ensuring the safety of R.M. and her children, and R.M.'s responses indicated an ongoing fear of the situation.

Moreover, the body-camera recording demonstrates that the interview was informal and conducted at a time when R.M. was in physical and emotional distress. *See Bryant*, 562 U.S. at 377, 131 S. Ct. at 1166 (stating that the informality of the situation and interrogation “suggests that the interrogators’ primary purpose was simply to address what they perceived to be an ongoing emergency”). It took place in R.M.’s neighbor’s apartment. R.M. was naked, wrapped only in a blanket, and seated on the stairs. She was visibly upset and difficult to understand due to her physical pain and emotional state of mind. *See State v. Dye*, 871 N.W.2d 916, 923 (Minn. App. 2015) (concluding that the victim’s statements to officers were nontestimonial, in part, because the victim was “in shock, crying, panicky, and appeared to be in significant pain”). And as in *Bryant*, the interview was short, lasting only about eight minutes. R.M. occasionally told the officer what Rosebear had done to her, but her descriptions of his actions were brief and mostly unsolicited.

In sum, R.M.’s state of mind, the short, informal nature of the interview, and the fluid situation involving an injured victim and the presence of her young children, demonstrate that the primary purpose of the interrogation was to enable the officers to meet an ongoing emergency. Because R.M.’s statements to the officer are not testimonial, admission of the body-camera recording did not violate Rosebear’s constitutional right to confrontation.

Even if we concluded that Rosebear’s right to confrontation was violated, any error is harmless beyond a reasonable doubt. Although the recording was likely persuasive evidence, and the prosecutor mentioned it during closing argument, the evidence of

Rosebear's guilt was overwhelming. The state introduced—without objection—the 911 call in which R.M. frantically reported that she was assaulted by Rosebear and sustained injuries. In addition, the nurse examiner and physician both testified about R.M.'s extensive injuries, which included a tear on her labia minora, fractured ribs, bite marks, and significant bruising all over her body. The record contains multiple photographs depicting these injuries and the derogatory markings on her buttocks, chest, and face. And Rosebear's DNA was found on one of R.M.'s breasts and on her left hand near a bite mark.

We also note that Rosebear did not contest the assault and threats-of-violence charges; his defense strategy focused on whether the strangulation and sexual assault occurred. As to those contested issues, the body-camera evidence was cumulative. R.M. told the 911 dispatcher the same thing she told Officer Nordskog—that Rosebear strangled her with a rope and digitally penetrated her. Her injuries were consistent with her report, including a tear in her labia minora, and petechiae in the sclera of her eyes and around her neck.¹ And the police located a rope near where they found Rosebear in the apartment. Given the overwhelming evidence of guilt, and the cumulative nature of the body-camera recording, any error in admitting the recording is harmless.

II. The district court did not abuse its discretion by admitting R.M.'s statements to the treating doctor and nurse.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted, and it is generally inadmissible. Minn. R. Evid. 801, 802. But rule 803(4) provides an exception for statements that are “made for purposes of medical diagnosis or treatment and

¹ Petechiae are small purple spots caused by capillaries bursting from excessive pressure.

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). The rationale behind the medical-diagnosis exception is “the patient’s belief that accuracy is essential to effective treatment.” *State v. Robinson*, 718 N.W.2d 400, 404 (Minn. 2006) (quotation omitted). We review evidentiary rulings for an abuse of discretion, reversing only if evidentiary error prejudiced the appellant’s substantial rights. *State v. Chavez-Nelson*, 882 N.W.2d 579, 588 (Minn. 2016).

In *Robinson*, our supreme court considered the admissibility of the victim’s statements to treating medical personnel identifying the father of her children as her assailant. 718 N.W.2d at 402, 405. The supreme court declined to adopt a categorical rule regarding the admissibility of such identification statements under the medical-diagnosis exception. *Id.* at 405-07. Instead, the supreme court examined the record, noting that the state did not present evidence—such as the assailant’s pattern of coercion or violence or psychological abuse, the victim’s seeking treatment for emotional or psychological harm, the nurses’ concern for the victim’s emotional or psychological well-being, or expert medical testimony—suggesting that the identity of the assailant was relevant to the diagnosis or treatment of the victim’s injury. *Id.* at 407. The supreme court held that “where, as here, there is an insufficient evidentiary foundation to establish that the identity of the person who caused an injury was reasonably pertinent to the medical diagnosis or treatment of that injury, the statement of identity is not admissible under Rule 803(4).” *Id.*

Rosebear asserts that R.M.'s statements to the treating medical personnel identifying him as the assailant are likewise inadmissible because they "were not pertinent to R.M.'s treatment." We disagree. Unlike *Robinson*, R.M.'s treating nurse testified that her practice when treating assault victims is to ask who the assailant is in order "to provide safe discharge planning for the patient." As the nurse explained: "We wouldn't want to send [the victim] to a place that wouldn't be safe for them. So if their assailant is someone that they live with we want to make sure that we're sending them and giving them the opportunity to find a safe place for them to go." On this record, we discern no abuse of discretion by the district court in admitting the nurse's challenged testimony as pertinent to R.M.'s treatment.

Finally, even if the district court abused its discretion by admitting the challenged statements, any error is harmless. See *Chavez-Nelson*, 882 N.W.2d at 588 (stating that a conviction will be reversed based on evidentiary error only if the appellant's substantial rights were prejudiced); see also *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (stating that a district court's ruling on an evidentiary objection is reviewed for harmless error). As noted above, the record contains ample evidence identifying Rosebear as the assailant, including R.M.'s statements to the 911 dispatcher and the two police officers. And the DNA evidence linked Rosebear, but not 99.9% of the world's population, to the assault. On this record, Rosebear has not demonstrated that he is entitled to a new trial.

Affirmed.