

*This opinion is nonprecedential except as provided by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
A23-1200**

State of Minnesota,
Respondent,

vs.

Ramon Roosevelt Blakey,
Appellant.

**Filed September 23, 2024
Affirmed in part, reversed in part, and remanded.
Smith, John, Judge***

Hennepin County District Court
File No. 27-CR-22-24340

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Larson, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the conviction of appellant, Ramon Roosevelt Blakey, for domestic assault by strangulation because the 911 calls from the underlying incident fall within the excited-utterance exception to the hearsay rule and were therefore properly admitted into evidence. We reverse and remand Blakey's sentence because the district court erred by imposing probationary conditions as part of an executed prison sentence.

FACTS

In the early afternoon on December 3, 2022, Minneapolis police officers were dispatched to a residence in Minneapolis to address an ongoing assault. L.M.-M. called 911 to report that her mother, J.F., was inside the house and in danger because she was "assaulted" by Blakey and he was being "aggressive" towards her. J.F. did not feel safe enough to make a phone call, which is why she was texting L.M.-M. and asking her to call the police. When police arrived, they knocked on both the front and back doors of the house with no response, but they could see the silhouette of a large man inside the house, and they could see the man motioning to someone else inside. The man pulled the curtains shut, and the police called out that they needed to talk to him and asked him to open the door. The police knocked again and asked if Blakey and J.F. were there. The man replied that J.F. was not there and that he was just staying with Blakey, who was also gone. L.M.-M. called 911 a second time to ask the police to stay at the house, tell them Blakey was lying about his identity, and reiterate that J.F. was inside and needed help. The man in the house was in fact later identified as Blakey.

The police went back to their squad car but did not leave the scene. L.M.-M. called 911 a third time relaying text messages from J.F. and asking the police to break into the house. Once the police officers received approval from their sergeant, they forced entry into the house by breaking in the front door. Inside, they also forced entry into the locked bathroom where they found J.F. “cowering” in the corner. J.F. appeared “[e]xtremely frightened” and had red marks and scratches on her chest, bruising and cuts on her throat, and bloodshot and swollen eyes underneath the sunglasses she was wearing. J.F. refused to leave the bathroom until Blakey was gone, but once police arrested him, she came out of the bathroom and agreed to talk. J.F. told the police that she and Blakey lived together and had a romantic relationship. J.F. was taken to the hospital by ambulance and told medical staff that the man she lives with had strangled her “intermittently” for two to three hours using both of his hands. She reported headaches, dizziness, pain when swallowing, and blurry vision.

Blakey was arrested and charged with felony domestic assault by strangulation. On December 7, a pretrial domestic-abuse no-contact order (DANCO) was put in place. On January 13, Blakey entered a not guilty plea, and this case proceeded to a two-day jury trial in April. Relevant to this appeal, neither J.F. nor L.M.-M. were available as witnesses for trial, so at a motion hearing prior to trial, the parties argued about the admissibility of L.M.-M.’s three 911 calls and the text messages from J.F. that L.M.-M. referenced during those calls. The district court ruled that both the 911 calls and the text messages fell within the excited-utterance exception to the hearsay rule and would therefore be admissible at trial.

The jury found Blakey guilty of felony domestic assault by strangulation in violation of Minn. Stat. § 609.2247 (2022), and the district court sentenced him to prison for 39 months with credit for the 166 days he had already served in jail. The sentencing order also listed “conditions” such as no contact with J.F. and completion of domestic-abuse programming.

Blakey appeals.

DECISION

I. The district court did not abuse its discretion by allowing L.M.-M.’s 911 calls into evidence under the excited-utterance exception to the hearsay rule.

“‘Hearsay’ is a statement other than one made by the declarant while testifying at the trial or hearing offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). “Hearsay is not admissible except as provided by [Minnesota’s Rules of Evidence] or by other rules prescribed by the Supreme Court or by the Legislature.” Minn. R. Evid. 802. One exception to the hearsay rule is “[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” Minn. R. Evid. 803(2). There are three requirements for a statement to meet this excited-utterance hearsay exception: (1) there was a startling event or condition; (2) the statement relates to the event or condition; and (3) the declarant was “under a sufficient aura of excitement caused by the event or condition to insure the trustworthiness of the statement.” Minn. R. Evid. 803(2) 1989 comm. cmt. Even if the hearsay statement meets the excited-utterance requirements, it is inadmissible if the danger of unfair prejudice substantially outweighs its probative value. Minn. R. Evid. 403.

We review a district court's evidentiary rulings for an abuse of discretion. *State v. Tapper*, 993 N.W.2d 432, 437 (Minn. 2023). "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." *Id.* (quotation omitted). Blakey bears the burden of demonstrating both that the district court abused its discretion in admitting the evidence at issue and that he was prejudiced by the admission. *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016).

There is no dispute that the 911 calls are hearsay. Instead, Blakey argues that the district court abused its discretion by admitting the 911 calls, which included references to the text messages, because they do not fall within a hearsay exception. He argues that because there was no startling event and L.M.-M. was not under an "aura of excitement" on the phone, these statements are not excited utterances. In making these arguments, Blakey points to the fact that L.M.-M. did not witness the assault or see anything at the scene of the alleged incident and that she remained calm and composed while talking with the 911 dispatcher. Blakey further argues that admission of the 911 calls was highly prejudicial to him because it was the only direct evidence the state had of his identity and that without its admission, the jury would not have found him guilty. None of these arguments persuade us to reverse.

Just prior to trial, the district court heard arguments on the record about the parties' motions on the admissibility of L.M.-M.'s 911 calls and found that "the assault is not the startling event; the startling event for the daughter is the receipt of the text message" and "those text messages caused [L.M.-M.] enough concern, consternation and so forth, for her to immediately call 911." The district court also found that "[it's] an ongoing emergency

that [Blakey] won't let the cops in the house . . . and the person [Blakey] who's saying that [J.F.'s] not there is lying." As a result, the district court found that the 911 calls were admissible as excited utterances under the hearsay exceptions.

The district court also ruled that J.F.'s text messages themselves are excited utterances because when police got to J.F., she was "completely traumatized . . . can hardly speak and she's injured, and she has bruises all over her. So, in the previous 30 minutes when she was sending those texts, those texts were excited utterances."

Our supreme court recently addressed the excited-utterance exception in a domestic-assault case. In *Tapper*, the supreme court held that it was not an abuse of discretion for the district court to exclude body-worn camera recordings containing statements made by the victim because the statements were inadmissible hearsay. 993 N.W.2d at 439. The victim's statements were not excited utterances because they were mostly made in response to questions from law enforcement, the victim "appeared to grow calmer" throughout the interaction, and the victim exhibited an "unexcited demeanor." *Id.* at 438. Additionally, enough time had passed¹ between the incident and the statements that the victim believed the defendant had fallen asleep, and the victim was, in part, recalling events that happened "hours previously." *Id.*

Blakey argues that this case is analogous to *Tapper* because part of the assault took place the previous day, there was no startling event because of the amount of time that

¹ While there are no "strict temporal guidelines" to evaluate whether statements qualify as excited utterances, district courts consider factors such as "the length of time elapsed, the nature of the event, the physical condition of the declarant, and any possible motive to falsify." *Tapper*, 993 N.W.2d at 438 (quotations omitted).

passed and the fact that L.M.-M. did not witness the assault, and L.M.-M. was calm and composed on the phone with the 911 dispatcher. The state argues that this case is distinguishable from *Tapper* because the assault was a current, ongoing event that was happening while L.M.-M. was on the phone with the 911 dispatcher and L.M.-M became more agitated throughout her calls as her concern for her mother's safety became more acute. The state has the better argument.

J.F. was so terrified that she felt unsafe to call 911, locked herself in the bathroom, and texted her daughter to call 911 for her. In the first call, L.M.-M. provided the address for the house along with a description of Blakey advising that the police would need two cars because Blakey is "really aggressive" and "super big." Even though L.M.-M. maintained her composure while talking to the dispatcher, she described her mom as being held "hostage" and called back less than ten minutes later as she continued to get text messages from J.F. During the second 911 call, L.M.-M.'s tone was more urgent telling the dispatcher, "[Blakey] is lying to [the police]. [J.F.] doesn't want the police to leave. She's in the house, she needs help."

Just three minutes later, L.M.-M. called 911 for a third time, this time with even more urgency and frustration in her voice as she told the dispatcher, "I think he's like, beating the sh-t out of her in there. . . . [S]he's like half talking to me." L.M.-M. was clearly frustrated that the police were not in the house and reiterated that J.F. could not leave the bathroom and come outside, so she urged the dispatcher to have the police "kick the damn door down." L.M.-M. told the dispatcher, in real-time, that her mom stopped texting her.

She also said that while she did not think Blakey would do anything “crazy,” she was unsure because her mom would not be texting her unless it was serious.

The transcript and recording of the 911 calls support the district court’s decision to admit the calls, and text messages referenced therein, as excited utterances. The startling event was when L.M.-M. started getting texts from J.F. about the assault that began the day before but was ongoing as demonstrated by J.F.’s fear to call 911 herself, the fact that she was locked in the bathroom, and Blakey lying to the police about his identity and telling them no one was inside. While L.M.-M. does remain relatively composed throughout her calls, her tone has more urgency and frustration as time goes on. And L.M.-M. is relaying text messages from her mom in real-time. These combined circumstances create the requisite “aura of excitement” for excited utterances.

But even without the 911 calls, there is ample evidence that Blakey was the person who assaulted J.F. Blakey and J.F. were the two tenants listed on the lease for the house they were in; there were two vehicles in the driveway, one was registered to J.F. and the other to Blakey; Blakey and J.F. were the only two people in the house when the police arrived; and Blakey lied about his identity to the police suggesting that he did not want to be found out. Even without the 911 calls, this evidence would have been enough to determine Blakey’s identity and find him guilty of assaulting J.F. There is no prejudice by admitting the 911 calls into evidence.

II. The probationary terms and conditions listed as part of Blakey’s executed prison sentence are erroneous.

We review sentencing decisions for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). But whether a sentence conforms to the requirements of a statute or the sentencing guidelines is a question of law we review de novo. *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009)

“The legislature has the exclusive authority to define crimes and offenses and the range of the sentences or punishments for their violation.” Minn. Stat. § 609.095(a) (2022). “Minnesota courts therefore do not have inherent authority to impose terms or conditions of sentences for criminal acts and must act within the limits of their statutory authority when imposing sentences.” *State v. Pugh*, 753 N.W.2d 308, 311 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Sept. 23, 2008). “A district court may not impose a no-contact order as part of an executed sentence unless the order is expressly authorized by statute.” *Pugh*, 753 N.W.2d at 311. Under Minn. Stat. § 609.2247, subd. 2, a person who is convicted of felony domestic assault by strangulation can be sentenced, “to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.”

Blakey argues that the district court erred by imposing probationary conditions as part of his sentence and that the district court has no authority to include probationary conditions as part of an executed prison sentence. We agree.

The district court sentenced Blakey to 39 months in prison with credit for the 166 days he had already served, and the district court laid out conditions for Blakey to follow,

presumably during his supervised release, including remaining law abiding, not leaving Minnesota without permission from the parole officer, not possessing guns or ammunition, and completing a domestic-violence program. The district court also ordered the DANCO to continue and that Blakey would have no contact in any way with J.F. But nothing in the statute Blakey was convicted under (Minn. Stat. § 609.2247) provides for “conditions,” including a DANCO, as part of an executed prison sentence.

The DANCO was proper during the case proceedings, but now there is a conviction and an executed sentence. *See Pugh*, 753 N.W.2d at 311 (stating “a court may impose a no-contact order in a criminal *proceeding* for domestic abuse” (emphasis added)). And while Blakey will serve the last one-third of his sentence on supervised release in the community, “[t]he commissioner of corrections shall adopt by rule standards and procedures for the revocation of supervised or conditional release” meaning that “the conditions of . . . supervised release [are] imposed by the commissioner.” Minn. Stat. § 244.05, subds. 2, 3 (2022). Conditions for supervised release are not within the district court’s purview and are instead determined by the commissioner of corrections. It was erroneous for the district court to impose probationary conditions, and Blakey must be resentenced to have the conditions removed from his executed prison sentence.

Affirmed in part, reversed in part, and remanded.