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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1386

State of Minnesota,
Respondent,

vs.

Ricky Sinatra Sims,
Appellant.

Filed August 10, 2020
Affirmed in part, reversed in part, and remanded
Reyes, Judge

Hennepin County District Court
File No. 27-CR-18-18804

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Slieter, Judge.

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

REYES, Judge

In this direct appeal from his judgment of conviction of domestic assault and fifth-degree assault, appellant argues that (1) the district court erroneously admitted hearsay statements under the residual hearsay exception and (2) recent changes to the sentencing

guidelines that altered the calculation of his criminal-history score entitle him to resentencing. We affirm in part, reverse in part, and remand.

FACTS

Appellant Ricky Sinatra Sims and B.M. have two children together. B.M. and her friend, S.S., were both at B.M.'s house on July 25, 2018, when S.S. called 911. S.S. told the police dispatcher that appellant had a knife, had been kicking the back door, was sitting on the back porch, and would not leave. Either S.S. or B.M. had called 911 twice earlier the same day, but appellant had left the home before police arrived. As captured in the body-camera video of the officer responding to the third 911 call, B.M. told the officer who arrived at her house that appellant had struck her several hours earlier and that she had a "knot" on her head. S.S. told the officer that appellant ripped out her hair, knocked her down the stairs, and struck B.M. After speaking with B.M. and S.S., police took appellant into custody.

Respondent State of Minnesota charged appellant with felony domestic assault against B.M. (count I) and felony fifth-degree assault against S.S. (count II), in violation of Minn. Stat. §§ 609.2242, subd. 4, .224, subd. 1(2) (2016), respectively. The district court held a three-day jury trial at which the jury heard testimony from B.M., S.S., and police officers, watched a body-camera video, and listened to the third 911 call. Over appellant's objection, the district court admitted statements B.M. and S.S. had made to the responding officer in the body-camera video under the residual exception to the hearsay rule stated in Minnesota Rule of Evidence 807. The district court noted that police did not ask leading questions, the witnesses made internally consistent statements, and other

evidence, such as the knot on appellant's forehead, corroborated their statements. Moreover, the responding officer testified that she could see and feel the knot on B.M.'s forehead.

During a later phone interview with a different police investigator, B.M. reiterated that appellant struck her. In a separate interview with the same investigator, S.S. reiterated that she saw appellant striking B.M. and that appellant also struck her, causing her to fall down the stairs.

B.M. and S.S. testified pursuant to a material-witness warrant for failure to appear after being summoned to testify. At trial, B.M. and S.S. confirmed that they did not want to testify against appellant. B.M. testified that she could not recall having been injured, that she could have made accusations out of anger, and that she was "pretty drunk" when she spoke to the police. However, B.M. testified consistent with her body-camera statements, acknowledged speaking to the police and conceded telling them that appellant struck her. B.M. also testified that, at the time of the incident, she wanted the police to take appellant away from her house.

S.S. testified that she saw appellant and B.M. pushing each other and saw appellant strike B.M. S.S. further testified that, when she intervened, appellant pulled her hair and that she "got bumped [and] fell down the stairs." S.S. acknowledged that her statements to the police recorded on the body-camera video were truthful.

The jury returned verdicts of guilty on counts I and II. Using a criminal-history score of five, the district court sentenced appellant to 27 months' imprisonment on count I and to a 90-day jail term on count II, to be served concurrently. This appeal follows.

DECISION

I. The district court did not abuse its discretion by admitting the body-camera statements under the residual hearsay exception.

Appellant argues that the district court abused its discretion and prejudiced his right to a fair trial by admitting the hearsay statements by B.M. and S.S. contained in the body-camera video under the residual hearsay exception. We disagree.

"We review a district court's decision to admit evidence for an abuse of discretion." *State v. Vasquez*, 912 N.W.2d 642, 648 (Minn. 2018). A district court abuses its discretion when it bases its decision to admit evidence on a conclusion that is clearly erroneous or when its decision is contrary to logic or the facts on the record. *Id.*

Hearsay is a generally inadmissible out-of-court statement offered "to prove the truth of the matter asserted." Minn. R. Evid. 801(c), 802. But the statement may be admissible if it (1) has "circumstantial guarantees of trustworthiness;" (2) provides evidence of a material fact; (3) has more probative value on the point it supports than does other evidence; and (4) its admission serves the "interests of justice." Minn. R. Evid. 807 (describing residual hearsay exception).

To determine whether a statement possesses circumstantial guarantees of trustworthiness, we examine the totality of the circumstances. *See State v. Hallmark*, 927 N.W.2d 281, 292 (Minn. 2019). These circumstances include (a) whether the declarant made the statement "voluntarily, under oath, and subject to cross-examination and penalty of perjury;" (b) the relationship between the declarant and the party; (c) whether the statement is against the declarant's penal interest; (d) whether the declarant had personal

knowledge of the incident; (e) whether the declarant recanted the statement; (f) "the existence of corroborating evidence;" (g) the declarant's truthfulness; (h) whether the statement is recorded, removing dispute regarding its contents; and (i) the declarant's motivation for making the statement. *Id.* at 292-93 (quoting *State v. Griffin*, 834 N.W.2d 688, 693 (Minn. 2013)). An appellant has the burden of establishing that the district court abused its discretion by admitting the evidence and that the admission prejudiced him. *Griffin*, 834 N.W.2d at 693. Appellant contends that the body-camera statements did not have the requisite circumstantial guarantees of trustworthiness because (1) B.M. and S.S. did not make them under oath or penalty of perjury or subject to cross examination; (2) the state presented no evidence of either declarants' character for truthfulness; (3) the state presented insufficient corroborating evidence; and (4) the declarants provided their statements almost four hours after the incident.

A. B.M.'s statements

Here, B.M.'s statements meet the majority of the circumstantial guarantees. B.M. voluntarily gave her statements to the police in response to open-ended questions. Her statements implicate the father of her children, with whom B.M. testified that she desired to preserve a relationship because he helped provide for her children. B.M.'s statements therefore go against "familial" interest, rendering them more trustworthy. *See Hallmark*, 927 N.W.2d at 295 n.6 (noting increased trustworthiness of statements going against "penal, parental, or familial" interests). B.M. made her statements based on firsthand knowledge. Even though at trial B.M. claimed she could not remember the incident, she did not recant her statements, but rather admitted to making them and gave testimony

consistent with them. Physical evidence corroborates B.M.'s statements, such as B.M. having a perceptible lump on her forehead when police arrived. S.S.'s statements and testimony also corroborate B.M.'s statements. The police body camera recorded B.M.'s statements. Finally, the body-camera video suggests that B.M. made the statements because she wanted the police to protect her from appellant, against whom she wanted to press charges. The record does not suggest that B.M. had an ulterior motive. To the contrary, B.M.'s statements at trial demonstrate that she had significant reasons *not* to accuse appellant, a man whose relationship and support she valued.

Even though B.M. did not give her statements under oath or subject to cross-examination and penalty of perjury and the state did not introduce evidence establishing her truthfulness, caselaw supports the admissibility of statements lacking these circumstantial guarantees of trustworthiness when the statements meet the other guarantees. *See, e.g.*, *id.* at 296-97 (describing balancing under totality-of-circumstances approach and upholding rule 807 admission of statement made not under oath or subject to cross-examination and without evidence of declarant's character for truthfulness). The Minnesota Supreme Court has even upheld a district court's admission of evidence possessing fewer circumstantial guarantees than are present here. *See, e.g.*, *State v. Robinson*, 718 N.W.2d 400, 410 (Minn. 2006) (upholding under rule 807 admission of statement given voluntarily, consistent across witness's two accounts, not inspired by a motive to lie, and told consistently to two people in short amount of time). B.M.'s statements possess all of the same circumstantial guarantees of trustworthiness noted in *Robinson*, including that B.M. gave a consistent account of events to police on the scene

and to the police investigator by phone several days later. In sum, B.M.'s statements possess sufficient circumstantial guarantees of trustworthiness to be admissible under rule 807.

B.M.'s statements also satisfy the other three requirements of rule 807. *See* Minn. R. Evid. 807. First, B.M.'s statements qualify as evidence of a material fact because they help establish appellant's assault charges. *See* Minn. Stat. §§ 609.2242, subd. 4 (describing elements of domestic assault), .224, subd. 1(2) (describing elements of fifth-degree assault). Second, B.M.'s statements are more probative of assault than other evidence because they are direct evidence of her firsthand experience of the assault and thereby establish the crime more effectively than any inference drawn from circumstantial evidence. Finally, the admission of B.M.'s voluntary statements directly implicating appellant promotes the "growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." *See State v. Aubid*, 591 N.W.2d 472, 479 (Minn. 1999) (quoting Minn. R. Evid. 102).

On this record, appellant has failed to meet his burden of demonstrating that the district court abused its discretion by admitting B.M.'s body-camera statements under the residual-hearsay exception. *See Griffin*, 834 N.W.2d at 693.

B. S.S.'s statements

S.S.'s statements meet all of the same circumstantial guarantees of trustworthiness as B.M.'s statements, except that the record suggests no strong relationship between S.S. and appellant, which does not weigh for or against truthfulness. For the same reasons stated above, S.S.'s recorded statements are also admissible.

II. Appellant is entitled to resentencing.

Appellant argues that we must remand his case for resentencing due to the amelioration doctrine because modifications to the sentencing guidelines reduced his criminal-history score by one-half point and therefore reduced his presumptive sentence by three months. We agree.

The proper calculation of a defendant's criminal-history score is a question of law that we review de novo. *See State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018). Under the amelioration doctrine, an amendment to a statute applies to an offense committed before the effective date of the amendment if "(1) there is no statement by the Legislature that clearly establishes the Legislature's intent to abrogate the amelioration doctrine; (2) the amendment mitigates punishment; and (3) final judgment has not been entered as of the date the amendment takes effect." *State v. Kirby*, 899 N.W.2d 485, 490 (Minn. 2017). Neither party disputes that the second element is met.

The legislature clearly abrogates the amelioration doctrine by making a statement to the effect of "crimes committed prior to the effective date of this act are not affected by its provisions." *State v. Robinette*, 944 N.W.2d 242, 249 (Minn. App. 2020) (quoting *Kirby*, 899 N.W.2d at 491), *review granted* (Minn. June 30, 2020). Certain statements by the sentencing commission, which proposes modifications to the sentencing guidelines, may also abrogate the amelioration doctrine if the legislature fails to contradict the statements. *See* Minn. Stat. § 244.09, subd. 11 (2018) (providing that sentencing commission modifications amending sentencing-guidelines grid or resulting in reduced sentence or early release become effective several months after being submitted to

legislature unless legislature by law provides otherwise, and that other modifications become effective according to commission's procedural rules).

Prior to the 2019 modifications, an offender received a full custody-status point if the offender committed an offense while on probation. Minn. Sent. Guidelines 2.B.2.a.(1)-(3) (Supp. 2017). Following the 2019 revisions, an offender now receives one-half of a custody-status point for an offense committed during probation. *See* Minn. Sent. Guidelines 2.B.2.a.(1)-(3) (Supp. 2019).

Our decision in *Robinette* supports appellant's contention that the legislature made no statement clearly establishing its intent to abrogate the application of the amelioration doctrine to the calculation of custody-status points under Minn. Sent. Guidelines 2.B.2 (Supp. 2019), and the state does not claim that it did. *See* 944 N.W.2d at 249-50.[1] Absent such a statement of intent, we presume the applicability of the amelioration doctrine. *Id.* at 249 n.1.

Finally, the third *Kirby* element precludes the application of the amelioration doctrine if there is final judgment affecting the *current* offense, but it does not refer to prior finalized criminal convictions making up a criminal-history score, as the state argues. *See*

[1] We also clarified that the sentencing committee's 2019 policy-modification suggestion that, "modifications to sections 1 through 8 of the Minnesota Sentencing Guidelines apply to offenders whose date of offense is on or after the specified modification date," does not qualify as a statement of intent by the legislature to abrogate the amelioration doctrine. *Id.* at 250 (quotation omitted); Minn. Sent. Guidelines 3.G.1 (Supp. 2019). Even though the legislature took no action on this suggestion, its inaction failed to operate as a statement of intent to abrogate the application of the amelioration doctrine because section 244.09, subdivision 11, does not provide for legislative adoption of alterations that do not modify the sentencing grid or reduce a sentence or incarceration length. *Id.*

Kirby, 899 N.W.2d at 490. We have applied the amelioration doctrine to recalculate a defendant's criminal-history score when the sentencing guidelines modified the points associated with *prior* finalized convictions before the defendant's *current* conviction became final. *See, e.g.*, *State v. Woods*, __ N.W.2d __, 2020 WL 2517077, at *1 (Minn. App. May 18, 2020) (applying amelioration doctrine to amended sentencing guidelines that changed decay requirement and therefore altered criminal-history score resulting from prior finalized convictions). In fact, a timely appeal suspends the finality of judgment until the appeal is dismissed or decided. *Luna-Pliego v. State*, 904 N.W.2d 916, 919 (Minn. App. 2017). Here, appellant timely appealed his sentence and thus had an outstanding appeal when the 2019 sentencing guidelines took effect, enabling him to receive the benefit of a decreased sentence pursuant to the modified sentencing guidelines. *See* Minn. R. Crim. P. 28.02, subd. 4(3)(a) (providing that appeal from felony must be filed within 90 days). Under the revised sentencing guidelines, appellant is entitled to resentencing in accordance with a reduced criminal-history score of four and one-half points.

Affirmed in part, reversed in part, and remanded.