STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1806

State of Minnesota,
Respondent,

vs.

Warren James Northrup,
Appellant.

Filed August 31, 2020
Affirmed
Reyes, Judge

St. Louis County District Court
File No. 69DU-CR-19-1433

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reyes, 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 second-degree assault and felony domestic assault, appellant argues that the district court abused its discretion by (1) admitting a 911 call at trial as an excited utterance over appellant's hearsay and

foundation objections and (2) redacting the opinion a police officer expressed during the victim's recorded statement that the victim was under the influence of drugs as opposed to alcohol. We affirm.

FACTS

Appellant Warren James Northrup and L.E. were in an intermittent relationship from approximately 2016 to 2019. On April 19, 2019, L.E. informed her mother, S.C., that she had been stabbed. S.C. conveyed this to L.T., L.E.'s stepfather, both parents went to L.E.'s house, and L.T. called 911 and reported "there was a stabbing. [Appellant] stabbed my daughter." Police took appellant into custody. Respondent State of Minnesota charged appellant with one count of second-degree assault with a dangerous weapon and one count of felony domestic assault, in violation of Minn. Stat. §§ 609.222, subd. 1, .2242, subd. 4 (2018), respectively. At the subsequent jury trial, L.E., S.C., the responding officer, a 911 call-center supervisor, and appellant's brother-in-law testified. The jury also heard the 911-call and a redacted version of a body-camera video of the responding police officer. Appellant chose not to testify.

As L.T. reported on the 911 call, after he and S.C. arrived at L.E.'s apartment at approximately 9:00 p.m. on the night of the incident, S.C. entered the apartment before L.T. and told L.T. that "[appellant] almost cut [L.E.'s] finger all the way off." L.T. repeated this statement to the 911 operator. As captured on the body-camera video of the responding police officer, L.E. reported that she and her friend J.F. had been drinking together in her apartment when appellant showed up unexpectedly and began arguing with her. L.E. also testified that J.F. left the apartment at some point, appellant tried to cut her throat, and she

moved her hand in front of the knife in self-defense, resulting in appellant slashing her hand and severing several tendons. The day after the incident, the officer spoke to J.F., who claimed that he had been intoxicated the day before and could not remember being at L.E.'s apartment. Appellant called his brother-in-law as an alibi witness, who testified that appellant returned to his brother-in-law's house sometime before the incident occurred at 9:00 p.m.

Appellant objected to the admission of L.T.'s 911 call on hearsay and foundation grounds, but the district court admitted it as an excited utterance, determining that discovering harm befalling one's child may send a parent into a state of shock. The district court also admitted the body-camera video of L.E.'s statements to the officer over appellant's objections that her testimony was inconsistent with her statements. Finally, the district court granted the state's motion to prohibit the officer from testifying that he thought L.E. was under the influence of drugs as opposed to alcohol when giving her statement to the officer, and it redacted the officer's statements to that effect from the body-camera video. The district court determined that the officer's "speculation" was not relevant because L.E. "is not being charged with a drug crime" and because it would be improper for the officer to opine about her credibility. The jury found appellant guilty of both counts, and the district court convicted him and imposed a 54-month prison sentence. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by admitting L.T.'s 911 call over appellant's hearsay and foundation objections.

Appellant argues that L.T.'s statements in his 911 call do not meet the excited-utterance hearsay exception because they are double hearsay stemming from information S.C. relayed to him, and no exception exists for the second iteration of hearsay, resulting in prejudice to him. We are not persuaded.

We review a district court's decision to admit evidence over objections for hearsay and lack of foundation for an abuse of discretion. *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (hearsay); *Turnage v. State*, 708 N.W.2d 535, 542 (Minn. 2006) (foundation). A district court abuses its discretion when it bases its decision to admit evidence on an erroneous view of the law or when its decision is contrary to logic or the facts in the record. *State v. Vasquez*, 912 N.W.2d 642, 648 (Minn. 2018).

Hearsay is a generally inadmissible out-of-court statement offered "to prove the truth of the matter asserted." Minn. R. Evid. 801(c), 802. A prior out-of-court statement is admissible as an exception to the hearsay rule if the statement qualifies as an "[e]xcited utterance." Minn. R. Evid. 803(2). An "[e]xcited utterance" 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." *Id.* Evidence containing double hearsay is admissible if each statement qualifies as an exception to the hearsay rule. Minn. R. Evid. 805.

Even if the district court abuses its discretion, an appellant is not entitled to a new trial if the error is harmless. *State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006). An

erroneous admission of evidence is harmless if there is no "reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (quotation omitted). If hearsay statements are cumulative and merely corroborate the testimony of other witnesses and are not otherwise prejudicial, the verdict may not be attributed to an erroneous admission of hearsay. *State v. DeRosier*, 695 N.W.2d 97, 106 (Minn. 2005). An appellant has the burden of establishing that the district court abused its discretion by admitting the evidence and that the admission of the evidence prejudiced him. *State v. Griffin*, 834 N.W.2d 688, 693 (Minn. 2013).

Here, as recorded on the body-camera video, L.E. told the responding officer that "[appellant] tried to . . . chop my hand . . . I think he was trying for my throat." Similarly, L.E. testified that "[appellant] had a knife," that he "put it up to my throat and I put my hand in the way," and that she had no doubt that "[appellant] cut my hand." Her recorded statements and testimony are direct evidence of the assault. In addition, S.C. testified that L.E. called her and told her that "[appellant] stabbed [her]." In his brief, appellant does not challenge the district court's admission of L.E.'s statements to officers in the body-camera video or the admissibility of L.E.'s or S.C.'s out-of-court statements. Because L.T.'s 911-call statements are cumulative of and corroborate this properly admitted evidence, even if we assume without deciding that they were erroneously admitted, their admission had no reasonable possibility of significantly affecting the verdict and therefore is harmless error. *See Matthews*, 800 N.W.2d at 633; *DeRosier*, 695 N.W.2d at 106.

Appellant also argues that the state presented an insufficient foundation to admit the 911 call because it did not submit testimony from the person who received the call and thus

failed to establish its correctness or completeness. Because we conclude that admitting the 911 call is harmless error, we need not address appellant's foundation argument.

II. The district court did not abuse its discretion by excluding the responding officer's opinion that L.E. was under the influence of a drug besides alcohol when he interviewed her immediately after the assault.

Appellant argues that the district court abused its discretion by not admitting the officer's opinion because it "bore directly on [L.E.]'s capacity to observe and accurately recollect the events of which she spoke" and "undermined her credibility by contradicting her statements and testimony that she had used only alcohol." We conclude that any alleged error is harmless.

We review for an abuse of discretion a district court's ruling on whether to admit a recording in full or in redacted form. *State v. Zulu*, 706 N.W.2d 919, 924 (Minn. App. 2005).

A district court does not abuse its discretion by excluding impeachment evidence if its exclusion is harmless error, meaning that there is no "reasonable possibility that the verdict might have been different if the evidence had been admitted." *State v. Graham*, 764 N.W.2d 340, 355 (Minn. 2009) (quotation omitted). The Minnesota Supreme Court has determined that a district court's exclusion of impeachment evidence is harmless error because the appellant effectively impeached the witness with other information regarding same issue. *State v. Larson*, 788 N.W.2d 25, 35-36 (Minn. 2010). We have reached the same conclusion when the appellant thoroughly cross-examined the defendant on the same issue that impeachment evidence would have further established. *State v. Volk*, 421 N.W.2d 360, 363, 364 (Minn. App. 1988), *review denied* (Minn. May 18, 1988).

Here, appellant sought to admit a comment by the officer on the body-camera video that he believed L.E. was under the influence of a substance besides alcohol. Appellant's defense strategy focused on portraying L.E. as not credible. Appellant effectively made this point because the jury saw the body-camera footage in which L.E. freely admitted to drinking for several hours and consuming either around a quart of a bottle of alcohol or twenty shots. Moreover, appellant cross-examined L.E. about her alcohol use and how it clouded her memory and argued to the jury that L.E. had been drinking all night, had trouble remembering what occurred, and confused important details of the incident. There is not a reasonable possibility that portraying L.E. as under the influence of drugs as opposed to alcohol would have impacted the jury's assessment of her credibility or appellant's guilt. *See Larson*, 788 N.W.2d at 35-36; *Volk*, 421 N.W.2d at 363, 364. Accordingly, we conclude that the district court did not abuse its discretion because excluding the officer's opinion that appellant was under the influence of a drug besides alcohol constitutes harmless error.

Affirmed.