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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1598**

State of Minnesota,
Respondent,

vs.

Malik Deshone Williams,
Appellant.

**Filed February 3, 2025
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-21-21026

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie L. Nelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

On direct appeal from his conviction of aiding and abetting second-degree intentional murder, appellant argues that the district court abused its discretion by admitting a recording of the 911 call made by the victim's mother and body-camera footage of a

police officer rendering first-aid to the victim before he died. Because the admission of the challenged evidence was harmless, we affirm.

FACTS

Following the shooting death of the victim, respondent State of Minnesota charged appellant Malik Deshone Williams with aiding and abetting second-degree intentional murder in violation of Minnesota Statutes section 609.19, subdivision 1(1) (2020). Williams pleaded not guilty. At the jury trial, the state presented a variety of witnesses, including the victim's mother, a responding police officer, and Williams's cousin, J.W. The state also introduced over 200 exhibits, including the two recordings at issue on appeal. Williams testified in his own defense. The trial lasted seven days, where the evidence established the following.

The Shooting

On October 17, 2021, the victim, Sean Johnson, was shot and killed in his apartment in Hopkins. Johnson lived on the third floor of the apartment building, and his mother lived on the fifth floor. Earlier that evening, Johnson was with his mother and a friend in his mother's apartment. Around 6:00 p.m., Johnson announced that "he had some business to take care of" and went to his apartment.

At 7:36 p.m., Johnson's mother texted him that she wanted to go to sleep, and that Johnson should get his friend from her apartment. Johnson's mother smoked a cigarette on her patio in the meantime. While on the patio, she heard several gunshots and then heard her son screaming. She and Johnson's friend then rushed down to Johnson's

apartment, where they found Johnson lying on the ground. Johnson told his mother that “they” shot him but did not provide any names.

At 7:42 p.m., Johnson’s mother called 911. A recording of the 911 call was played for the jury and admitted as an exhibit. In the recording, Johnson’s mother tells the dispatcher that Johnson had been shot in the side and that she has “no idea” who shot him. Johnson’s mother can be heard asking Johnson who shot him, to which Johnson responds, “I don’t know.” As the call goes on, Johnson’s mother grows increasingly distraught. The call ends when the dispatcher announces that police officers are on scene.

Law Enforcement Arrives

A Hopkins police officer responded to Johnson’s apartment complex after receiving a call from a dispatcher. Once in Johnson’s apartment, the officer found Johnson lying on a bedroom floor with a small amount of blood next to him. The officer testified that Johnson was “light pale,” was gasping for breath, and “appeared to be in distress.”

The officer checked for Johnson’s pulse but felt nothing, so he began performing chest compressions on Johnson. Soon paramedics arrived and took over performing chest compressions, but they were unable to save Johnson’s life. Johnson was declared dead at 7:59 p.m. A recording from the officer’s body-worn camera was admitted at trial and published for the jury over Williams’s objection. The recording shows the officer’s arrival at the apartment, his administration of chest compressions to Johnson, the emotional reactions of Johnson’s mother and friend, and the arrival of paramedics.

The Investigation

In the weeks following the shooting, police acquired surveillance footage from around Johnson's apartment and spoke with potential witnesses. Through the investigation, police developed three primary suspects: Williams, S.P. (who Williams referred to as his "partner" at trial), and J.W. (who is one of Williams's cousins).

During the investigation, L.S., who described herself as Johnson's best friend, reported that she had a video call with Johnson around 6:30 p.m. on the night of the shooting. L.S. lived in an apartment across the street from Johnson. In the background of the video call, L.S. noticed someone wearing a blue, hooded sweatshirt. During the call, Johnson asked L.S. to retrieve some guns that he had stored in her apartment and bring them to him. Around 7:15 p.m., L.S. met Johnson outside her apartment to give him the guns. The man in the blue sweatshirt was with Johnson when he retrieved the guns.

Police also spoke with a witness who lived near Johnson's apartment complex. The neighbor reported that he saw two men walking along a pathway away from the apartment complex at 7:41 p.m., about 25 minutes after L.S. gave Johnson the guns. One of the men was wearing a blue sweatshirt with white block lettering. The men proceeded on the path until they encountered a fence, which they jumped over. Less than a minute later, the neighbor saw "a fleet of squad cars" approach Johnson's apartment complex. Police showed the neighbor a picture from Williams's social media in which Williams is wearing a blue sweatshirt with block lettering. Police cropped Williams's face from the photo so that only the blue sweatshirt was visible. The neighbor was "absolutely certain" that the

sweatshirt from the picture matched the one worn by one of the men he saw walking away from Johnson's apartment complex after the shooting.

Based on the neighbor's information, police obtained surveillance video from the area. Footage from behind Johnson's apartment complex matched the neighbor's account, showing two men, including one in a blue sweatshirt who was later identified as Williams, walking away from the complex shortly after the shooting. Police also obtained surveillance footage from a gas station a few blocks from Johnson's apartment. The footage, captured roughly two hours before the shooting, shows Williams and three other men pumping gas and shopping in the convenience store. The three other men were later identified as Williams's "partner," S.P., and Williams's cousins, J.W. and K.W.

In November 2021, police received a tip about some clothing found in a park near Johnson's apartment complex. Among the clothing was a blue sweatshirt with white block lettering. The blue sweatshirt had "areas of bloodlike substance," but there was insufficient DNA on it to perform any scientific analysis.

Surveillance footage from a nearby restaurant showed that Williams entered the restaurant following the shooting. Williams was shoeless and his white t-shirt was mud-stained. Williams approached a teenage boy who was patronizing the restaurant and asked if he could use the boy's phone to make a call. Williams claimed he had been robbed while trying to buy a car. The boy let Williams use his phone. Soon thereafter, Williams exited the restaurant and got into a car, which drove off with Williams.

After reviewing the surveillance footage, police went to the boy's house and took the boy's statement about encountering Williams at the restaurant. While giving the

statement, the boy positively identified Williams from a photo lineup as the man who had asked to use his phone.

During the investigation, law enforcement also received a call from a woman, S.H., who reported that she possessed a handgun that she wished to turn over to police. S.H. was in a relationship with Williams's cousin, J.W. An officer went to S.H.'s house, where he collected a backpack that contained a .45 caliber gun and some ammunition. Ballistic testing on the gun revealed that the .45 caliber cartridge casings police recovered from the crime scene were ejected from the gun and that a bullet found in Johnson's body was consistent with a test bullet fired from the gun.

Police arrested Williams on November 29. Investigators obtained a DNA sample from Williams, which matched DNA found on the .45 caliber gun that was involved in the shooting.

Williams and J.W. Testify, Implicating Each Other

At trial, J.W. implicated Williams in the shooting. He testified that Williams and S.P. were in Johnson's apartment during the shooting. J.W. also testified that Williams told him that Williams and S.P. shot Johnson. Williams testified in his own defense and claimed that J.W. was the shooter. The following summarizes the testimony of each.

According to J.W., on the day of the shooting, he drove Williams, S.P., and K.W. to Johnson's apartment in K.W.'s car. Once they arrived at the apartment building, Williams used J.W.'s cell phone to set up a meeting with Johnson for a drug deal. Williams did not have his own cell phone at the time. Both Williams and S.P. then went into Johnson's apartment, while J.W. and K.W. waited in the car. J.W. testified that Williams

and S.P. took so long that J.W. and K.W. decided to leave and go to K.W.'s girlfriend's apartment in Minneapolis. Once he was back in Minneapolis, J.W. received a call from Williams via Johnson's phone. Williams asked J.W. to pick him up at Johnson's apartment. J.W. departed Minneapolis for Hopkins in his own car. When J.W. arrived at the apartment complex, he parked, started calling Johnson's phone, heard gun shots, and then left immediately.

J.W. testified that he slept at S.H.'s house the night of the shooting. According to J.W., Williams and S.P. came to S.H.'s house the following morning. Williams brought a gun with him and "put it in the drawer." S.H. and J.W. then got into a fight because J.W. wanted to leave the gun at S.H.'s house. J.W. testified that S.H. did not want the gun in her house and so she called J.W.'s parole officer.

J.W. further testified that he spoke with Williams about what happened in Johnson's apartment. According to J.W., Williams told him that Williams and S.P. were "try[ing] to take something from [Johnson]" but Johnson "stood up" to them, so Williams and S.P. shot him.

Williams testified and denied being involved in the shooting of Johnson. According to Williams, he rode with J.W., S.P., and K.W. to Johnson's apartment for a drug deal with Johnson. Williams said that he went up to the apartment alone, where Johnson offered to smoke with Williams. The others left while Williams and Johnson hung out at the apartment complex. After a while, Williams called J.W. and asked for a ride home. During the phone call, Williams also told J.W. that Johnson had "a lot of merchandise." Williams testified that J.W. wanted to speak with Johnson about the "merchandise," and that, after

they talked, J.W. stated that he was coming back to Johnson's apartment. J.W. arrived with S.P. at the apartment. J.W. spoke with Johnson for a while and then asked Williams to retrieve money from his car. Williams testified that he found the money in J.W.'s car and made his way back into the apartment complex. According to Williams, when he opened the stairway door, he heard a series of gunshots and then heard S.P. coming down the stairs. Williams testified that S.P. said that they had to leave, and so Williams fled the apartment complex on foot with S.P.

Cell Phone Records

Records from the involved parties' cell phones generally corroborated J.W.'s version of the events. Around 4:15 p.m. on the day of the shooting, a text was sent from J.W.'s phone to Johnson's phone regarding a drug deal. A little while later, there was a text from Johnson's phone to J.W.'s phone saying, "Let me know when you're on your way." At 5:42 p.m., the person texting with J.W.'s phone confirmed that he was outside Johnson's apartment. Cell-phone mapping showed that J.W.'s phone was back in Minneapolis at 7:14 p.m. when it received a call from Johnson's phone. At 7:41 p.m., J.W.'s phone was back in Hopkins and called Johnson's phone. The call resulted in a 78-second voicemail, which featured only ambient sounds associated with driving, such as a turn signal activating.

Verdict and Sentencing

The jury found Williams guilty of aiding and abetting second-degree intentional homicide. The district court entered a judgment of conviction and sentenced Williams to 367 months in prison.

Williams appeals.

DECISION

Williams argues that the district court abused its discretion by admitting the 911 recording and the responding officer's body-worn-camera footage. He further contends that he is entitled to a new trial because the admission of this evidence was highly prejudicial. We are not persuaded.

We review a district court's evidentiary ruling for an abuse of discretion. *State v. Maye*, 6 N.W.3d 103, 108 (Minn. 2024). "The district court abuses its discretion when it exercises its discretion in an arbitrary or capricious manner, bases its ruling on an erroneous view of the law, or makes clearly erroneous factual findings." *Munt v. State*, 984 N.W.2d 242, 246 (Minn. 2023) (quotation omitted). "We generally will not reverse a verdict even when improper evidence is presented to the jury unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotation omitted). The defendant has the burden to make such a showing. *Id.*

Under the Minnesota Rules of Evidence, all "relevant evidence" is presumptively admissible. Minn. R. Evid. 402. "Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. But relevant evidence "may be excluded 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, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403.

Williams argues that the district court abused its discretion by admitting both the 911 recording and the body-worn-camera footage, asserting that the challenged evidence was not probative of the issues at trial and that any probative value was greatly outweighed by the risk of unfair prejudice. We need not determine whether the district court abused its discretion by admitting the challenged evidence because, as discussed below, Williams has not established that there is a reasonable possibility that the challenged evidence significantly affected the jury’s verdict.

When assessing the likelihood that wrongfully admitted evidence significantly affected the verdict, we consider the following nonexclusive factors: “(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.” *Bigbear*, 10 N.W.3d at 54. (quotation omitted). In addition, “strong evidence of guilt” is a factor to consider because it “undermines the persuasive value of wrongly admitted evidence.” *Id.* at 54, 59 (quotation omitted). We address each factor below and conclude, on balance, that there is no reasonable possibility that the challenged evidence significantly affected the jury’s verdict.

The Manner of Presentation

We first consider the manner in which the state presented the challenged evidence. In assessing this factor, the supreme court has considered the prominence of the challenged evidence by looking at “among other things, the relative number of transcript pages that

the evidence occupies” and “whether the evidence was used throughout the [s]tate’s case.” *Id.* at 56. Williams does not contend, nor does the record suggest, that the challenged evidence played a prominent role in the state’s case. The challenged evidence—the 911 recording and body-worn-camera footage—combined, ran just 16 minutes and forty-four seconds. The transcript of the 911 recording, which was admitted as an exhibit, is only five pages long. In contrast, the transcript of the trial testimony from the seven-day trial is over 1,000 pages. In addition, there were over 200 exhibits introduced during the trial, including over 100 photographs, several audio and video recordings (other than the two at issue here), and a variety of physical evidence. And other than when these two exhibits were published, the state did not reference the contents of either exhibit at any point during trial. When considered relative to the totality of the evidence at trial, and how the state presented the evidence, we conclude that the challenged evidence did not play a prominent role in the state’s case.

This conclusion is reinforced by the district court’s limitation on the state’s presentation of the body-worn-camera footage. The district court ruled that, while the state could publish the video for the jury to view during trial, the jury would not be permitted to view the video again during deliberations. This ruling limited the state’s presentation of the video, further indicating that the manner in which the state presented the challenged evidence likely did not affect the verdict.

Williams disagrees, arguing that the order in which the state offered the challenged evidence shows that it was harmful. The state published the body-worn-camera recording during the testimony of the officer who responded to the victim’s apartment. The next

witness to testify was the victim's mother. During her testimony, the state published the 911 recording. Williams asserts that the state's presentation of the evidence in this manner amplified the jury's sympathy for the victim and his mother, unfairly prejudicing Williams. But given the small role the challenged evidence played in the trial and the district court's limitation on the state's ability to present the evidence, we are not convinced that the order in which the state offered the challenged evidence suggests that there is a reasonable possibility that the challenged evidence had a substantial effect on the verdict. We therefore conclude that the first factor weighs in favor of a finding that any error in admitting the evidence was harmless.

The Persuasiveness of the Evidence

The second factor that we consider is whether the challenged evidence was "highly persuasive." *Bigbear*, 10 N.W.3d at 56-57. Williams argues that the challenged evidence was persuasive because of its emotional impact. When assessing the persuasive value of challenged evidence that may evoke the jury's sympathy, we may consider whether other admissible evidence had a similar effect. *See id.* at 58 (observing that other, unchallenged emotion-provoking evidence "lessens any persuasive effect" of challenged evidence). At trial, Johnson's mother and friend both testified about seeing the victim—their son and childhood friend, respectively—die in front of them. Williams does not challenge the admission of this emotion-provoking testimony. Nor does Williams contest the admission of certain photos that also could have evoked emotion, showing Johnson naked and dead on an autopsy table. Taken together, this unchallenged evidence likely diminished the persuasive value of the 911 recording and the body-worn camera footage because it may

have had a similar, or perhaps even greater, emotional impact than the challenged evidence. *See id.* Further, the district court instructed the jury that its decision could not be “governed by sympathy, prejudice, or public opinion.” “Because the jury is presumed to have followed that instruction, any improper evocation of the jury’s sympathy for the victim was mitigated.” *Id.* Finally, neither the 911 recording nor the body-worn-camera footage was probative of the main disputed issue at trial—whether Williams was involved in the shooting. Accordingly, we conclude that the challenged evidence was not highly persuasive, and consequently this factor favors a finding that admission of the challenged evidence was harmless.

The State’s Reliance on the Evidence in Closing Argument

The third factor is whether the state relied on the challenged evidence in its closing argument. *Id.* at 59. It is undisputed that the state did not rely on either piece of contested evidence in its closing argument. Thus, this factor also weighs in favor of a finding that the admission of the evidence was harmless.

Williams’s Opportunity to Counter the Challenged Evidence

The fourth factor that we consider is whether the defendant had a chance to counter the challenged evidence. *Id.* at 59. Unlike the other factors, this factor does not favor harmless error. There was no way for Williams to counter any sympathy that the challenged evidence might have evoked in the jury. In fact, Williams’s counsel declined to cross-examine Johnson’s mother or friend following their testimony—a reasonable decision given the emotional nature of their testimony as well as the challenged evidence. We therefore agree with Williams that, assuming the challenged evidence was erroneously

admitted, there was no way for him to have effectively countered it. Consequently, this factor favors a finding that the error was not harmless.

Strong Evidence of Guilt

Finally, we consider the strength of the unchallenged evidence. *Id.* at 59-60. As the supreme court observed in *Bigbear*, “[s]trong evidence of guilt undermines the persuasive value of wrongly admitted evidence.” *Id.* at 59 (quotation omitted). Here, the evidence of Williams’s guilt of the offense of aiding and abetting second-degree intentional murder was strong. Williams does not argue otherwise. The evidence of Williams’s guilt includes evidence of Williams’s activities on the date of the shooting, DNA evidence tying Williams to the gun used in the shooting, and witness testimony tying Williams to the shooting. Because the evidence demonstrating Williams’s guilt is strong, this consideration weighs in favor of a finding that any error was harmless.

Conclusion

Weighing the foregoing factors, we conclude that Williams did not meet his burden to establish that there is a reasonable possibility that the admission of the challenged evidence significantly affected the verdict. We reach this conclusion because the majority of the factors that we analyzed support this conclusion. We place particular emphasis on the state’s strong evidence of Williams’s guilt and the small role that the challenged evidence played in the state’s case. Therefore, assuming without deciding that the district court abused its discretion by admitting the challenged evidence, Williams has not met his

burden of demonstrating there is a reasonable possibility that the challenged evidence had a substantial effect on the verdict.

Affirmed.