

*This opinion is nonprecedential except as provided by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
A22-1759**

State of Minnesota,
Respondent,

vs.

Ronald Curtis Mitchell,
Appellant.

**Filed November 13, 2023
Affirmed
Reyes, Judge**

Stearns County District Court
File No. 73-CR-21-7375

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges his felony domestic-assault conviction, arguing that the district court abused its discretion by (1) admitting the victim's 911 call under the excited-

utterance exception to the hearsay rule and (2) admitting the victim's out-of-court statements under the residual exception to the hearsay rule. We affirm.

FACTS

Appellant Ronald Curtis Mitchell shared a home with his long-time girlfriend and her son, T.L. On the night of the incident, T.L. called 911, stating that appellant "took a swing at" T.L., threatened T.L. and T.L.'s mother, and kicked a hole in T.L.'s bedroom door. Officers responded to appellant's home and discussed the incident with T.L., T.L.'s mother, and appellant in conversations recorded on the officers' body cameras. T.L. reiterated that appellant had threatened T.L. and T.L.'s mother, demonstrated assaultive behavior, attempted to punch T.L., and kicked in T.L.'s bedroom door. Both T.L. and T.L.'s mother told the officers that they feared that appellant would physically harm T.L.

Respondent State of Minnesota charged appellant with felony domestic assault (fear) under Minn. Stat. § 609.2242, subd. 4 (2020). The state moved to admit both the recording of T.L.'s 911 call and the body-camera video capturing T.L.'s statements to the responding officers. Over appellant's hearsay objections, the district court admitted T.L.'s 911 call as an excited utterance under Minn. R. Evid. 803(2), and the body-camera video under the residual hearsay exception in Minn. R. Evid. 807. At trial, T.L., T.L.'s mother, appellant, and the responding officers testified about the incident. The jury also heard T.L.'s 911 call, watched the officers' body-camera videos, and saw photographic evidence of the damage to T.L.'s bedroom door.

The jury found appellant guilty. The district court imposed a 15-month prison sentence, stayed for five years. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by admitting (1) T.L.’s 911 call and (2) the body-camera videos capturing T.L.’s statements to the responding officers over appellant’s hearsay objections.

Hearsay statements, or statements made by an out-of-court declarant offered to prove the truth of the matter asserted, are inadmissible unless the statement falls within a recognized exception to the hearsay rule. Minn. R. Evid. 801(c), 802, 803; *State v. Bradford*, 618 N.W.2d 782, 793 (Minn. 2000).

Appellate courts review a district court’s determination that a statement meets the requirements of a hearsay exception for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). “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. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). A defendant claiming that the district court improperly received evidence has the burden to show both error and prejudice resulting from the error. *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009).

I. The district court did not abuse its discretion by admitting T.L.’s 911 call as an excited utterance.

Appellant first asserts that the district court abused its discretion by admitting T.L.’s 911 call as an excited utterance. We are not persuaded.

A hearsay statement is admissible as an excited utterance if three conditions are met: (1) a startling event exists; (2) the statement relates to the startling event; and (3) the

declarant was sufficiently excited by the event to ensure the statement's trustworthiness. *State v. Daniels*, 380 N.W.2d 777, 782 (Minn. 1986); Minn. R. Evid. 803(2).

Appellant contends that T.L.'s 911 statements were not excited utterances because the startling event was confined to appellant swinging at T.L., which occurred before T.L.'s 911 call. However, the "startling event" was not so limited. The record reflects that appellant's assaultive behavior continued after the attempted punch and lasted throughout T.L.'s 911 call. During the call, T.L. reported that appellant threatened T.L. and T.L.'s mother, chased T.L., tried to fight T.L.'s mother, and kicked a hole in T.L.'s door. Assaultive behavior can qualify as a startling event. *State v. Tapper*, 993 N.W.2d 432, 438 (Minn. 2023); *State v. Hogetvedt*, 623 N.W.2d 909, 913 (Minn. App. 2001), *rev. denied* (Minn. May 29, 2001). Because both the attempted punch and appellant's subsequent assaultive behavior were part of an ongoing startling event, appellant's argument that no startling event existed during T.L.'s 911 call fails.

Appellant next cites *State v. Davis* to contend that the circumstances underlying T.L.'s statements, including T.L.'s "matter-of-fact" demeanor and the 30-minute period between the attempted punch and the 911 call, demonstrate that T.L. was not sufficiently excited to admit his 911 statements as excited utterances. *See* 820 N.W.2d 525, 536 (Minn. 2012).

Appellant's reliance on *Davis* is misguided. In holding that the challenged statements were not excited utterances, the *Davis* court emphasized that, not only did the declarants not appear "animated" while providing their statements, but there was also no evidence or testimony suggesting that the declarants were startled by the shooting. *Id.*

Conversely, ample evidence demonstrates that appellant's actions startled T.L., including T.L.'s strong language during the 911 call, T.L. reporting that he feared appellant during the assault, T.L.'s mother asserting that she feared appellant would harm her or T.L., and the documented physical evidence of T.L.'s damaged door. Furthermore, because we have already concluded that appellant's assaultive conduct was part of an ongoing startling event that persisted throughout T.L.'s 911 call, *Davis*'s focus on the ten-minute gap between the startling event and the subsequent statements provides no support for appellant's position. *Id.* at 535-36.

The substantial evidence corroborating T.L.'s 911 statements therefore distinguishes this case from *Davis* and supports the district court's determination that T.L. was under a sufficient aura of excitement during the 911 call to admit his 911 statements as excited utterances.

II. The district court did not abuse its discretion by admitting T.L.'s hearsay statements from the body-camera video under the residual exception.

Appellant next argues that the district court abused its discretion by admitting the responding officers' body-camera video under the residual exception. We disagree.

The decision to admit hearsay statements under the residual exception is a two-step process. *Hallmark*, 927 N.W.2d at 292. First, the district court evaluates the totality of the circumstances to determine whether the statements have sufficient circumstantial guarantees of trustworthiness. *Id.* Second, the district court must assess whether the statements satisfy the requirements of Minnesota Rule of Evidence 807. *Id.* at 293.

A. T.L.’s statements to the responding officers were trustworthy under the totality of the circumstances.

When evaluating the trustworthiness of a statement under the totality of the circumstances, appellate courts often consider four nonexclusive factors, including: (1) the lack of a Confrontation Clause issue because the declarant testifies, admits to making the prior statement, and is available for cross-examination; (2) the statement is recorded, removing any real dispute about what the declarant said; (3) the statement is against the declarant’s penal interest; and (4) the statement is consistent with the state’s other evidence that points strongly toward the defendant’s guilt. *Id.*; *State v. Ortlepp*, 363 N.W.2d 39, 44 (Minn. 1985). Conversely, circumstances tending to undermine a statement’s trustworthiness include a significant period of time between the event and the statement, an unsworn statement that cannot be tested by cross-examination, a statement offered without firsthand knowledge, and when the declarant has a strong incentive to make a false statement. *State v. Hansen*, 312 N.W.2d 96, 101-02 (Minn. 1981); *Hallmark*, 927 N.W.2d at 293.

Appellant concedes that T.L.’s statements to the responding officers satisfy the first two *Ortlepp* factors. The thrust of appellant’s argument is that T.L.’s body-camera-video statements do not satisfy the fourth *Ortlepp* factor because they are inconsistent with the state’s other evidence. Specifically, appellant notes that, at trial, T.L. testified that he was not afraid of appellant on the night in question and that appellant was “randomly punching” rather than swinging at T.L., contradicting T.L.’s statements to the responding officers.

Despite T.L.'s testimony downplaying the severity of appellant's conduct, the state's evidence is otherwise consistent with T.L.'s statements to the responding officers. T.L.'s recorded statements corroborated the statements T.L. made during his 911 call regarding appellant's threatening behavior, assaultive conduct, and kicking a hole in T.L.'s door. Notably, the 911 call and the recorded statements were made during and shortly after the assault. T.L.'s statements were further corroborated by recorded statements from T.L.'s mother, the responding officers' testimony, and the physical evidence from T.L.'s damaged door. Although T.L. minimized appellant's conduct at trial, he still testified that appellant was intoxicated, throwing punches, yelling belligerently, and had kicked a hole in T.L.'s bedroom door. The evidence verifying T.L.'s initial reports to the responding officers therefore supports the district court's finding that T.L.'s statements were consistent with the state's additional evidence.

Appellant also contends that T.L.'s statements were not against his penal interests. Although *Ortlepp*'s third factor generally requires that a declarant's statements be against their own penal interests, we have concluded that the penal-interest factor may be satisfied if the declarant's statements are against their social interest in maintaining their relationship with the defendant. *See, e.g., State v. Whiteside*, 400 N.W.2d 140, 146 (Minn. App. 1987) (concluding statement by defendant's girlfriend implicating defendant was against her penal interests), *rev. denied* (Minn. Mar. 18, 1987). The state contends that, like *Whiteside*, T.L.'s desire to protect his mother's long-term relationship with appellant provided a strong social incentive against making his initial statements to the responding officers, and therefore the statements were against T.L.'s interests. We need not address the merits of

the state's argument to resolve this issue because, even if the penal-interest factor is neutral, the remaining *Ortlepp* factors decidedly support the district court's determination that T.L.'s statements were sufficiently trustworthy to be admitted under the residual exception.

Furthermore, the underlying factual circumstances support that T.L.'s statements were not the result of deliberate fabrication. T.L. made the statements with firsthand knowledge, shortly after the event, and had no motive to deceive the officers.¹ *Contra Hansen*, 312 N.W.2d at 101-02; *Hallmark*, 927 N.W.2d at 293. Because the *Ortlepp* factors and underlying factual conditions show that T.L.'s statements were trustworthy under the totality of the circumstances, T.L.'s statements satisfy the first step to admit hearsay statements under the residual exception. *Hallmark*, 927 N.W.2d at 292-93.

B. T.L.'s statements to the responding officers satisfy the requirements to admit hearsay statements under rule 807.

The second step to admit T.L.'s hearsay statements under the residual exception requires assessing the statements against the three requirements of rule 807. *Id.* at 293. Under rule 807, hearsay statements not covered by an enumerated exception are nevertheless admissible if the district court determines that: (1) the statements are offered as evidence of a material fact; (2) the statements are more probative on the point for which they are offered than any other evidence the proponent can obtain through reasonable efforts; and (3) the general purposes of the rules of evidence and the interests of justice will be best served by admitting the statements. Minn. R. Evid. 807.

¹ Appellant suggests that T.L. may have fabricated his statements due to appellant threatening T.L.'s mother. However, the record provides no support for this inference.

Appellant concedes that the first two elements are met and only contests rule 807's final prong, asserting that the interests of justice would not be served by admitting hearsay statements made "under unreliable circumstances like these." However, as discussed above, the record demonstrates that T.L.'s statements are sufficiently trustworthy to be admitted under the residual exception. Appellant's allegations of untrustworthiness alone are insufficient to exclude T.L.'s statements under rule 807's interests-of-justice prong.

Because T.L.'s body-camera-video statements satisfy the requirements to be introduced as hearsay statements under the residual exception, the district court did not abuse its discretion by admitting the body-camera video capturing T.L.'s statements to the responding officers.

Affirmed.