STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0425

State of Minnesota,
Respondent,

vs.

Jeremiah Zekial Jones,
Appellant.

Filed January 29, 2024
Affirmed
Florey, Judge*

Stearns County District Court
File No. 73-CR-22-7584

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Florey, Judge.

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from the final judgment, appellant argues that his convictions of violating a Domestic Abuse No-Contact Order (DANCO) must be reversed because (1) the district court abused its discretion by admitting hearsay statements into evidence and (2) the district court violated appellant's right to confrontation by admitting said statements. We affirm.

FACTS

On August 15, 2022, J.L.V. called law enforcement to report a "domestic dispute" between herself and the appellant, Jeremiah Zekial Jones. Jones appeared for a hearing before the Honorable Laura Moerhle on August 19, 2022. At the hearing, the district court issued a DANCO, which prohibited Jones from contacting J.L.V. This included any direct contact or contact through others in person, by phone, in writing, or electronically.

Following the hearing, in early September 2022, Jones was held at the Stearns County jail. The Stearns County jail had a "HomeWAV kiosk," which allowed inmates to make video and audio calls and receive video messages. The jail's HomeWAV kiosk system blocks known phone numbers of alleged victims. Jones used this kiosk to communicate with a visitor registered under a name with the initials S.K.A. multiple times. An officer tasked with reviewing footage of video visits noticed that the person in the video communications from the account registered as S.K.A. did not match the photo identification provided when the account was created. The officer was able to identify the person in the videos who had been communicating with Jones as J.L.V. based on a photo

law enforcement had on file. Accordingly, respondent State of Minnesota charged Jones with five counts of violating a no-contact order within ten years of the first of two or more convictions. The matter proceeded to a jury trial held in December 2022.

One issue at trial was whether Jones was aware of the DANCO. No witnesses at trial could testify that Jones had been served with the DANCO, so the state offered into evidence a redacted copy of the transcript from the hearing on August 19, 2022. The transcript included the district court judge's statements granting the DANCO and instructing Jones, who was present at the hearing, to "[h]ave no contact with the alleged victim." The judge specified that this meant "no [contact] in-person, no electronic [contact], no social media [contact], [and] no contact through third parties." The transcript was admitted into evidence over Jones's objections that the transcript contained hearsay statements and that admitting the statements violated Jones's confrontation rights under *Crawford v. Washington*, 541 U.S. 36 (2004).

The district court instructed the jury that, "[u]nder Minnesota law, whoever violates a [DANCO] . . . and knows of the existence of the Order is guilty of a crime." The jury found Jones guilty of all five counts of violating a DANCO. The district court sentenced Jones to 36 months in prison for counts 1, 3, 4, and 5, to be served concurrently, and 12 months and one day in prison for count 2, to be served consecutively. Jones now appeals.

DECISION

I. The district court did not abuse its discretion by admitting transcript statements by the district court judge during Jones's DANCO hearing over Jones's hearsay objection.

"Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). "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).

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Hearsay is excluded under Minn. R. Evid. 802 unless some exception applies. Accordingly, there are two steps to every hearsay analysis. First, we must determine whether the statement at issue is an out-of-court statement that is being used to prove the truth of the matter asserted and thus hearsay. If the statement is an out-of-court statement presented for the truth of the matter asserted, we must then determine whether an exception to the exclusionary rule for hearsay applies.

Here, the contested statements were the district court judge's statements from the hearing transcript. The district court judge informed Jones that she was granting a DANCO against him and explained that he could not have contact with J.L.V. These statements were relevant at trial because the state had to prove that Jones "kn[ew] of the existence of the [DANCO]."

Jones argues that this case involves "double hearsay" or "hearsay within hearsay." *See* Minn. R. Evid. 805. He asserts that each layer of hearsay has a separate declarant. The declarant for the first layer is the district court judge who made the statements. The declarant for the second layer is the court reporter who documented the statements made in court and prepared the transcript. Under Minn. R. Evid. 805, "[h]earsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules." Thus, we address the statements by each declarant in turn.

A. The district court judge's statements are not hearsay.

We first address whether the district court judge's statements at the DANCO hearing are inadmissible hearsay. If an out of court statement is "used in court for some . . . purpose" other than to prove the truth of the matter asserted, "such as to prove knowledge, notice, or for impeachment purposes[,] it is not hearsay." Minn. R. Evid. 801(a)-(c) 1989 comm. cmt. Accordingly, in *State v. Leja*, this court determined that a statement was not hearsay when it was used "not for its truth, but to show [the defendant's] knowledge." 660 N.W.2d 459, 465 (Minn. App. 2003), *aff'd on other grounds*, 684 N.W.2d 442 (Minn. 2004).

Jones claims that "there is . . . no question that the judge's statements were offered for the truth of the matter asserted." We disagree. The state introduced the district court judge's statements not to prove the contents of those statements, but to prove that Jones knew of the DANCO when he violated it. In other words, these statements were not offered to show that there was, in fact, a DANCO, but to show that Jones was informed that a

DANCO was in place. Therefore, these statements are not hearsay because they are being used to show Jones's knowledge, not the truth of the matter asserted.

Since the district court judge's statements are not hearsay, we need not address whether any hearsay exception applies.

B. The statements in the transcript are admissible under the public-records hearsay exception.

Next, we address whether the court reporter's transcription of these statements is inadmissible hearsay. The declarant for these statements is the court reporter preparing the transcript. These statements are being used to prove the truth of the matter asserted because they were admitted to show that the judge made these statements to Jones. Accordingly, we consider whether an exception to the exclusionary hearsay rule applies.

At trial, the district court determined that the transcript was admissible under the public-records exception, Minn. R. Evid. 803(8), and the residual exception, Minn. R. Evid. 807. Minnesota Rule of Evidence 803(8) allows admission of hearsay statements contained in public records. The rule states that:

> [u]nless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases and petty misdemeanors matters observed by police officers and other law enforcement personnel.

The court found that the information in the transcript "does *not* lack indications of trustworthiness," that "[i]t is an official court report created by an [o]fficial [c]ourt [r]eporter in her official capacity and duties and certified to as such," that "it covers the

official duties and activities of that office of the court reporter as well as the office of the Judicial Branch and the presiding judge," and that it "reflects matters that were specifically observed pursuant to the court reporter's duties" of transcribing proceedings. Accordingly, the district court determined that the document was trustworthy and permitted the statements on those grounds.

Jones argues on appeal that this exception does not apply because the state "did not obtain the transcript of [the judge's] statements *from a public office or agency*" and instead obtained the transcript directly from the court reporter. The state argues that "[t]his is an overly technical and unjustifiably narrow interpretation of Rule 803(8)." We agree with the state.

The language of the rule indicates that documents "of public offices or agencies" are admissible and does not state that such documents must be obtained *from* a public office or agency, as Jones asserts. Jones does not cite to any authority requiring that a party obtain public documents *from* a public office or agency. The district court appropriately determined that the transcript "is an official court report created by an [o]fficial [c]ourt [r]eporter in her official capacity and duties and certified to as such," and Jones has not shown that the state was required to obtain the public record directly from a public office or agency. Accordingly, the district court did not abuse its discretion by determining that the transcript was admissible as a public record.

Given that the district court did not abuse its discretion by admitting the transcript under the public-records exception, we need not address whether the residual exception applies.

II. The district court did not violate Jones's right to confrontation by admitting the transcript into evidence.

"[W]hether the admission of evidence violates a criminal defendant's rights under the Confrontation Clause is a question of law" that appellate courts review de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006).

The Confrontation Clause of the Sixth Amendment states 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. In *Crawford*, the United States Supreme Court held that testimonial out-of-court statements are not admissible unless the witness was unavailable to testify, and the defendant had a prior opportunity for cross-examination. 541 U.S. at 68.

Jones argues on appeal that the statements were testimonial, and their admission violated the Confrontation Clause. The state argues that "the Confrontation Clause was not implicated" by "[t]he judge's statements to Jones about the DANCO" because they "were not hearsay." We agree with the state.

The Confrontation Clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." *Crawford*, 541 U.S. at 59 n.9. Jones specifies that his Confrontation Clause arguments relate to the judge's statements only, "not the transcript of those statements." Accordingly, because, as stated

above, the statements made by the district court judge to Jones were not presented for the truth of the matter asserted, the admission of these statements does not violate the Confrontation Clause, regardless of whether these statements are testimonial.

Affirmed.