STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2012

State of Minnesota,
Respondent,

vs.

Danny Lamont Weekly,
Appellant.

Filed December 16, 2019
Affirmed
Smith, John, Judge[*]

Hennepin County District Court
File No. 27-CR-17-27262

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

Michael O. Freeman, Hennepin County Attorney, Patrick R. Lofton, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Smith, John, Judge.

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

U N P U B L I S H E D O P I N I O N

SMITH, JOHN, Judge

We affirm appellant Danny Lamont Weekly's conviction of felony domestic assault because the district court did not err (1) in admitting two 911 calls by the victim or (2) in admitting an unredacted 911 call, which revealed that appellant had a warrant for his arrest.

FACTS

L.J., who is appellant Danny Lamont Weekly's mother, called 911 regarding her son twice on October 27, 2017. First, at 4:51 p.m., L.J. called 911 to report that Weekly had "hit [her] in [her] face" multiple times and informed the operator that Weekly was "on the run from the police." When officers responded to the scene about 10-11 minutes later, L.J. was "pretty distressed," "very excited and animated," and officers observed swelling on top of L.J.'s head. Officers also observed that "the kitchen table" was "askew" as if "it had been knocked away from the wall." Weekly was not at L.J.'s residence. Officers left the scene.

Second, at 6:16 p.m., L.J. called 911 and reported that Weekly was "back on [her] premises," that he was "outside," and that he was "dangerous." Officers returned to L.J.'s residence shortly after 6:40 p.m., located Weekly in the backyard, and arrested him. Officers again spoke with L.J., who was applying an ice pack to her head.

Three days after the 911 calls, the state charged Weekly with second-degree assault (dangerous weapon) under Minn. Stat. § 609.222, subd. 1 (2016) (count one);[1] felony

[1] L.J. told the 911 operator that Weekly had hit her with an "iron." This part of the 911 call was never admitted into evidence because the district court determined it was testimonial.

domestic assault under Minn. Stat. § 609.2242, subd. 4 (2016) (count two); terroristic threats under Minn. Stat. § 609.713, subd. 1 (2016) (count three); and interference with a 911 call under Minn. Stat. § 609.78, subd. 2 (2016) (count four).

After the state filed charges, L.J. wrote a letter asserting that she wanted the state to drop the charges against her son because she did not want him to go to jail. The state tried to subpoena L.J. to testify at trial but was unable to serve her.

Before trial started, the state offered as evidence the two 911 calls and the two responding officers' body-camera recordings from their first visit to L.J.'s residence. The state argued that the statements in the recordings were nontestimonial and were not hearsay because they were admissible as excited utterances. Weekly moved to exclude all of this evidence as inadmissible hearsay and in violation of the Confrontation Clause. The district court took the matter under advisement.

Before jury selection, the district court determined that most of the body-camera footage contained testimonial statements and was inadmissible. As for the 911 calls, the district court ruled that each call contained both testimonial and nontestimonial statements and, accordingly, struck the parts of the call it considered testimonial. In admitting parts of each call, the district court reasoned that the purpose of L.J.'s statements and the 911 operator's questions in each call was initially "to assist the police in an ongoing emergency."

After the court's evidentiary ruling, the state dismissed counts one, three, and four of the complaint, leaving felony domestic assault as the only remaining count. At trial, a records keeper for 911 dispatch, the two responding officers, and a jail administrator

testified for the state. The state played the admitted portions of the 911 calls for the jury and provided the jury with transcripts. Before the jury heard the calls, the district court asked if Weekly had any "objections or any corrections or anything that need[s] to be changed." Weekly's attorney only objected that the transcript was not a helpful addition to the calls. The state also showed two pictures of L.J. to the jury, including a picture of her head injury. Weekly did not testify and presented no evidence.

The jury found Weekly guilty of felony domestic assault. The district court sentenced Weekly to 24 months' imprisonment. This appeal follows.

D E C I S I O N

I.

Weekly argues that the district court's admission of L.J.'s statements in the two 911 calls violated his constitutional rights under the Confrontation Clause because the statements were testimonial. Weekly contends that L.J. "was not in the midst of an ongoing emergency when she made the 911 calls." Weekly argues that the admission of the statements was not harmless and asks this court to "reverse Weekly's convictions and remand for a new trial."

The Confrontation Clause of the Sixth Amendment to the United States Constitution 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; *see also* Minn. Const. art. I, § 6. The Confrontation Clause generally bars the admission of testimonial statements of a witness who does not appear at trial. *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 1365-66 (2004). If a statement is testimonial, its admission violates the

Confrontation Clause unless the declarant is unavailable and the defendant has had a prior opportunity to cross-examine the declarant. *Id.* at 53-54, 124 S. Ct. at 1365. If a statement is nontestimonial, it is not barred by the Confrontation Clause. *Davis v. Washington*, 547 U.S. 813, 840, 126 S. Ct. 2266, 2284 (2006).

Whether a statement is testimonial depends on the "primary purpose" for the statement. *See id.* at 822, 126 S. Ct. at 2273. "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." *Id.* Statements are testimonial under circumstances objectively indicating there is "no such ongoing emergency" and the "primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.* at 822, 126 S. Ct. at 2273-74.

Davis provides four factors that indicate whether the primary purpose of statements was to meet an ongoing emergency:

> (1) the victim described events as they actually happened and not past events; (2) any "reasonable listener" would conclude that the victim was facing an ongoing emergency; (3) the questions asked and answers given were necessary to resolve a present emergency, rather than only to learn what had happened in the past; and (4) there was a low level of formality in the interview because the victim's answers were frantic and her environment was not tranquil or safe.

State v. Warsame, 735 N.W.2d 684, 690 (Minn. 2007) (citing *Davis*, 547 U.S. at 826-27, 126 S. Ct. at 2276-77).

Davis is instructive in its application of the factors. In *Davis*, a woman called 911 and informed the operator that she had been assaulted by her former boyfriend, who had just run "out the door" during the call. 547 U.S. at 817-18, 126 S. Ct. at 2271. The woman described the "context of the assault" and provided information to police "including [the assailant's] birthday." *Id.* at 818, S. Ct. at 2271. The operator told the woman that police were going to "check the area for [the assailant] first" and that they were going to "come talk to [her]." *Id.*

The United States Supreme Court determined that the woman's statements were nontestimonial based on the four *Davis* factors. First, the woman was "speaking about events *as they were actually happening*." *Id.* at 827, 126 S. Ct. at 2276. Second, the call was "plainly a call for help against bona fide physical threat." *Id.* Third, the nature of the questioning was "to *resolve* the present emergency," in part, so that officers might know whether they would be encountering a violent felon. *Id.* Fourth, the woman's answers were frantic and the environment was not tranquil. *Id.* at 827, 126 S. Ct. at 2276-77.

Here, the *Davis* factors support the nontestimonial nature of the 911 calls. First, L.J. spoke about ongoing events. In the first 911 call, L.J. stated "he *just* hit me in my face," "[h]e *is* on the run," "*he's* running around out somewhere," and "*he's* wearing some black sweats and a black jacket." (Emphasis added). In the second call, L.J. stated that Weekly "*is* back on my premises." (Emphasis added). These events were happening or had just happened.

Second, L.J. made the calls for help, stating in the first call that her head was "busted" and that she did not know where Weekly was. In the second call, L.J. stated that Weekly was "dangerous."

Third, the dispatcher's questions were to address an ongoing emergency. In the first call, the dispatcher requested information so officers could "know who they're looking for." As in *Davis*, the dispatcher's identification question was to "*resolve* the present emergency" involving an assailant on the run. *Id.* at 827, 126 S. Ct. at 2276. The dispatcher asked, "Where is he *right now*?" and "[h]ow many people are involved *right now*?" (Emphasis added). In the second 911 call, the dispatcher similarly addressed questions to address an ongoing emergency, asking L.J., "Is he inside of your house, or at your door?" and "Do you see any weapons on him?" The context of the admitted portions of both calls supports that the dispatcher was attempting to figure out the extent of an ongoing emergency, not to learn past events.

Fourth, the transcript of the calls suggest that L.J. was frantic. In the first call, L.J. repeatedly told the operator that Weekly had hit her and stated that she was injured. The operator also had to repeat questions. The second call reflects a similar situation.

We conclude that the admitted portions of the 911 calls were nontestimonial in nature and did not violate L.J.'s constitutional rights. But, to be admissible, the calls still must comply with the rules of evidence. Weekly raises one challenge to their admissibility under the rules, which we review next.

II.

Weekly argues that the district court plainly erred because it failed to redact L.J.'s statements to the 911 operator that Weekly was "on the run from the police," and "has a warrant for his a** in Waterloo, Iowa." Weekly contends that L.J.'s statements were not relevant evidence under Minn. R. Evid. 401; were prejudicial under Minn. R. Evid. 403; and constituted impermissible character evidence under Minn. R. Evid. 404. Weekly admits that he "did not specifically ask that the statements be redacted when the court ruled the recording was admissible, and the jury therefore heard them."

We review unobjected-to error under the plain-error standard of review. *See* Minn. R. Crim. P. 31.02. The plain-error standard requires the defendant to show: (1) error; (2) that was plain; and (3) that affected substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.*

Under the first prong of the plain-error analysis, this court must determine whether the district court abused its discretion in admitting the challenged statements. *See State v. Hayes*, 826 N.W.2d 799, 808 (Minn. 2013) (declining to "consider the remaining prongs of the plain-error test" after concluding that "the district court did not abuse its discretion in admitting the challenged testimony").

"Relevant evidence" is evidence that has "any tendency" to make a material fact more or less probable. Minn. R. Evid. 401. Irrelevant evidence is not admissible. Minn. R. Evid. 402. Under Minn. R. Evid. 404(b), evidence of prior bad acts is not admissible to

prove a defendant's character, but may properly show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Prior bad acts may be admissible to show the "context of [a] conversation." *State v. Czech*, 343 N.W.2d 854, 856 (Minn. 1984); *see also State v. Stafford*, 404 N.W.2d 918, 921 (Minn. App. 1987) (determining that evidence of a defendant's prior record "may be relevant to establish identity, to provide the context for a statement or a conversation, or for other legitimate purposes"), *review denied* (Minn. June 26, 1987). District courts must "balance the probative value of the evidence against its potential for unfair prejudice." *Stafford*, 404 N.W.2d at 921 (citing Minn. R. Evid. 403).

Here, L.J.'s statements about Weekly being "on the run" from police and having an outstanding warrant were unfavorable for Weekly and referenced a prior bad act. But the statements also provide important context, including why Weekly possibly wanted to stay at L.J.'s home, Weekly's potential motive for the assault, and why L.J. did not want Weekly to stay in her home. Just after saying Weekly was supposed to be in prison, L.J. stated, "[h]e's mad at me because he couldn't stay at my house," and that her whole head was "busted." Without this context, the jury would not have had the "complete picture" of events. *State v. Gonzales-Guerrero*, 364 N.W.2d 792, 794 (Minn. 1985) (holding that evidence of a prior bad act was admissible when it gave "the jury the complete picture of how defendant tried to escape prosecution by lying to the police"). We conclude that the district court did not abuse its discretion in admitting the evidence about the warrant. Because there was no error, we do not discuss the remaining plain-error factors.

Affirmed.