

*This opinion is nonprecedential except as provided by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
A21-1584**

State of Minnesota,
Respondent,

vs.

Alexander Baldwin,
Appellant.

**Filed September 6, 2022
Affirmed
Connolly, Judge**

Scott County District Court
File No. 70-CR-20-15643

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

Ronald Hovevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Klaphake,
Judge.*

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction for domestic assault, arguing that the district court abused its discretion in admitting one of the victim's prior hearsay statements under the excited utterance exception rule to the hearsay rule and another under the residual exception. Because we see no abuse of discretion in the admission of either statement, we affirm.

FACTS

Appellant Alexander Baldwin and A.S. began a relationship in 2015. In November 2020, a 911 call reported ongoing domestic violence in the apartment of A.S., and two officers were dispatched to investigate. When they arrived, they saw appellant leaving the apartment with blood on his clothes and his hand and A.S. entering the apartment.

After appellant said A.S. had bitten him, one officer told A.S. that she would be charged because she had bitten appellant. A.S. said she had bitten appellant because he was choking her and she wanted to escape (Statement One). A.S. then pulled off her shirt to show the injuries appellant had caused. She went on to tell the officers that appellant had pushed her into a closet and choked her on the closet floor when she bit him (Statement Two). She also showed them the blood in the closet and said the injuries on her face and chest had been caused by appellant. Both statements were recorded on videos from the officers' body cameras.

Appellant was charged with felony domestic assault. Prior to trial, he moved to exclude A.S.'s two statements as hearsay. The district court denied the motion as to

Statement One, which it ruled was admissible under the “excited utterance” exception set out in Minn. R. Evid. 803(2). The district court ruled that Statement Two had the circumstantial guarantees of trustworthiness required for admissibility under the residual exception, Minn. R. Evid. 807, but deferred ruling on the admissibility of Statement Two until after A.S. testified.

At trial, A.S. recanted both Statement One and Statement Two. She testified that she bit appellant when he put his hand over her mouth to quiet her because there was a warrant out for his arrest and he did not want her screams to attract attention. Appellant testified that he did not choke A.S., push her into a closet, or harm her in any way; he was simply trying to quiet her. The officers also testified, and the jury saw their body-camera videos of the incident.

The jury found appellant guilty. This was his ninth domestic-violence conviction, and he was sentenced to 32 months in prison. He challenges his conviction, arguing that Statement One was not an excited utterance and Statement Two did not have the circumstantial guarantees of trustworthiness required for admission under the residual exception.

DECISION

1. Statement One and the Excited Utterance Exception

A determination that a statement meets the foundational requirements of a hearsay exception is reviewed for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). An excited utterance has three factors: it is a statement “[1] relating to a startling event or condition [(2)] made while the declarant was under the stress of

excitement [(3)] caused by the event or condition.” Minn. R. Evid. 803(2). “It is for the [district] court, in the exercise of its discretion in making discretionary rulings, to determine whether the declarant was sufficiently under the aura of excitement.” *State v. Edwards*, 485 N.W.2d 911, 914 (Minn. 1992) (quotation omitted).

As to Statement One, the district court found that:

A.S., the alleged victim, [was] told that police [would] be recommending she be charged for assaulting [appellant]. A.S. then [became] extremely upset and start[ed] yelling at [appellant] and [the] officers about how [appellant] choked her, but she [was] being charged for biting him back. Officers [told] A.S. to calm down as she continue[d] to talk over them. A.S. rip[ped] her sweatshirt off to show officers the marks on her body from [appellant] allegedly choking her. This is clearly an excited utterance as A.S. was reacting to the information that she would be charged and [it] is admissible.

Appellant argues that Statement One was not an excited utterance because it did not meet the second factor—too much time elapsed between the A.S.’s altercation with appellant and Statement One. We recently addressed this argument in *State v. Debner*, No. A21-0672, 2022 WL 1298137, at *2-3 (Minn. App. May 2, 2022), *rev. denied* (Minn. July 19, 2022).¹

In *Debner*, a patron of a tavern confided to the tavern owner that: (1) she and the defendant, who had been charged with felony theft, had stolen a cooler from a club’s banquet room, but the cooler broke when it fell out of their car in the club’s parking lot; (2) she was worried because someone might have seen them leave the club with the cooler

¹ While this opinion is nonprecedential, it is persuasive, particularly since it closely resembles this case in several relevant respects. *See* Minn. R. Civ. P. 136.01, subd. 1(c) (stating that nonprecedential opinions may be cited for persuasive value).

and they had not paid their tab at the club; and (3) the defendant was then paying the tab at the club while the patron waited for him at the tavern. The tavern owner testified that she had seen the patron at the tavern earlier in the day and, when she returned and made the statements, she appeared frantic, nervous, and giddy because of the incident she was describing. *Id.* at *3.

Based on the tavern owner's testimony that, when the patron made the statements, she was nervous, frantic, and giddy, this court agreed with the district court that the record supported the finding that the patron was still under the stress of the excitement caused by the theft. *Id.* Here, A.S. made Statement One to officers who arrived soon after the 911 call reporting the altercation, and that call was made while the altercation was still going on. There was no significant time lapse. Moreover, "our caselaw is clear that there are 'no strict temporal guidelines for admitting an excited utterance' so long as the declarant is still under the stress of excitement caused by the event." *Id.* (quoting *State v. Martin*, 614 N.W.2d 214, 223-24 (Minn. 2000)). The same is true here; A.S. was still under the stress of the excitement. The second factor, that the statement be made "while the declarant [is] under the stress of excitement," is met.

Appellant also argues that the third factor is not met because Statement One, that A.S. bit appellant because he was choking her, was not caused by the exciting event, namely, the officer's telling A.S. that she would be charged. In *Debner*, the defendant argued that tavern owner's testimony as to what the patron said was inadmissible because the patron's statement was not about her witnessing a startling event, i.e., the theft of the cooler, but rather about her "getting in trouble for the theft." *Id.* at *2. This court concluded

that the patron's testimony was admissible because it "either described how the theft unfolded or expressed [the patron's] worry about getting caught for the theft" and "[b]oth of those statements relate generally to the theft" and rejected the defendant's parsing of the excited utterance. *Id.*

Here, the exciting event for A.S. was being told by an officer that, even though she had been appellant's victim and he was choking her, she was going to be charged for having bitten him. A.S.'s Statement One was about appellant choking her and therefore closely related to the exciting event, so the third factor for the excited utterance exception is met.

As in *Debner*, the district court did not abuse its discretion by concluding that Statement One was an excited utterance.

2. Statement Two and the Residual Rule

A hearsay statement not included under Minn. R. Evid. 803 (exceptions to the hearsay rule) or Minn. R. Evid. 804 (declarant unavailable) may nevertheless be admitted if it has "circumstantial guarantees of trustworthiness" and: (A) is offered as evidence of a material fact, (B) is more probative on the point for which it is offered than any other evidence the proponent can procure through reasonable effort, and (C) its admission will serve the purpose of the rules of evidence and the interests of justice. Minn. R. Evid. 807. Establishing circumstantial guarantees of trustworthiness involves an application of the totality-of-the-circumstances approach and "requires a careful balancing of all relevant circumstances surrounding the making of the statement." *Hallmark*, 927 N.W.2d at 292.

Here, the district court considered that A.S (1) made Statement Two shortly after the incident, (2) she showed officers where the incident occurred, (3) pointed out blood in

the closet to prove the statement, (4) had scratches and bruises on her body, (5) explained why she bit appellant, (6) explained that she and appellant had a history of domestic assaults, and (7) said she had previously punched appellant in the face and had bitten him that evening. The district court noted that these statements were against A.S.'s penal and relationship interest, one of the factors to be considered. *See State v. Vangrevenhof*, 941 N.W.2d 730, 738 (Minn. 2020) (citing *Hallmark*, 927 N.W.2d at 292-93).

Appellant refutes the district court's conclusion that Statement Two had adequate circumstantial guarantees of trustworthiness by stating that A.S. did not make the statements under oath, recanted the statements, and had motivation to lie, all listed as relevant considerations of trustworthiness in *Vangrevenhof*, 941 N.W.2d at 736. But a district court is under no obligation to consider every possible factor, or even every requirement: "the failure to make an explicit finding [on a particular requirement] does not automatically require a reversal of a conviction and a new trial." *Id.* at 739. Concluding that Statement Two had adequate guarantees of trustworthiness was not an abuse of discretion.

The district court also addressed the other three factors listed in Minn. R. Evid. 807.² As to (A), whether Statement Two was offered as evidence of a material fact, the district court concluded that it was "being offered to prove [appellant] assaulted A.S. by putting his arm on her neck and strangling her. This is an essential element of the offense." As to (B), whether Statement Two was more probative than any other evidence the state could

² Appellant does not dispute the district court's findings and conclusions as to these three factors.

procure, only A.S. was capable of describing the assault for which appellant was being tried: there was no other evidence except appellant's own account. Finally, as to (C), *Vangrevenhof* addressed whether the admission of recanted statements served the purpose of the rules of evidence and the interest of justice.

[The declarant's] statements provide the only first-person account from someone involved in the [defendant's criminal act]. Letting the jury hear the statements allowed it to ascertain truth by weighing the relative credibility between [the declarant's] unsworn, recorded statements and [her] sworn testimony during trial, which recanted those recorded statements. Admission of the statements serves the purpose of the rule along with the interests of justice.

Id. The jury here could weigh the relative credibility of A.S.'s statements and her testimony recanting them.

There was no abuse of discretion in the admission of A.S.'s Statement One and Statement Two.

Affirmed.