

*This opinion is nonprecedential except as provided by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
A20-0933**

State of Minnesota,
Respondent,

vs.

Antonio Dupree Wright,
Appellant.

**Filed April 12, 2021
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-17-19207

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal of the district court's resentencing order, appellant argues that the district court violated the Confrontation Clause when it relied on three exhibits to calculate his criminal-history score. We conclude that the district court's reliance on the exhibits

did not violate appellant's confrontation rights, and we affirm the district court's calculation of appellant's criminal-history score.

FACTS

In August 2017, respondent State of Minnesota charged appellant Antonio Wright with third-degree drug sale and fifth-degree drug possession. After a trial, a jury found Wright guilty of both offenses. At sentencing, the district court calculated Wright's criminal-history score by including two armed-robbery convictions from Illinois that occurred when Wright was 17 years old. The district court sentenced Wright to 57 months in prison. Wright appealed his convictions and the calculation of his criminal-history score. *State v. Wright*, No. A18-1097, 2019 WL 3293761 (Minn. App. July 22, 2019), *review denied* (Minn. Oct. 15, 2019). This court affirmed Wright's conviction for third-degree drug sale but reversed the imposition of a conviction for fifth-degree drug possession because it was a lesser-included offense. *Id.* at *5. This court also remanded for recalculation of Wright's criminal-history score because the district court did not determine whether the Illinois offenses would have been certified to adult court had they been committed in Minnesota. *Id.* at *6. In its remand instructions, this court gave the district court discretion whether to reopen the record to allow the parties to introduce additional evidence. *Id.* at *7.

On remand for resentencing, Wright argued that he was entitled to a jury trial to determine whether the Illinois offenses would have been certified to adult court in Minnesota. The state disagreed and submitted criminal records from Illinois showing convictions for armed and aggravated robbery from 1999. Wright argued that the records

provided by the state listed the defendant's name as "Anthony Wright," not "Antonio Wright" and that they contained no other identifying information, such as a date of birth. The district court continued the resentencing hearing and ordered further briefing from the parties.

The state submitted additional exhibits regarding the Illinois offenses. Exhibit 1 consists of a one-page printout of information from the Illinois Department of Corrections' "Offender Tracking System," a one-page "Certification of Record," and a printout of the email attaching those documents. The "Offender Tracking System" record lists custody history, offense information, incarceration location, and various dates (labeled as "discharge out," "parole out," "sent date," "mvmnt date," and "admit in") for a person named "Antonio Wright," and identified by an Illinois Department of Corrections identification number and date of birth. The date of birth on this record matches Wright's date of birth. In addition, the "Certification of Record," is a statement certifying the accuracy of the enclosed information and is signed by the "Acting Chief Record Officer, duly authorized custodian of Illinois Department of Corrections Records." The email in exhibit 1 contains a booking photo, the following sentence: "Please see attached Pen Pack for Antonio Wright," and an inmate number. The email also includes the email from the state's attorney requesting the information.

Exhibit 2 is a four-page addendum to the presentence investigation report (PSI) prepared in Wright's present case. The addendum includes the information regarding the Illinois criminal history contained in exhibits 1 and 3. Exhibit 3 is a sixty-five page printout of criminal records data from the National Crime Information Center database for "Antonio

Wright,” further identified by a Federal Bureau of Investigation (FBI) number and a date of birth that matches Wright’s. Wright objected to the exhibits, arguing, among other things, that they contained testimonial information in violation of his confrontation rights.

The district court issued a resentencing order on April 7, 2020. The district court declined to address Wright’s argument that he was entitled to have a jury determine the certification issue because Wright did not raise the issue at the initial sentencing or on direct appeal. The district court also rejected Wright’s argument that the state’s exhibits violated his confrontation rights, concluding that the right of confrontation does not apply to sentencing hearings. Relying on the state’s exhibits, the district court found that Wright had been convicted of two armed-robbery offenses in Illinois when he was 17 years old. The district court further determined that, based on Minnesota and Illinois law, Wright’s Illinois convictions would have been certified to adult court in Minnesota had they been committed here. The district court calculated Wright’s criminal-history score as seven and sentenced him to 57 months in prison—the same score and sentence that he received in the original sentencing proceedings. Wright appeals his sentence.

DECISION

Wright argues that the district court erred because the Confrontation Clause should apply to a dispute regarding the calculation of his criminal-history score and because exhibits 1, 2, and 3 contained testimonial statements.¹ Because Wright’s argument is

¹ The state argues that Wright forfeited his Confrontation Clause argument because the scope of this court’s remand instructions did not specifically allow it. We disagree. The district court had discretion to reopen the record. *Wright*, 2019 WL 3293761, at *7. Exercising this discretion, the district court allowed the state to submit the exhibits in

inconsistent with binding legal authority and because the exhibits contain nontestimonial statements, we conclude that the district court did not violate the Confrontation Clause.

Wright's argument concerns application of the Confrontation Clause to a dispute regarding the calculation of his criminal-history score. The Sixth Amendment of the United States Constitution and article I section 6 of the Minnesota Constitution guarantee several rights to all criminal defendants, including a right to a jury trial, the right to counsel, the right to compel the appearance of favorable witnesses, and the right to confront adverse witnesses. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The Confrontation Clause "prohibits 'admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.'" *State v. Warsame*, 735 N.W.2d 684, 689 (Minn. 2007) (quoting *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 1365 (2004)). Whether a defendant's confrontation rights were violated is a question of law, which this court reviews de novo. *Id.*

The Minnesota Sentencing Guidelines govern the calculation of a defendant's criminal-history score based on his or her prior convictions. A prior felony offense from a jurisdiction other than Minnesota committed when the offender was under 18 years old may be included in the adult section of the criminal-history score, but only "if the factfinder determines that it is an offense for which the offender would have been certified to adult court if it had occurred in Minnesota." Minn. Sent. Guidelines 2.B.5.e (2016).

question. Because Wright could not have raised the Confrontation Clause issue until after the state submitted the exhibits, the issue is properly before us on appeal.

Wright challenges the foundation for the state's exhibits, arguing that the Confrontation Clause guarantees him the opportunity to cross-examine the people who prepared the documents to ask "pertinent questions about how the records are kept for each state, how they are accessed, and what information the witnesses relied upon to make their assertions concerning the accuracy of his criminal history." We are not persuaded for two reasons. First, Wright's argument is inconsistent with the analysis in other cases regarding sentencing disputes. When the Supreme Court applied the Sixth Amendment to certain sentencing disputes, it expressly made an exception for disputes relating to prior convictions: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 2536 (2004) (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 2362-63 (2000)). This court has previously determined that disputes regarding the calculation of a person's criminal-history score fall within the stated exception to the application of the Sixth Amendment. *State v. Edwards*, 900 N.W.2d 722, 731 (Minn. App. 2017) (holding that district court's calculation of a defendant's criminal-history score did not violate the Sixth Amendment right to a jury trial), *aff'd mem.*, 909 N.W.2d 594 (Minn. 2018) Wright provides no analysis or explanation to justify making a new exception to this exception. Absent some applicable authority to support this legal proposition, we decline to articulate a new constitutional rule that differs from the holdings in *Blakely* and *Edwards*.

Second, even assuming that the Confrontation Clause applies to disputes regarding a person's criminal-history score, we are convinced that the data reported in the exhibits is nontestimonial. The "principal evil at which the Confrontation Clause was directed" was the "use of *ex parte* examinations as evidence against the accused." *Crawford*, 541 U.S. at 50, 124 S. Ct. at 1363-64 (describing the "specific type of out-of-court statement" to which the Confrontation Clause applies). A district court violates a defendant's right to confront when it admits testimonial hearsay statements without providing the defendant an opportunity to cross-examine the declarant. *Id.* at 68-69, 124 S. Ct. at 1374. The Supreme Court listed three examples of "core" testimonial hearsay: *ex parte* in-court testimony or its functional equivalent, extrajudicial statements, and "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Id.* at 51-52, 124 S. Ct. at 1364 (quotation omitted). None of the three exhibits in this case falls within any of those core categories.

The one-page record at exhibit 1 is a print out of data regarding custody that was maintained prior to the commission of the instant Minnesota offense. Similarly, exhibit 3 is a printout from the FBI criminal records database, which contains data stored and maintained for many purposes other than litigating the instant Minnesota case. While the printouts were made in connection with Wright's resentencing, the data contained in the exhibits was collected without any connection to the instant offense. We have previously held that reports of similar data are nontestimonial. *State v. Vonderharr*, 733 N.W.2d 847, 852 (Minn. App. 2007) (adopting the holdings in *United States v. Torres-Villalobos*, 487

F.3d 607, 612-13 (8th Cir. 2007) and *United States v. Urqhart*, 469 F.3d 745, 748-49 (8th Cir. 2006) and applying that reasoning to conclude that admission of Department of Public Service records did not violate the defendant's Confrontation Clause rights because such records were nontestimonial); *State v. Jackson*, 764 N.W.2d 612, 619 (Minn. App. 2009) (holding that admission of firearm trace report did not violate defendant's Confrontation Clause rights because such reports were nontestimonial), *review denied* (Minn. July 22, 2009); *see also, e.g., Torres-Villalobos*, 487 F.3d at 612-13 (listing cases and holding that admission of documents showing a prior deportation and that included statements from an attesting witness that the witness observed the defendant leaving the country did not violate defendant's Confrontation Clause rights because such documents were nontestimonial); *Urqhart*, 469 F.3d at 748-49 (holding that admission of a Certification of Nonexistence of Record to prove that a person lacked permission to reenter after deportation did not violate defendant's Confrontation Clause rights because such documents were nontestimonial).

Likewise, the other two documents included in exhibit 1 are also nontestimonial. The email included in exhibit 1 serves as a cover page, and the certification in exhibit 1 serves to authenticate the one-page record. We have previously classified both types of documents as nontestimonial. *State v. Noor*, 907 N.W.2d 646, 655-56 (Minn. App. 2018) (holding that cover pages and certifications of authenticity are nontestimonial), *review denied* (Minn. Apr. 25, 2018); *see also United States v. Johnson*, 688 F.3d 494, 504-05 (8th Cir. 2012) (holding that certificates of authenticity are nontestimonial); *United States v. Yeley-Davis*, 632 F.3d 673, 680 (10th Cir. 2011) (holding that the certification and affidavit of a telephone company record custodian are nontestimonial); *United States v.*

Morgan, 505 F.3d 332, 339 (5th Cir. 2007) (holding that foundational evidence authenticating business records is nontestimonial); *United States v. Ellis*, 460 F.3d 920, 927 (7th Cir. 2006) (holding that certificates of authenticity are nontestimonial); *State v. Murphy*, 991 A.2d 35, 42, 44 (Me. 2010) (holding that a certificate authenticating business records is nontestimonial).

Finally, the addendum to the PSI marked as exhibit 2 was created by the probation officer who wrote the PSI. While some statements in a PSI can include testimonial hearsay, such as a summary of interviews, probable cause statements, or police reports, the information in the addendum at exhibit 2 is derived entirely from the data contained in the other two exhibits.

Because the district court did not err by considering these exhibits, it properly calculated Wright's criminal-history score and rendered an appropriate sentence.

Affirmed.