STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0672

State of Minnesota,
Respondent,

vs.

Ryan Lee Debner,
Appellant.

Filed May 2, 2022
Affirmed
Wheelock, Judge

Meeker County District Court
File No. 47-CR-18-1224

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbein, Meeker County Attorney, Litchfield, Minnesota (for respondent)

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

Considered and decided by Bryan, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant Ryan Lee Debner challenges his felony theft conviction, arguing that the district court erroneously concluded that a witness's out-of-court statements fell within an exception to the hearsay rule. We affirm.

FACTS

On the evening of October 20, 2018, Litchfield police responded to a theft report from a trustee of the Eagle's Club (club). The trustee informed the first responding officer that someone had tried to steal the club's beverage cooler from the banquet room. A television that had been on top of the cooler was found behind the club, and the large, glass beverage cooler lay broken in the middle of the parking lot with much of its contents either broken or damaged. Based on several eye-witness statements and a search of Debner's vehicle, which contained items identified as belonging to the club, Debner was charged with felony theft in violation of Minn. Stat. § 609.52, subd. 2(a)(1) (2018).

The following summarizes the witness testimony at Debner's three-day jury trial. A club employee saw Debner and his significant other, Jaclynn Condon, having drinks at the club bar. The employee noticed Condon, a former club bartender, going in and out of the club's kitchen. The employee informed the trustee, who searched the kitchen but did not find Condon there. While the trustee was in the kitchen, he saw someone in the banquet room, which is attached to the kitchen.

A patron soon informed the trustee that the club's beverage cooler was broken in the middle of the parking lot. The cooler was ordinarily stored in the banquet room. The patron testified that she heard a strange noise and observed a sport utility vehicle (SUV) speed out of the parking lot with its hatchback open.

The first police officer arrived roughly 15 minutes later, around 8:00 p.m. A second officer came to help but left after determining that the first officer did not need assistance.

When the second officer left around 8:20 p.m., he saw Debner drive into the parking lot of the club in a red SUV.

After the bartender informed the first officer that Debner had returned to the club, the officer moved to park his squad car in front of Debner's SUV to prevent him from leaving the club parking lot. The second officer returned, and together they searched Debner's vehicle. The officers found loose beverage containers and other items that the trustee identified as belonging to the club.

During this time, Condon was at a local tavern for the second time that day. The tavern owner testified at trial about statements Condon made to her. Debner objected to the admission of these statements as hearsay, and the district court found the statements admissible under the excited-utterance exception.

The tavern owner testified that Condon and Debner were at the tavern in the afternoon and that several hours later, Condon returned to the tavern towards the end of the dinner rush, which is usually from 6:00 p.m. to 9:00 p.m. In her testimony, the tavern owner described Condon as nervous, frantic, and giddy when Condon returned. The tavern owner stated that Condon confided in her that she and Debner had stolen a cooler from the club but that it broke when it fell out of their car in the club parking lot. Condon was concerned that someone had seen them leave. She was also worried because they had forgotten to pay their tab at the club. Condon explained that Debner had returned to the club to pay their tab while she waited for him at the tavern. Debner never returned. The tavern owner eventually called the sheriff's department and learned that Debner had been arrested.

After a three-day trial, the jury found Debner guilty of theft, and the district court entered a judgment of conviction. The district court stayed imposition of sentence, placed Debner on probation for five years, and ordered restitution.

Debner appeals.

DECISION

Debner contends that the district court abused its discretion by allowing the tavern owner to testify about hearsay statements Condon made to her.

"Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] 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 its "ruling is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015) (quotation omitted).

"'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 inadmissible unless an exception to the hearsay rule applies. Minn. R. Evid. 802; *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006).

Here, the district court found that Condon's statements to the tavern owner were admissible under the excited-utterance exception to the hearsay rule. The excited-utterance exception allows admission of 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." Minn. R. Evid. 803(2). Three requirements must be met for hearsay to qualify as an excited utterance: (1) there was a startling event or condition; (2) the hearsay statement relates to

the startling event or condition; and (3) the declarant was "under a sufficient aura of excitement caused by the event or condition to insure the trustworthiness of the statement." Minn. R. Evid. 803(2) 1989 advisory comm. cmt. The district court, "in its discretion, determines whether the declarant was under the 'aura of excitement,' and we review that determination for an abuse of discretion." *State v. Martin*, 614 N.W.2d 214, 224 (Minn. 2000) (quoting Minn. R. Evid. 803(2) 1989 advisory comm. cmt.) (citation omitted). Debner mounts three challenges to the district court's evidentiary ruling. We address his challenges in turn.

The district court found that Condon's statements about the "very recent theft from the Eagles [Club]" constituted a startling event. This finding supports the first two requirements for an excited utterance: there was a startling event, and the statement relates to it. Debner, however, argues that the statements Condon made were not related to her witnessing a startling event but were instead the result of her worrying about "get[ting] in trouble for the theft." We disagree. Condon's statements either described how the theft unfolded or expressed her worry about getting caught for the theft. Both of those statements relate generally to the theft, and we need not parse them as Debner suggests. The district court therefore did not clearly err in its finding.

The third requirement asks whether Condon was sufficiently under the stress of excitement when she made the statements. Debner contends that Condon's statement fails this requirement because Condon's excitement is attributable to her drinking and because the state failed to establish how much time passed between the theft and Condon's statements. Neither contention is persuasive.

First, the tavern owner specifically testified that although she was aware that Condon had been drinking, Condon appeared frantic, nervous, and giddy "because of that incident." Based on the tavern owner's description of her, the district court did not clearly err in its finding that Condon was still under the stress of excitement caused by the theft.

Second, our caselaw is clear that there are "no strict temporal guidelines for admitting an excited utterance" so long as the declarant is still under the stress of excitement caused by the event. *Martin*, 614 N.W.2d at 223-24 (quotation omitted). As we previously noted, the record here supports the district court's determination that Condon was still under the stress of excitement caused by the theft. We also observe that the record supports the district court's finding that Condon's statements were made within an hour of the theft, which is within a time range that other cases have found acceptable for the excited-utterance exception. *See State v. Berrisford*, 361 N.W.2d 846, 850 (Minn. 1985) (affirming the admission of a statement made "just 90 minutes after the murder"); *State v. Daniels*, 380 N.W.2d 777, 783-84 (Minn. 1986) (affirming the admission of statements made "within an hour" of a fire).

On this record, there is no basis to conclude that the district court abused its discretion in weighing the tavern owner's description of Condon's demeanor and finding that Condon's statement fell within the excited-utterance exception to the hearsay rule.

Affirmed.