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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1849

State of Minnesota,
Respondent,

vs.

Precious Sylvanna Williams,
Appellant.

Filed December 7, 2020
Affirmed
Reilly, Judge

Ramsey County District Court
File No. 62-CR-19-1452

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

Lyndsey M. Olson, St. Paul City Attorney, Michael A. Seasly, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

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

REILLY, Judge

When a security guard patrolling a building in downtown St. Paul tried to deescalate a verbal altercation between appellant and another woman, appellant assaulted the security

guard. The responding police officers wore body cameras that recorded interviews with the victim and a witness. At her jury trial, the jury found appellant guilty of disorderly conduct and fifth-degree assault. Appellant challenges the admission of the camera footage on the ground it is inadmissible hearsay. We affirm.

FACTS

At around 6:45 p.m. on February 25, 2019, police officers Samuel Keller and David Rud responded to a call at the U.S. Bank building (building) in St. Paul. When they arrived, the Metro Transit Police Department had appellant in custody. The officers conducted an investigation. Officer Keller interviewed the victim, D.A., and Officer Rud interviewed the witness, B.C. Both officers wore body cameras and recorded the interviews.

The state charged appellant with fifth-degree assault, Minn. Stat. § 609.224, subd. 1 (2018), and two counts of disorderly conduct, Minn. Stat. § 609.72, subds. 1(1), (3) (2018). The district court conducted a two-day jury trial. The state called five witnesses. Appellant testified on her own behalf and called no other witnesses.

Trial testimony established these facts. D.A. worked as a security guard for the building and was on duty the evening of February 25, 2019. While sitting at the security desk on the second floor of the building, D.A. heard "loudness" on the first floor. D.A. went down the escalator and saw appellant arguing with another woman. Appellant was "very upset; very, very upset" and was "very, very, very aggressive." D.A. stepped between both women and tried to calm down appellant. After about three to four minutes, appellant began acting like she wanted to fight the woman. D.A. told appellant she needed to either calm down or leave the vestibule. Appellant said she was not going anywhere and

tried to get around D.A. to the other woman. D.A. leaned against the glass of the vestibule to block appellant.

In response, appellant tried to slap D.A., but missed. D.A. grabbed appellant's wrist to keep her from attempting to slap him again. As D.A. held appellant's wrist, appellant grabbed D.A.'s necktie. Appellant never let go of D.A.'s necktie and continually tried to twist it and choke D.A. Because appellant would not let go of D.A., he and another security guard walked her outside. While D.A. tried to move appellant outside, she continued to choke, scratch, and kick him in the groin.

B.C. testified that around 6:45 p.m. on that day, she was inside the vestibule of the building with her two children waiting for their bus. B.C. saw appellant and another woman arguing in the vestibule. Soon after, D.A. arrived and asked appellant to leave but appellant refused. B.C. saw appellant first smack D.A. and then beat, hit, and kick him in his groin. B.C. heard D.A. tell appellant "I'm not going to hit you" and ask appellant to let him go. Appellant would not let go of D.A. and continued to grab him. It took both D.A. and the second security guard to get appellant out of the building. B.C. never saw D.A. strike appellant and believed appellant was the aggressor. B.C. and her children believed the incident was "crazy," and so B.C. called the police and told them that a girl was attacking a man. B.C. had a clear view of the incident for the 10 to 15 minutes it lasted, she recorded the attack on video, and she showed the video to police.

After D.A. and B.C. testified, the state sought to introduce the body-camera footage of the officers' interviews with D.A. and B.C. Appellant objected, asserting that she did not impeach D.A. or B.C., and there was thus no need to bolster their credibility; instead,

the footage would be cumulative. The state argued the footage was nonhearsay evidence under Minn. R. Evid. 801(d)(1)(B) that would help the jury in evaluating the credibility of both D.A. and B.C. The district court admitted the footage of both officers' body cameras into evidence as (1) prior consistent statements under Minn. R. Evid. 801(d)(1)(B), and (2) present sense impressions under Minn. R. Evid. 801(d)(1)(D). The jury watched the footage.

At the end of trial the jury found appellant guilty on all three charges. This appeal follows.

D E C I S I O N

Appellant challenges the admission of the officers' body-camera footage at trial and argues that the district court abused its discretion by admitting the footage because it was inadmissible hearsay. "Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). "A [district] court abuses its discretion when it acts arbitrarily, without justification, or in contravention of the law." *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). Appellant bears "the burden of establishing that the [district] court abused its discretion and that [the] appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Hearsay is generally not admissible unless an exception to the hearsay rule applies. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020) (citing Minn. R. Evid.

802). The Minnesota Rules of Evidence provide instances when an out-of-court statement is not hearsay. Minn. R. Evid. 801(d). Two such instances are relevant here: prior consistent statements and present sense impressions. We discuss each in turn.

A. The footage is admissible as a prior consistent statement.

Appellant argues that the footage was inadmissible as a prior consistent statement for two reasons. First, appellant claims that she did not impeach either witness's credibility. Second, according to appellant, the footage was not consistent with trial testimony because the footage contained evidence besides both witnesses' out-of-court statements.

Out-of-court statements are admissible as prior consistent statements when: (1) the declarant testifies at trial, (2) the declarant is subject to cross-examination, and (3) the statements are "consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility as a witness." Minn. R. Evid. 801(d)(1)(B). Prior consistent statements are not automatically admissible under Minn. R. Evid. 801(d)(1)(B), however. The district court must first determine that the witness's credibility has been challenged and that the statement will bolster the witness's credibility. *State v. Nunn*, 561 N.W.2d 902, 909 (Minn. 1997).

On the threshold question of whether appellant challenged the witnesses' credibility, appellant argues that under *Nunn*, the district court erred in admitting the footage. The court in *Nunn* held that prior consistent statements must help the jury in evaluating the witness's credibility and "[t]hus, before the statement can be admitted, the witness'[s] credibility must have been challenged, and the statement must bolster the witness'[s]

credibility with respect to that aspect of the witness'[s] credibility that was challenged." *Id.* A defendant challenges a witness's credibility by disputing his or her recollection of the events surrounding the crime. *Id.*

Here, the holding in *Nunn* supports admission of the footage. The district court determined that appellant challenged the witnesses' credibility at trial by disputing their recollections of the events surrounding the crime. Thus, the district court determined that it was particularly important to know who acted at what times, and the footage would help the jury in assessing credibility. We agree that appellant challenged the credibility of both D.A. and B.C. by disputing their recollections of the events and that the prior consistent statements were, therefore, helpful to the jury.

Having determined that appellant challenged the witnesses' credibility, we turn to appellant's second argument that because the footage differs from trial testimony it contains inconsistent statements and thus should not have been considered a prior consistent statement. Trial testimony and the prior statement need not be identical to be considered consistent. *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *review denied* (Minn. Feb. 24, 2000). It is sufficient if the prior statement is simply reasonably consistent with the trial testimony. *State v. Zulu*, 706 N.W.2d 919, 924 (Minn. App. 2005). A prior statement is not reasonably consistent with trial testimony when the inconsistencies affect the elements of the charge so that, if believed by the jury, they would legally escalate the criminal charge. *Bakken*, 604 N.W.2d at 110.

Appellant argues that the footage of D.A.'s interview differed from his trial testimony because it contained these five statements:[1] (1) D.A. described appellant's behavior as ridiculous, (2) the second security guard stated that he felt the need to step in when he saw appellant kicking D.A., (3) Officer Keller told D.A. he had a right to defend himself, (4) the second security guard stated that D.A. tried not to defend himself, and (5) D.A. stated that he did not touch appellant other than holding her wrists. Appellant similarly contests the footage of B.C.'s interview with Officer Rud because it includes these five statements to which she did not testify at trial: (1) B.C. described the attack and stated that appellant would not leave, was screaming, started attacking D.A., and that it took both security guards to get appellant out of the building; (2) B.C. showed Officer Rud her cell-phone video of the attack; (3) B.C. stated that appellant went crazy and that D.A. is a nice man; (4) B.C. stated she felt bad for D.A. and hoped he gets a raise; and (5) Officer Rud gave stickers to B.C.'s children.

In our review of the footage of both witnesses' interviews and their trial testimony, we conclude that they do not diverge so much so that they were not reasonably consistent. Nor do they legally escalate the criminal charges against appellant. To convict appellant of fifth-degree assault the state had to prove that she intentionally inflicted or attempted to

[1] Appellant appears to claim that besides the footage differing from trial testimony, the state should have redacted certain portions of the footage before publishing it to the jury. But appellant did not object on these grounds at trial and has therefore forfeited that issue on appeal. *See State v. Mosley*, 853 N.W.2d 789, 797 n.2 (Minn. 2014) (finding that an evidentiary issue was not preserved for appeal when the defendant made an objection on due-process grounds, but failed to state the specific ground of objection under an evidentiary rule).

inflict bodily harm on another. Minn. Stat. § 609.224, subd. 1(2). The state established this element when D.A. testified that appellant choked, scratched, and kicked him, and when B.C. testified that appellant beat, hit, and kicked D.A. The other details D.A. and B.C. described in their interviews, if true, did not raise appellant's conduct to a higher level of criminality than the fifth-degree assault charge.

Similarly, to convict appellant of the first count of disorderly conduct the state had to prove that she engaged in brawling or fighting. Minn. Stat. § 609.72, subd. 1(1). The state established this element when D.A. and B.C. testified that appellant attacked D.A. To convict appellant of the second count of disorderly conduct the state had to prove that she engaged in offensive, obscene, abusive, boisterous, or noisy conduct or language that tended to reasonably arouse alarm, anger, or resentment in others. *Id.*, subd. 1(3). The state established this element (1) when D.A. testified appellant was aggressive, yelled, tried to fight another woman, and physically attacked him, and (2) when B.C. testified the attack was "crazy" and that she called the police for help. Again, the other details D.A. and B.C. described in their interviews, if true, did not raise appellant's conduct to a higher level of criminality than the charges of disorderly conduct.

Consistency does not require trial witnesses to recite their prior statements verbatim. *Bakken*, 604 N.W.2d at 109. We conclude the footage was reasonably consistent with the trial testimony, and thus the district court did not abuse its discretion in admitting the footage as prior consistent statements.

B. The footage is admissible as a present sense impression.

Out-of-court statements are not hearsay "if the declarant testifies at the trial, is subject to cross-examination concerning the statement, and the statement describes or explains 'an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.'" *Melius v. Melius*, 765 N.W.2d 411, 418 (Minn. App. 2009) (quoting Minn. R. Evid. 801(d)(1)(D)). Appellant argues that the footage is not admissible as a present sense impression under *State v. Pieschke*, 295 N.W.2d 580 (Minn. 1980), because too much time passed between the assault and recording of the footage. In *Pieschke*, the supreme court determined that statements made within a few minutes of an accident qualified as a present sense impression but those made an hour later did not because too much time had passed. 295 N.W.2d at 584. The court stated the purpose of requiring that the statement be "made contemporaneously with the event or immediately thereafter [is] so that there is little time to consciously fabricate a story." *Id.* at 583. Thus, *Pieschke* established a continuum of time, ranging from a few minutes up to an hour, when a statement may qualify as a present sense impression. *Id*. at 584.

Here, the footage captured an ongoing police investigation shortly after the assault. It is unlikely that either witness had time to "consciously fabricate a story" and thus did not undermine the purpose of Minn. R. Evid. 801(d)(1)(D). *Id.*

We conclude that the district court's decision to admit the footage as a present sense impression is not contrary to the time spectrum established by caselaw. The district court did not abuse its discretion. *See Mix*, 646 N.W.2d at 250 ("A [district] court abuses its discretion when it acts . . . in contravention of the law.").

Having concluded that the district court did not abuse its discretion when it admitted the footage as a prior consistent statement or present sense impression, we briefly discuss appellant's claim that the admission of the footage impacted the verdict. Even if appellant could show that the district court committed error by admitting the footage, appellant is not automatically entitled to a new trial. *See Nunn*, 561 N.W.2d at 907 ("Reversal is warranted only when the error substantially influences the jury's decision."). Appellant must also establish that the error prejudiced the outcome of the trial. *Id.* We conclude that nothing in the record shows that the admission of the footage prejudiced the outcome of the trial.

Affirmed.