This opinion is nonprecedential except as provided by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
A22-1752

State of Minnesota,
Respondent,

vs.

Stacey Kay Johnson,
Appellant.

Filed December 18, 2023
Affirmed
Smith, Tracy M., Judge

Crow Wing County District Court
File No. 18-CR-21-3095

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

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from a judgment of conviction for first-degree assault, appellant Stacey Kay Johnson argues that she is entitled to a new trial because the district court

prevented her from presenting a complete defense when it excluded two pieces of evidence offered by the defense. First, Johnson argues that the district court improperly excluded evidence that, after Johnson's arrest, the alleged victim—Johnson's ex-boyfriend, M.D.—stole money from her, which Johnson offered to challenge M.D.'s credibility. Second, Johnson argues that the district court improperly excluded testimony from a police officer that Johnson said "why" when she was arrested, which Johnson offered to show her reaction to being arrested. Because we discern no abuse of discretion in the district court's evidentiary rulings, we affirm.

FACTS

The following facts are drawn from the jury trial in this case and the district court proceedings.

Early in the summer of 2021, Johnson and M.D. ended their seven- or eight-year, intermittent relationship. But, later in the summer, M.D. allowed Johnson to live in his apartment again because Johnson had nowhere else to stay.

According to M.D., one night in August 2021, he fell asleep on the couch with his keys and wallet on the floor next to the couch. M.D. owned a knife, which he kept inside a plastic sheath on a side table next to the couch. M.D. did not move, unsheathe, or otherwise touch the knife that night. Sometime that night, M.D. awoke to go to the bathroom. When he returned to the living room, M.D. saw Johnson going through his pants pockets and his wallet and he saw her grab his keys. M.D. walked up behind Johnson, grabbed her by the shoulders, and asked her what she was doing. Although M.D. did not see exactly what

happened, he suddenly felt a burning sensation in his arm and felt his arm get wet. When he looked down, he saw that his arm was covered in blood.

A woman, L.C., was in an apartment across the hall. She heard a voice saying, "No, no, don't," and then heard a "horrific" scream. L.C. knocked on M.D.'s apartment door, and M.D. came to the door bleeding profusely. Johnson told L.C. to "get the f---" out of there. L.C. called the police, and an officer arrived shortly thereafter. When the officer entered M.D.'s apartment, he saw a large amount of blood on the floor and saw M.D. standing next to the couch with two towels wrapped around his arm as tourniquets. M.D. told the officer that he needed to go to the hospital. When the officer asked M.D. what had happened, M.D. said that he fell on a knife. An ambulance arrived on the scene, and M.D. was taken to the local Brainerd hospital.

The officer checked the apartment and confirmed that Johnson was the only other person there. After asking Johnson some questions about what had happened, the officer arrested Johnson and handcuffed her. According to the officer, upon arrest Johnson was emotional and crying and went limp. The officer did not recall Johnson being "surprised."

When M.D. arrived at the hospital, he had no pulse in his right arm, and, when his homemade tourniquets were removed, his arm began to bleed so profusely that a new tourniquet had to be applied. Because of suspected arterial injuries, arrangements were made to transfer M.D. to a hospital in St. Cloud.

Before the transfer took place, a second police officer spoke with M.D. This time, M.D. told the officer that Johnson stabbed him in the arm when he confronted her about

the keys. In searching the apartment, officers found a knife with blood on it lying on the floor between the side table and the wall.

M.D. underwent two surgeries to repair a lacerated brachial artery and a nearly severed median nerve. He was in the hospital for six or seven days, was unable to work for over a month, and continued to suffer from pain for months thereafter.

Respondent State of Minnesota charged Johnson with first-degree assault, in violation of Minnesota Statutes section 609.221, subdivision 1 (2020), and second-degree assault with a dangerous weapon, in violation of Minnesota Statutes section 609.222, subdivision 2 (2020).

Before trial, Johnson filed a motion in limine asking the district court to permit her to question M.D. on cross-examination about his stealing funds from Johnson's bank account while she was incarcerated following her arrest. Johnson also asked for permission to introduce extrinsic evidence of the theft. The district court denied Johnson's motion under Minnesota Rules of Evidence 608(b) and 403.

At trial, defense counsel cross-examined the arresting officer about Johnson's reaction to being arrested. Defense counsel asked, "Didn't she blurt out 'why'?" The state objected on hearsay grounds. The district court initially overruled the objection but, after a brief sidebar conference, sustained the state's objection. The following day, the district court heard additional arguments from the parties on the issue and ultimately decided to exclude the evidence under Minnesota Rule of Evidence 403.

The jury found Johnson guilty of both charges. The district court convicted her of first-degree assault and sentenced her to 96 months in prison.

Johnson appeals.

DECISION

Johnson argues that she was prevented from presenting a complete defense when the district court denied her requests to introduce (1) evidence that M.D. stole money from Johnson's bank account after her arrest and (2) testimony from the arresting officer that Johnson said "why" when she was arrested.

The Due Process Clauses of the United States and Minnesota Constitutions protect a criminal defendant's right to a meaningful opportunity to present a complete defense. *See* U.S. Const. amend XIV; Minn. Const. art. I, § 7. A criminal defendant's due process right to present a complete defense generally "yields to the application of an evidentiary rule unless the rule 'infringe[s] upon a weighty interest of the accused and [is] arbitrary or disproportionate to the purposes [the rule is] designed to serve'" or unless the rules of evidence "serve no legitimate purpose or . . . are disproportionate to the ends that they are asserted to promote." *State v. Pass*, 832 N.W.2d 836, 841-42 (Minn. 2013) (alteration in original) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324-26 (2006)).

"[Appellate courts] review a district court's evidentiary rulings for abuse of discretion, even when, as here, the defendant claims that the exclusion of evidence deprived him of his constitutional right to a meaningful opportunity to present a complete defense." *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Mikell*, 960 N.W.2d 230, 256 (Minn. 2021) (quotation omitted).

If an evidentiary ruling reaches the level of a constitutional error, the standard of review is whether the exclusion of the evidence was "harmless beyond a reasonable doubt." *State v. Smith*, 876 N.W.2d 310, 331 (Minn. 2016) (quotation omitted).

Evidence of Alleged Theft of Funds

Johnson argues that the district court abused its discretion by precluding her from introducing evidence that M.D. stole funds from her bank account while she was incarcerated pending trial. Johnson argues that evidence of M.D.'s alleged theft was admissible for two reasons: (1) it was probative of M.D.'s credibility and character for truthfulness and (2) it was relevant to show a motive to fabricate testimony—namely, to keep Johnson incarcerated so that M.D. would not face consequences for taking her money.

Under Minnesota Rule of Evidence 608(b), a district court may allow a party to cross-examine witnesses about specific instances of conduct that are probative of a character for truthfulness or untruthfulness. The rule does not require the district court to admit all evidence that is probative of a witness's character for truthfulness or untruthfulness. Rather, evidence of specific acts of conduct that bear on a witness's character for truthfulness or untruthfulness is admissible "in the discretion of the court." Minn. R. Evid. 608(b).

Under Minnesota Rule of Evidence 403, a district court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay [or] waste of time."

Here, the district court explained its decision to exclude the evidence as follows:

> My ruling is that this evidence will not be allowed. Under Rule 608(b), I do not find that there is enough information here to indicate that it's particularly probative as to truthfulness or untruthfulness as the whole issue could just open up a—just a sideshow of a lot of reasons why if this in fact did happen, rationalizations he would have for it, I don't find it particularly probative as to truthfulness or untruthfulness.
>
> Under 403 of evidence, to the extent there may be some probative value, I find the probative value to be substantially outweighed by the danger of unfair prejudice, confusion of the issues, and inefficiency and undue delay and waste of time. Therefore, I am not going to allow that evidence.

Johnson argues that the ruling was erroneous because M.D.'s credibility was the most important aspect of the case and evidence that M.D. stole money from Johnson while she was incarcerated was relevant to his credibility. Johnson asserts that M.D.'s credibility was particularly important because M.D. changed his story regarding what happened the night of the incident several times.

On this record, we discern no abuse of discretion in the district court's ruling. During arguments on the issue, defense counsel stated that Johnson had a statement from her bank showing transfers bringing her account balance from $2,799 down to $.90 during the months that she was incarcerated before trial. But the state argued that the document did not indicate who made the transfers or whether Johnson and M.D. had joint use of the account or the money. Moreover, the state observed that the defense had ample other bases for impeaching M.D.'s credibility: M.D. had felony convictions, and he changed his story about the stabbing over the course of the night. We conclude that the district court did not abuse its discretion when it determined that the evidence of the alleged theft of Johnson's

funds after her arrest was not particularly probative of M.D.'s character for truthfulness or untruthfulness and denied admission of the evidence under rule 608(b).

Moreover, we see no abuse of discretion in the district court's exclusion of the evidence under rule 403. The district court noted that the evidence could open up a "sideshow" regarding if and why M.D. transferred Johnson's money. In addition, the state argued that questioning M.D. about this specific instance of conduct would be highly prejudicial because he would likely invoke his Fifth Amendment right to remain silent. Under these circumstances, we conclude that the district court did not abuse its discretion when it concluded that the probative value of the evidence was substantially outweighed by other concerns and denied admission of the evidence under rule 403.

Johnson's Statement of "Why" Upon Arrest

We turn to Johnson's second challenge. At trial, Johnson's counsel cross-examined the arresting officer and the following exchange ensued:

> Q: [W]hen [Johnson] was placed under arrest, handcuffed, she appeared very surprised. Is that not correct?
> A: Umm—
>
> Q: Do you recall?
> A: I recall arresting her. I don't recall her being surprised as much as emotional.
>
> Q: Okay. In what way?
> A: Crying and then—and then going limp.
>
> Q: Didn't she blurt out why?

The state objected to the last question on hearsay grounds, and, after a sidebar, the district court sustained the state's objection. Later that day, the district court made a record of its

ruling and explained that it sustained the state's objection because Johnson's statement could be understood as "meaning why am I being arrested" and "could appear to be a self-serving hearsay proclamation of innocence." After further argument, the district court confirmed its ruling because it did not "discern any [probative] value other than to prove that [Johnson] was surprised she was being arrested because she was . . . innocent."

The next day, both parties provided more argument on the issue. Johnson's trial counsel argued that Johnson's statement fell into the state-of-mind hearsay exception under Minnesota Rule of Evidence 803(3) because the statement expressed her surprise at being placed under arrest. The district court agreed that the statement "could certainly be" an expression of state of mind under rule 803(3). But the district court ultimately excluded the evidence. It ruled not that the evidence was barred by the hearsay rule but that, under Minnesota Rule of Evidence 403, the evidence should be excluded because any relevance that the statement had was "slight" and the statement's relevance was "outweighed by the danger of confusion of the issues and other concerns laid out in Rule 403."

Johnson asserts that the district court erred when it did not allow her to introduce the evidence because her statement was relevant, it was not hearsay, and, if it was hearsay, it fell within the state-of-mind hearsay exception.

Although the district court did not ultimately exclude the evidence based on the hearsay rule, we address the rule because it informed the district court's decision under rule 403. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Absent an exception, hearsay is not admissible. Minn. R. Evid. 802. Johnson argues that her statement "why" was not hearsay because she was not

offering it to prove the truth of the matter asserted; rather, she was offering her statement to establish her reaction to being arrested. The district court, though, reasoned that Johnson's statement "why" could reasonably be interpreted to mean "why am I being arrested," which would be an assertion that she was surprised and thus innocent. Under these circumstances, the district court reasonably concluded that the statement could be offered to prove the truth of the matter implicitly asserted—that Johnson was innocent. But the district court also later concluded that the statement could fall into the rule 803(3) state-of-mind exception because it could be interpreted as merely demonstrating Johnson's condition of being surprised and upset—not just interpreted as an assertion of innocence.

Even so, the district court ultimately excluded the evidence under rule 403 because it concluded that the probative value was outweighed by the danger of confusion of the issues and other concerns outlined in the rule.

Challenging that decision, Johnson emphasizes that her statement was relevant to her defense because it refuted the state's theory that she knew that she assaulted M.D. But the district court did not find that Johnson's statement had no relevance; rather, it found that Johnson's statement had "slight" relevance. The ambiguity of the statement "why," in conjunction with the admitted testimony from the officer describing Johnson's emotional reaction to being arrested, supports the district court's finding that Johnson's statement had relatively low probative value.

In addition, the record supports the district court's determination that the statement's probative value was outweighed by other concerns in rule 403. "[T]he term 'prejudice' in [r]ule 403 does not mean the damage to the opponent's case that results from the legitimate

probative force of the evidence; rather, it refers to the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means." *State v. Mosley*, 853 N.W.2d 789, 797 (Minn. 2014) (quotation omitted). "Consequently, if relevant evidence has the effect of persuading the jury through illegitimate means, it must be excluded from trial." *State v. Hallmark*, 927 N.W.2d 281, 299 (Minn. 2019).

The district court explained that, to the extent that Johnson's statement is interpreted as a proclamation of innocence, the statement would be a "self-serving" statement. A criminal defendant's self-serving out-of-court statements are generally inadmissible because they allow the "defendant the opportunity to present [their] version of the facts without ever being subject to cross-examination by the state." *State v. Taylor*, 258 N.W.2d 615, 622 (Minn. 1977); *see also Dolo v. State*, 942 N.W.2d 357, 367 n.9 (Minn. 2020) (concluding that the defendant's out-of-court statements denying sexual abuse were inadmissible self-serving hearsay). Although Johnson's statement may have also had a non-prejudicial interpretation, the record shows that the district court was concerned about an interpretation that could persuade the jury by illegitimate means. On this record, we conclude that the district court did not abuse its discretion when it excluded this evidence under Minnesota Rule of Evidence 403.

Because we conclude that the district court's evidentiary rulings did not constitute an abuse of discretion, we need not reach the question whether any error was harmless beyond a reasonable doubt.

Affirmed.