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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1182**

State of Minnesota,
Respondent,

vs.

Shawn Michael Manton,
Appellant.

**Filed August 21, 2023
Affirmed
Ross, Judge**

Clay County District Court
File No. 14-CR-20-2529

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

Brian J. Melton, Clay County Attorney, Molly M. Doda, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Shawn Manton arrived drunk at his former girlfriend's home and stabbed a man in the back. Manton challenges his consequent second-degree-assault conviction, arguing that the district court erred by not suppressing in-custody statements he made to a police

investigator because the investigator initiated contact with him after he had been appointed legal counsel. Manton also contends that the district court erred by admitting into evidence a computer-generated report that organized data and text messages from his cellphone because it deprived him of his constitutional right to confront witnesses against him and because the report was not properly authenticated. Because a police investigator may interview a represented, in-custody defendant who validly waives his right to have counsel present, we hold that the district court did not err by denying Manton's motion to suppress. And because the computer-generated report containing Manton's cellphone data does not implicate Manton's rights under the Confrontation Clause and was sufficiently authenticated, we reject his evidentiary argument. We therefore affirm.

FACTS

Shawn Manton and his former girlfriend, whom we will call Andrea for her privacy, exchanged dozens of increasingly hostile text messages throughout one day and into the evening in July 2020. Andrea taunted Manton to come to her Moorhead home to confront her in person, and, after consuming an unspecified number of alcoholic beverages, Manton acquiesced. He parked at the McDonald's across the street from Andrea's house and walked over to her front door. Manton and Andrea argued, Andrea told Manton to leave, and she shoved him away and closed the door.

Andrea's friend, whom we will call Bill to maintain his privacy, was at Andrea's house. After Andrea told Manton to leave, Bill heard a noise near his motorcycle and went to check on it. Manton stabbed Bill in the back with a paring knife. Manton drove to his home across the border in Fargo. At the request of Moorhead police, a Fargo, North Dakota

police officer arrested and jailed him. Moorhead Police Detective Shaun Van Dyke sought to interview Manton at the jail in Fargo, where Manton was being detained. Manton refused to be interviewed.

The State of Minnesota charged Manton with one count of second-degree assault with a dangerous weapon. During his arraignment on July 31, 2020, Manton requested a public defender be appointed to represent him. The district court denied his request. Manton repeated his request for appointed counsel two days after the arraignment, and the district court approved the request on August 3.

On August 4 and 5, Detective Van Dyke went to the Clay County jail where Manton had been transferred and remained in custody, intending to interview him. Detective Van Dyke read Manton the *Miranda* warning on both occasions, including the right to have counsel present during questioning. Manton affirmed that he understood his rights and said he was willing to proceed with the interview. Neither Manton nor Detective Van Dyke were then aware that the district court had already appointed counsel to represent Manton. Manton admitted during the August 4 interview that he went to Andrea's house to confront her. He denied getting into an altercation with another man, but he acknowledged that it was possible and that, if it happened, it would have been in self-defense. He at first denied stabbing the man, but he said he could not remember the events because of his drinking. During the August 5 interview, the detective read text messages Manton sent to others stating, "I just stabbed someone." After he read Manton a text message he sent to Andrea shortly after the altercation, which stated, "You need to take your man to the hospital; I just stabbed the f--k out of him," Manton acknowledged that he must have stabbed Bill. He

added, “I don’t know how it went from fighting to stabbing; he must have threatened me somehow. Something had to have happened. I assume both of them came at me, so, did what I had to do.”

Manton moved the district court to suppress the statements he made to Detective Van Dyke, contending that the detective violated his constitutional right to counsel. The district court denied the motion, concluding that suppression was not warranted. The district court based this conclusion on the fact that Manton had waived his right to have counsel present during the interview and that Detective Van Dyke’s conduct was not egregious because Manton and Detective Van Dyke were both unaware that Manton was represented by counsel at the time of the interviews.

The primary dispute at Manton’s three-day jury trial was whether Manton stabbed Bill in self-defense. Bill testified that he went to the backyard with Andrea to smoke cigarettes after her confrontation with Manton at the door. Bill stated that he became concerned that someone was messing with his motorcycle parked on the side of Andrea’s house, and he went to investigate. He said that Manton appeared before he could reach his motorcycle and said, “I got something for you.” He testified that both men squared up to fight but that, before he could throw a punch, Manton swung and stabbed him in the back with a knife. He said that Manton then returned to his car across the street. Andrea testified that she did not witness the stabbing but saw Manton run towards the McDonald’s while she tended to Bill’s stab wound.

Detective Van Dyke testified, recounting his investigation and reading Manton's text messages admitting to the stabbing. The detective also testified that he interviewed Manton in jail, and jurors heard a redacted audio recording of only the August 4 interview.

Manton testified claiming that he stabbed Bill in self-defense in the McDonald's parking lot after Bill chased him to his car. He testified that Bill swung at him, prompting Manton to stab him once in the back because he could not get into his car without a fight. Manton also discussed the text messages he sent after the altercation, insisting that he had not stated that he was acting in self-defense in those messages because he was afraid and did not know what was happening. He gave these same reasons to explain why he had not described the events the same way during his interview with Detective Van Dyke.

The district court instructed the jury that if it found that Manton had acted in defense of himself when he stabbed Bill, then he was not guilty of the charged crime. The jury found Manton guilty of second-degree assault with a dangerous weapon, rejecting his claim that he acted in self-defense. It sentenced Manton to a 21-month term of imprisonment, stayed on probationary conditions. Manton appeals.

DECISION

Manton argues that he is entitled to a new trial because the district court improperly admitted evidence, specifically, the content of his interview with Detective Van Dyke and the report generated from information on his cellphone revealing data about the text messages he sent shortly after the stabbing. He questions admission of the former on right-to-counsel grounds and the latter on Confrontation Clause and authentication grounds. We address the arguments in turn.

I

We are not persuaded by Manton’s contention that the district court erred by failing to suppress statements he made to Detective Van Dyke during his August 4 in-custody interview. We review a district court’s pretrial order deciding a motion to suppress evidence by considering the factual findings for clear error and legal determinations *de novo*. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). Manton argues that the detective violated his right to counsel by initiating the interview and proceeding with it without notifying Manton’s counsel. The argument is unconvincing.

The argument fails because Manton validly waived his right to have counsel present during this encounter. Both the federal and state constitutions entitle a criminal defendant to counsel to aid in his defense. U.S. Const. amend. VI; Minn. Const. art. I, § 6. “This right attaches as soon as the accused . . . is subject to adverse judicial proceedings, including arraignments.” *State v. Clark*, 738 N.W.2d 316, 337 (Minn. 2007). This right entitles defendants to have counsel present at all critical stages of the proceeding, including during police interrogations. *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009); *State v. Ware*, 856 N.W.2d 719, 725 (Minn. App. 2014). But a defendant may waive this right. *Ware*, 856 N.W.2d at 725 (citing *Montejo*, 556 U.S. at 786). After Detective Van Dyke informed Manton of his right to have counsel present before both interviews, Manton expressly waived that right before proceeding to answer questions.

Manton maintains that his waiver is invalid. For this he relies primarily on two cases. He relies on *Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981), which held that “an accused . . . , having expressed his desire to deal with the police only through counsel, is

not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” And he relies on *Montejo*, which he maintains left open the question as to whether the *Edwards* rule applies to a defendant’s request for counsel at an arraignment or similar proceeding. Minnesota caselaw has already resolved this question against Manton’s contention.

Our decision in *State v. Ware*, applying *Montejo*, refutes Manton’s theory. Ware had repeatedly contacted police before being arrested, seeking to discuss an assault he had committed. 856 N.W.2d at 722–23. The district court appointed Ware a public defender at his first appearance. *Id.* at 723. An investigator went to the jail five days later to interview him, unaware that he had been appointed counsel. *Id.* Ware waived his right to counsel and made incriminating statements that he later sought to suppress. *Id.* We held that suppression was not warranted, relying on *Montejo* and *State v. Buckingham*, 772 N.W.2d 64 (Minn. 2009). *Id.* at 725–26. We explained that *Montejo* was consistent with Minnesota precedent holding that “[p]olice may speak with a defendant, even after appointment of counsel, so long as the defendant does not clearly assert a desire to deal with the police only through counsel.” *Id.* at 725 (quoting *Buckingham*, 772 N.W.2d at 70). And we expressly referenced *Edwards* and its relation to *Montejo* as an essential case safeguarding a defendant’s rights while in custody and subject to interrogation. *Id.* We concluded that “[w]hen a defendant is read his *Miranda* rights’ in a post-arraignment interview ‘and agrees to waive those rights, that typically’ constitutes a valid waiver for Sixth Amendment purposes.” *Id.* at 726 (quoting *Montejo*, 556 U.S. at 786). Because Ware validly waived his right to have counsel

present during the interrogation, we held that his statements should not be suppressed under the Sixth Amendment. *Id.*

Manton argues that the *Ware* court “did not explain how the defendant’s invocation of his right to counsel by applying for a public defend[er] at his first appearance and the police, not the defendant, subsequently initiating contact satisfied the *Edwards* rule.” But the logic of *Ware* undermines this argument. We explained that, if a “defendant does not clearly assert a desire to deal with the police only through counsel,” *Edwards* allows police to initiate contact with the defendant and then interview him so long as police obtained a valid waiver of *Miranda* rights. *Id.* at 725–26 (quotation omitted). Requesting a public defender at arraignment is not clearly asserting a desire to speak only through counsel. We also need not address Manton’s suggestion that the state constitution may afford greater protection to defendants than the United States Constitution; we have already held that *Montejo* is consistent with state supreme court precedent on this issue. *Id.* at 726.

Under *Montejo*, *Edwards*, *Buckingham*, and *Ware*, Detective Van Dyke could initiate contact with Manton despite Manton’s having already been appointed counsel. Manton does not argue on appeal that the waiver of his rights during his in-custody interview was unknowing, unintelligent, or involuntary. *See Montejo*, 556 U.S. at 786 (explaining requirements for defendant to waive Sixth Amendment right to counsel). Because Manton validly waived his right for counsel to be present during the interview with Detective Van Dyke, the district court did not err by refusing to suppress the statements made during the interview.

II

Manton next argues that he is entitled to a new trial because the district court violated his right to confront witnesses against him by admitting into evidence the report organizing and containing the data from his cellphone, including his text messages, and alternatively because the district court failed to follow the rules of evidence by admitting the report without sufficient authentication. Neither contention prevails.

The district court did not violate Manton's right to confrontation by admitting the report because the report is not a testimonial statement. The Sixth Amendment affords the criminally accused the right "to be confronted with the witnesses against him." U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. Subject to exceptions, the Confrontation Clause bars the admission of prior testimonial statements of an unavailable witness who was not subject to cross-examination. *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). Whether the admission of evidence violates a defendant's Confrontation Clause rights is a question of law reviewed *de novo* on appeal. *State v. Sutter*, 959 N.W.2d 760, 764 (Minn. 2021). Manton did not raise his Confrontation Clause objection to the district court, so we evaluate his contention under our plain-error standard of review. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under this standard, the defendant has the burden of first demonstrating that the district court erred. *Id.* Manton fails at this first step.

The report generated from Manton's cellphone data is not a testimonial statement under the Confrontation Clause. It is the same sort of report we have held to be nontestimonial. In *State v. Ziegler*, the state utilized software to extract data from a car's data recorder. 855 N.W.2d 551, 552–53 (Minn. App. 2014). Ziegler argued that the report

contained testimonial information prepared for litigation. *Id.* at 554. We rejected the argument, holding that machine-generated statements are not subject to a Confrontation Clause analysis if the resulting report summarizing the data is not altered or modified by human intervention. *Id.* at 557–58. Although our holding was limited to data “that do not contain the statements of human witnesses,” *id.* at 558, our analysis focused on whether the person utilizing the extraction software alters or manipulates the data during its extraction and recording, *id.* at 557. We emphasized that the class of testimonial statements under the Confrontation Clause analysis generally includes extrajudicial statements like affidavits or depositions, custodial examinations, or other evidence that “would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” *Id.* at 554 (quoting *Crawford*, 541 U.S. at 51–52). *Ziegler* is instructive here.

The report generated from Manton’s cellphone data is likewise not a testimonial statement. Detective Van Dyke executed a warrant to search Manton’s cellphone before directing a technician to connect the phone to a data-extraction program and generate a report of the phone’s contents and data. The detective received a copy of the report, and the record does not suggest that the report was modified after the program extracted the data. Under *Crawford* and *Ziegler*, we see no error in the district court’s decision admitting the computer-generated report.

Manton also contends that the report was improperly admitted because it was not sufficiently authenticated. The decision to admit evidence falls within the discretion of the district court, and we will not reverse an evidentiary ruling unless the district court clearly abused that discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014); *see also Turnage*

v. State, 708 N.W.2d 535, 542 (Minn. 2006) (discussing standard of review for objection based in foundation). Manton fails to establish that the district court abused its discretion.

The state laid sufficient foundation to authenticate the report. Authentication requires evidence “sufficient to support a finding that the matter in question is what its proponent claims.” Minn. R. Evid. 901(a). Evidence can be authenticated through “[t]estimony that a matter is what it is claimed to be.” Minn. R. Evid. 901(b)(1). Detective Van Dyke testified that he obtained a warrant for Manton’s cellphone and directed the technician to extract the data from the phone. The technician used an extraction program to generate the report, and the detective received the report generated by the program and confirmed that the report the state offered as evidence was the same report based on his pretrial review of the exhibit. He also described the information contained within the report and confirmed that the phone number associated with the report belonged to Manton. This testimony sufficiently authenticated the report.

We are not persuaded otherwise by Manton’s assertion that only the technician could properly authenticate the report that the district court admitted into evidence. Our caselaw does not require such a rigid approach. We have previously recognized that “it is not the case . . . that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution’s case.” *Ziegler*, 855 N.W.2d at 558 (quoting *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 311 n.1 (2009)); *see also State v. Coy*, 200 N.W.2d 40, 44 (Minn. 1972) (“Except when foundation and probative value are entirely absent, they bear on the weight of the evidence rather than its admissibility.”). Manton was free to urge the

jury not to rely heavily on the report by pointing out that the state produced only the detective, but not the technician, to verify that the report accurately documented the contents of Manton's phone. But we are satisfied that the district court acted within its discretion by admitting the report based on the detective's testimony. Because the district court acted within its discretion, we need not discuss whether the alleged error was harmless.

Affirmed.