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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/01/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 10-0746
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
AARON DARNELL WOODS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-129684-001DT

The Honorable Lisa M. Roberts, Judge Pro Tem

AFFIRMED

Thomas Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Barbara A. Bailey, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Aaron Darnell Woods appeals his conviction and sentence for aggravated assault, a class three dangerous felony.

For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 Viewed in the light most favorable to supporting Woods' conviction, the following evidence was presented during trial. See *State v. Moody*, 208 Ariz. 424, 435 n.1, 94 P.3d 1119, 1130 n.1 (2004). In the early morning hours of May 1, 2009, Woods visited D.T., a long-time friend of Woods, at D.T.'s apartment in Phoenix. D.T. shared the apartment with his roommate K.E., who was asleep at the time Woods arrived. K.E. had a pet boa constrictor that he kept in a tank, which was located in the living room area of the apartment.

¶13 While at the apartment, Woods and D.T. consumed several cans of beer, and then Woods began playing with K.E.'s snake. According to D.T., Woods was handling the snake in a rough manner and as a result the snake bit Woods near his left eye. D.T. brought Woods to the bathroom to tend to the bite. Inside the bathroom, Woods became angry with D.T. and started punching him. The two men fought momentarily, and K.E. was awakened by the commotion. After the fight ended, D.T. went to his bedroom to lie down and Woods returned to the living room area with K.E.

¶14 A short time later, while D.T. was lying in his bed, Woods pushed through the door to D.T.'s bedroom and began stabbing D.T. in his legs. After being stabbed four times, the knife broke in D.T.'s left leg and a piece of the knife struck

D.T. in the eye. D.T. quickly wrapped one of his legs in a "tourniquet," and called 9-1-1 for help. K.E. made two calls to 9-1-1 around the same time, explaining that he needed immediate police assistance and an ambulance because D.T. had been stabbed. Two different 9-1-1 operators spoke with K.E. over the course of the two calls. The operators asked K.E. basic questions such as the identity of the victim, the identity of the attacker, and whether the attacker was still in the apartment. D.T. decided not to wait for an ambulance and drove himself to the hospital, where he was treated for the stab wounds. He also had surgery to repair his eye. K.E. waited outside the apartment for police to arrive.

¶15 Police arrived at the apartment complex shortly after D.T. and K.E. placed the 9-1-1 calls. For approximately one hour, police attempted to get Woods to come out of the apartment by pounding on the apartment door and shouting for Woods to come out. Woods, however, did not respond to the police. Consequently, a SWAT team entered the apartment and apprehended Woods, who was in one of the bedrooms. According to various law enforcement officers at the scene, the apartment smelled like bleach and it appeared that someone was attempting to clean up a blood stain located in one of the bedrooms.

¶16 As a result of the stabbing, Woods was charged with one count of aggravated assault, a class three dangerous felony.

The State also alleged the following: (1) that the offense was committed while Woods was on probation for a 2008 aggravated DUI conviction, (2) that Woods had historical prior felony convictions, and (3) that there were other aggravating circumstances.

¶7 Prior to trial, the State filed a motion in limine to allow into evidence recordings of the 9-1-1 calls made by D.T. and K.E. In response, Woods moved to preclude the admission of the 9-1-1 calls, arguing their admittance during trial would violate his Confrontation Clause rights under the United States Constitution. The court, however, found the calls to be non-testimonial and ruled that the calls were admissible.

¶8 During trial, the State played the 9-1-1 calls for the jury. In addition, the jury heard testimony from D.T. and multiple law enforcement officers. D.T. testified that Woods came into his bedroom while he was lying down and stabbed him multiple times in both legs. Officer J.O., who interviewed D.T. shortly after the stabbing at the hospital, testified that D.T. told him that Woods forced his way into D.T.'s bedroom and stabbed D.T. The jury also heard testimony from the law enforcement officers involved in Woods' apprehension. They testified that the apartment smelled like bleach and that it appeared someone was trying to clean a large blood stain in one the apartment's bedrooms. Woods testified in his own defense,

claiming D.T. was the original aggressor and that he stabbed D.T. in self-defense. K.E. did not testify.

¶9 The jury convicted Woods of aggravated assault and found the offense dangerous. At sentencing, the court found that Woods had historical prior felony convictions and also found that Woods committed the assault while on probation for the 2008 aggravated DUI conviction. The court sentenced Woods to a slightly aggravated prison term of nine years for the assault conviction. In addition, the court revoked Woods' probation for the DUI conviction and imposed a presumptive two and one-half year prison sentence to be served consecutively to the assault conviction.

¶10 Woods timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21 (A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).

ANALYSIS

¶11 Woods' sole contention on appeal is that the court committed reversible error by allowing into evidence recordings of the 9-1-1 calls made by K.E., who was unavailable to testify at trial and whom Woods did not have an opportunity to cross-examine.¹ Woods asserts that pursuant to *Crawford v. Washington*,

¹ Woods concedes that the court correctly allowed into evidence the 9-1-1 calls made by D.T. because D.T. testified at trial.

541 U.S. 36 (2004), the admission of the calls during trial violated his Confrontation Clause rights because the calls were testimonial. According to Woods, K.E.'s 9-1-1 calls were testimonial because K.E. was describing a completed incident and because the 9-1-1 operator attempted to gather information that could be used in a future prosecution.

¶12 "Although we ordinarily review a trial court's ruling on the admissibility of evidence for an abuse of discretion, we conduct a *de novo* review of challenges to admissibility under the Confrontation Clause." *State v. King*, 213 Ariz. 632, 636, ¶ 15, 146 P.3d 1274, 1278 (App. 2006) (citation omitted). Because we conclude that the 9-1-1 calls at issue in this case were nontestimonial, we find no error with their admission during trial.

¶13 The Sixth Amendment's Confrontation Clause provides 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 the Confrontation Clause prohibits the admission of "testimonial evidence" in a criminal trial against a defendant, unless the proponent of the evidence is able to show that the person making the statements is unavailable to testify and the opposing party had a prior opportunity to cross-examine that person. 541 U.S. at 68. The court did not "spell

out a comprehensive definition of 'testimonial,'" but noted that the term "applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." *Id.*

¶14 Subsequently, in *Davis v. Washington*, 547 U.S. 813, 822, 828 (2006), the Supreme Court held that statements made to police are "nontestimonial" when the circumstances objectively indicate that the police are seeking information to meet an ongoing emergency. Specifically, the *Davis* Court provided the following test to determine whether statements are testimonial or nontestimonial:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Id. at 822.

¶15 Most recently, in *Michigan v. Bryant*, 131 S. Ct. 1143, 1156 (2011), the Supreme Court explained that when deciding whether the "primary purpose" of an interrogation is to enable police assistance to meet an ongoing emergency, a court must "objectively evaluate the circumstances in which the encounter

occurs and the statements and actions of the parties." "[T]he existence of an 'ongoing emergency' at the time of an encounter between an individual and the police is among the most important circumstances informing the 'primary purpose' of an interrogation." *Id.* at 1157. This is because the "emergency focuses the participants on something other than 'prov[ing] past events potentially relevant to later criminal prosecution.'" *Id.* (quoting *Davis*, 542 U.S. at 822). Accordingly, statements made to police to resolve an ongoing emergency are less likely to be fabricated. *Bryant*, 131 S. Ct. at 1157.

¶16 Applying *Davis* and *Bryant* to this case, we conclude that K.E.'s statements to the 9-1-1 operators were nontestimonial because the emergency circumstances in which the encounter occurred, as well as the statements made by K.E. and the 9-1-1 operators, objectively indicate that the primary purpose of the 9-1-1 operators' questions was to enable police to assist in regard to an ongoing emergency.

¶17 K.E. made two calls to 9-1-1 moments after D.T. was stabbed multiple times and while Woods was present in the apartment. In the first call, K.E. shouts multiple times "I need the cops right now!" K.E. tells the 9-1-1 operator that "this guy is going crazy," and that "he's attacking my roommate." During the phone call, it appears that K.E. learns D.T. was *actually* stabbed and K.E. shouts, "Oh my God! He

stabbed him!" K.E. then tells the operator that D.T. needs an ambulance right away. In an effort to determine what was happening at the apartment, the 9-1-1 operator asked K.E. a series of basic questions, including the identity of D.T.'s attacker. In response, K.E. told the operator that it was D.T.'s friend. During the second call to 9-1-1, K.E. again shouts that he needs "police and an ambulance right now!" The 9-1-1 operator asks K.E. what happened and K.E. explains that D.T. was stabbed. The operator did not ask K.E. to identify D.T.'s attacker but did ask if the attacker was still in the apartment. K.E. responded that D.T.'s attacker was still inside the apartment.

¶18 Most of K.E.'s statements to the operators were not in response to the operators' questions. Rather, K.E.'s statements can best be described as "loud cries for help," which are not considered testimonial. See *State v. King*, 212 Ariz. 372, 378, ¶ 29, 132 P.3d 311, 317 (App. 2006) (explaining that 9-1-1 calls that are primarily "loud cries for help" are nontestimonial). Moreover, under an objective view of the 9-1-1 calls, the operators' primary purpose in questioning K.E. was to gather information to meet the ongoing emergency. The elicited information such as what had happened, the identity of the victim, the identity of the attacker, and the location of the attacker, assisted the operator in assessing the situation and

how best to resolve the emergency. The circumstances of the call suggest that the operators' questions were not directed fundamentally at obtaining information to use for future prosecution, as Woods claims.

¶19 Accordingly, we conclude that K.E.'s statements in the 9-1-1 calls were nontestimonial, and the court did not violate Woods' Confrontation Clause rights by allowing their admission during trial.

CONCLUSION

¶20 Woods' conviction and sentence are affirmed.

_____/s/_____
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

_____/s/_____
PATRICK IRVINE, Judge

_____/s/_____
DONN KESSLER, Judge