STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0521

State of Minnesota,
Respondent,

vs.

Courtney Wade Locke,
Appellant.

Filed March 13, 2023
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Hennepin County District Court
File No. 27-CR-19-30078

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

Mary F. Moriarty, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges his conviction for violating a domestic abuse no-contact order, arguing that the district court denied his right to confrontation by admitting a body-camera recording of the nontestifying victim's out-of-court statements. Appellant also asserts he

is entitled to resentencing based on the erroneous calculation of his criminal-history score. We affirm his conviction but reverse and remand for resentencing.

FACTS

In December 2019, law enforcement responded around 2:00 a.m. to a call reporting an "unknown trouble" in an apartment in Minneapolis. An officer wearing a body camera approached the door of the apartment, heard a female voice screaming, and opened the unlocked door. The following paragraph describes a portion of the officer's body-worn-camera recording later played at trial.

The officer was greeted by a man and the officer stated that he had received "a bunch of calls about you guys." From behind the door, a female voice cried out, "Yes, I did," and the officer stepped inside. The officer discovered a wheelchair-bound woman, later identified as R.M.T., who had blood on her swollen face from a laceration. The officer assumed the man was R.M.T.'s assailant and ordered the man to put his hands behind his back. The woman yelled, "It's not him." The officer asked who did it. While crying, R.M.T. replied, "He ran out the back door. He's got on a white jacket with a ponytail." The officer asked, "Where did, ponytail, white dude? Black dude?" R.M.T. responded, "No. Native American." The officer's partner asked, "What's his name?" R.M.T. responded, "Courtney Locke." The officer and his partner informed the man and R.M.T. that they would look for the assailant and then return.

In the alleyway behind the apartment building, the officer and his partner saw an individual with a long ponytail wearing a winter jacket inside out walking quickly away from the apartment building. They arrested the man, later identified as appellant Courtney

Wade Locke, and discovered a small, tan, women's wallet and R.M.T.'s Minnesota identification card in the pocket of the white winter jacket. The officer ran a search using R.M.T.'s identification and discovered that there was a no-contact order between Locke and R.M.T. The officer returned to the apartment, called an ambulance to treat R.M.T.'s facial injury, and took R.M.T.'s statement. R.M.T. said that she shared the apartment with Locke and that she was lying in bed when Locke struck her three times in the face with a closed fist and kicked her in the torso.

Respondent State of Minnesota charged Locke with felony violation of a no-contact order and felony domestic assault. Later, the state amended its complaint and charged Locke with fifth-degree assault. Before the district court conducted the jury trial, the state moved to admit R.M.T.'s statements to the officer and his partner in the apartment that were captured by the officer's body-worn camera. The district court determined that the statements were nontestimonial and did not violate Locke's rights under the Confrontation Clause because (1) the statements were made in the context of relating Locke's current location, (2) R.M.T. was afraid of Locke, (3) Locke still posed an immediate threat to R.M.T., and (4) the interaction between R.M.T. and the officers was brief and informal. R.M.T. did not testify at trial. The jury heard testimony from the responding officer who wore the body camera and reviewed the recording of the exchange between the officer, his partner, and R.M.T. in the apartment. Another officer testified about the content of the no-contact order that identified Locke as the defendant and R.M.T. as the protected person.

The jury found Locke guilty of fifth-degree assault and violating a no-contact order, and not guilty of felony domestic assault. The district court sentenced Locke to 80 days in

jail for fifth-degree assault and 18 months in prison, stayed for three years, for violating the no-contact order.

This appeal follows.

DECISION

I. Admission of R.M.T.'s statements on the officer's body-worn-camera recording did not violate Locke's constitutional right to confrontation.

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6; *State v. Hull*, 788 N.W.2d 91, 100 (Minn. 2010) ("We apply an identical analysis under both the state and federal Confrontation Clauses."). The Confrontation Clause bars the admission of a prior testimonial statement of a person who does not testify at trial, subject to exceptions. *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). As a result, the admissibility of a prior statement under the Confrontation Clause depends on whether the statement is testimonial in nature. *Davis v. Washington*, 547 U.S. 813, 821 (2006). While evidentiary rulings are within the district court's discretion, whether the admission of evidence violates a defendant's rights under the Confrontation Clause is a question of law that is reviewed de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006).

To determine whether a statement made 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). A statement is testimonial when "the *primary purpose* of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.*

(quotation omitted). A statement is nontestimonial when it is made "under circumstances objectively indicating that the *primary purpose* of the interrogation is to enable police assistance to meet an ongoing emergency." *Id.* (quotation omitted). Nontestimonial statements arise if police questioning "relate[s] directly to addressing the emergency." *State v. Warsame*, 735 N.W.2d 684, 694 (Minn. 2007).

The Supreme Court in *Davis* articulated four objective factors to be considered when determining whether a victim's statements were made to meet an ongoing emergency: (1) the victim described events as they 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 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. at 827.

Locke contends R.M.T.'s statements to the officers were testimonial in nature because the assault on R.M.T. was already over and her statements were geared toward describing past events. Upon "objectively evaluating the statements and actions of the parties . . . in light of the circumstances," we disagree that R.M.T.'s statements were testimonial. *Michigan v. Bryant*, 562 U.S. 344, 370 (2011). R.M.T.'s statements focused on identifying her assailant. Though the assault happened in the past, before the police arrived, R.M.T.'s statements in the recording did not describe the circumstances under which she was injured. Rather, her statements focused on stopping the officers from

apprehending the man in her apartment and describing her assailant, Locke, who had just fled the apartment building.

On the second *Davis* factor, a reasonable listener would likely conclude that R.M.T. was facing an ongoing emergency. At trial, the officer testified he heard yelling and believed an assault was still occurring when he arrived at the apartment door. The body-worn-camera recording also depicts a disordered scene as the officers tried to quickly learn who and where the assailant was while R.M.T. was sitting at a table, crying, yelling her responses, and bleeding significantly from a swelling laceration on her face.

Locke contends that the emergency was over because when the officers arrived on the scene, Locke was no longer present and a threat to the victim. But our caselaw does not "restrict what may constitute an ongoing emergency to such a limited area" based on the victim's location. *Warsame*, 735 N.W.2d at 693-94. "[T]he necessity to assess the assailant and any threat to personal safety is equally applicable when the police are pursuing [an] assailant outside of the victim's proximity." *Id.* at 694. Locke's absence from the apartment does not, by itself, stop the ongoing emergency and render R.M.T.'s statements testimonial. *C.f. Hammon v. Indiana*, 547 U.S. 813, 830 (2006) (determining no emergency was in progress when police arrived and kept the assailant and victim in separate rooms while the victim was questioned). We note Locke had very recently fled from the scene after an alleged violent assault. In fact, Locke shared the apartment with R.M.T. and presumably posed an ongoing threat because he had access to the apartment and might return. *See State v. Washington*, 725 N.W.2d 125, 133 (Minn. App. 2006), *rev. denied* (Minn. Mar. 20, 2007) (finding statements in a 911 call to be nontestimonial and to

resolve an ongoing emergency when the assailant had the ability to return to the crime scene to assault the victims).

On the third factor, the questions asked and answers given were largely to resolve a present emergency. In *Bryant*, police responded to a call that a man had been shot and officers did not know the location of the shooter or any additional circumstances about the shooting. 562 U.S. at 375-76. The court found that the officers' questions to the victim about what happened and who shot him were "the exact type of questions necessary to allow the police to assess the situation, the threat to their own safety, and possible danger to the potential victim and to the public." *Id*. at 376 (quotation omitted). The victim immediately identified the shooter and provided a physical description while bleeding from a gunshot wound and awaiting emergency services. *Id.* at 375. "In other words, [the officers] solicited the information necessary to enable them to meet an ongoing emergency." *Id.* at 376 (quotation omitted).

Here, the officers arrived only with the information that an "unknown trouble" was occurring in the apartment. The officer testified they were greeted at the apartment complex door by a neighbor, who the officer believed to be the 911 caller. The officer testified the neighbor told them, "They are still going at it." When the officer discovered R.M.T. crying and bleeding from a facial laceration, the officer mistakenly assumed the man in the apartment was her assailant. Rather than describing past events, R.M.T.'s initial statements were made to ensure that her at-large assailant was apprehended, not an innocent man. The officer's clarifying question asking "who did it" prompted R.M.T., like the victim in *Bryant*, to say that her assailant fled from the apartment and to provide a brief

description of him—he wore a white jacket and ponytail. The officers' follow-up questions asked about the assailant's name and race. And R.M.T.'s answers developed her assailant's description, ensuring that the correct suspect would be apprehended and informing the officers "whom they are dealing with." *See Davis*, 547 U.S. at 832 ("We have already observed of domestic disputes that officers called to investigate need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim. Such exigencies may often mean that initial inquiries produce nontestimonial statements."). The officers did not try to elicit any information about the altercation leading to R.M.T.'s injury. Their questions focused on what looked like an ongoing emergency, rather than on creating a record for future prosecution. On these facts, it is hard to conclude that the officer's questions and R.M.T.'s statements were to "prove past events potentially relevant to later criminal prosecution." *Id.* at 822.

Finally, the exchange between R.M.T. and the officers exhibited a low level of formality. The interaction in the apartment lasted under one minute. R.M.T. raised her voice while crying to respond to the officers' clarifying questions, reflecting she was frantic, upset, and in pain from the facial laceration that was bleeding significantly.

Taken together, an objective analysis of the statements and actions of the officers and R.M.T., as well as the contemporaneous circumstances, show that the "primary purpose of the interrogation [was] to enable [the officers] to meet an ongoing emergency." *Wright*, 726 N.W.2d at 472. Thus, R.M.T.'s statements were nontestimonial in nature and their admission did not violate Locke's constitutional right to confrontation.

II. Locke is entitled to resentencing based on his correct criminal-history score.

The district court is afforded great discretion in the imposition of sentences and this court will reverse sentencing decisions only for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court must use accurate criminal-history scores to impose presumptive sentences that comply with the sentencing guidelines. *State v. Maurstad*, 733 N.W.2d 141, 142 (Minn. 2007). Any sentence based on an incorrect criminal-history score is an illegal sentence correctable at any time. *Id.* at 147. When a defendant is sentenced based on an incorrect criminal-history score, the district court must resentence the defendant. *State v. Provost*, 901 N.W.2d 199, 202 (Minn. App. 2017).

The parties agree that Locke was sentenced based on an erroneously high criminal-history score of two[1] and has a right to be resentenced based on a criminal-history score of one. We agree. But the parties disagree as to how the district court should have arrived at Locke's criminal-history score when dealing with a partial custody-status point. An offender's criminal-history score is the sum of points assigned to their custody status at the time of the offense and points assigned to certain prior felonies, gross misdemeanors, misdemeanors, and juvenile adjudications. Minn. Sent'g Guidelines 2.B (Supp. 2019). Prior felony points are calculated by assigning a "particular weight for every felony conviction" before sentencing on the present offense. Minn. Sent'g Guidelines cmt.

[1] For violating the no-contact order, the district court sentenced Locke to 18 months in prison and stayed the execution of his sentence based on Locke's two criminal-history points. *See* Minn. Sent'g Guidelines 4.A, 5.A (Supp. 2019) (showing that 18 months and presumptive stayed sentence is the guidelines sentence corresponding to a level four offense and criminal-history score of two).

2.B.101. Custody-status points are assigned when offenders were under some form of eligible criminal justice supervision when they committed the present offense. Minn. Sent'g Guidelines cmt. 2.B.201.

Locke's presentence investigation report and sentencing worksheet reflected that he had a total criminal-history score of two based on the sum of 1.5 felony points and 0.5 custody-status points. But when the sum of the weighted felony points leads to a partial point, the point value for felony points must be rounded down to the nearest whole number. Minn. Sent'g Guidelines 2.B.1.i. Applying the rounding rule to Locke's felony points, Locke is left with one felony point and 0.5 custody-status points for a total of 1.5 criminal-history points. But the sentencing grids' horizontal axes, which reflect an offender's criminal-history score, contain only whole numbers. *See* Minn. Sent'g Guidelines 4.A, 4.B, 4.C (Supp. 2019). In *State v. Beganovic,* this court adopted the Minnesota Sentencing Guidelines Commission's interim guidance that addressed an error in the calculation of criminal-history scores when partial-custody points were present and held that a partial custody-status point should be disregarded when calculating a presumptive sentence. 974 N.W.2d 278, 288 (Minn. App. 2022). According to the interim guidance and *Beganovic*, Locke's total 1.5 criminal-history points are effectively treated as a criminal-history score of one for determining his presumptive sentence because Locke's partial custody-status point is disregarded.[2] *Id.* Because Locke's criminal-history score was incorrectly

[2] The interim guidance memorandum provides instruction for calculating a criminal-history score using facts identical to this case as an example. *See* Minn. Sent'g Guidelines Comm'n, *Half Custody Status Point Problem – Interim Guidance* (Jan. 15, 2022),

calculated and the incorrect score was used to determine his presumptive sentence, Locke's sentence is illegal. *Maurstad*, 733 N.W.2d at 142-47. We reverse and remand for resentencing based on his correct criminal-history score.

Affirmed in part, reversed in part, and remanded.

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https://mn.gov/sentencing-guidelines/assets/20220115-MSGC-PartialPointsinCriminalHistory_tcm30-515455.pdf [https://perma.cc/LH7M-2KHH] (determining that 0.5 custody-status points and 1.5 felony points leads to an accurate criminal-history score of 1.5, which should be treated as a criminal-history score of 1 for finding the presumptive sentence).