STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0911

State of Minnesota,
Respondent,

vs.

Teshome Sok Sameru,
Appellant.

Filed June 27, 2022
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-CR-14-1154

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

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Ramsey County jury found Teshome Sok Sameru guilty of attempted second-degree murder and first-degree assault based on evidence that he beat a man, causing severe and permanent injuries. Sameru argues that he should receive a new trial because the

district court admitted into evidence audio-recordings of two 911 calls, which he contends is a violation of his rights under the Confrontation Clause. We conclude that the 911 calls are nontestimonial in nature and, thus, admissible. Therefore, we affirm.

FACTS

Sameru attacked his victim, A.A., during the evening of January 31, 2014, in the parking lot of an apartment building in the city of St. Paul. A.A. testified at trial that, at the time of the incident, he was returning to his home alone after giving Sameru's former girlfriend a ride from her workplace to her home. He testified that he parked his car and was walking toward the apartment building when he was struck from behind and fell. He did not see who struck him and does not remember anything that happened thereafter.

Part of the attack was witnessed by another resident of the apartment building, L.T., who happened to be looking out a window of her third-floor apartment. At 9:34 p.m., L.T. called 911 and told the 911 operator that she had seen a maroon four-door car follow a car belonging to a person who lived in the building. She said that the driver of the maroon car "crept up" on the resident, turned off the car's headlights, approached the resident on foot, and "beat him." L.T. clarified that she saw the attacker's arms swing up and down approximately eight times but could not see what he was striking because her view was partially blocked by a parked vehicle. She said that the attacker had driven away two or three minutes before her call. She could not provide any identifying information about the attacker except that he was wearing dark clothing. Police officers responded to L.T.'s 911 call but could not locate a victim.

Nineteen minutes later, at 9:53 p.m., L.T. called 911 again. She told the 911 operator that she had just seen the victim of the assault stagger to a bus-stop bench and then fall to the ground. She told the 911 operator where the man could be found. Police officers were dispatched to the scene again and quickly found A.A., who was transported by ambulance to a nearby hospital. He had substantial injuries to his face and skull. Emergency-room physicians determined that he was bleeding into his brain and required emergency surgery. A.A. spent weeks in the hospital before he was discharged to a rehabilitation center. At trial, more than five years after the attack, A.A.'s niece testified that A.A. had ongoing deficits to his memory, patience, and physical strength and that it was difficult for him to work or sit for an extended period of time.

After the incident, police investigators spoke with Sameru's former girlfriend, who alerted them to Sameru and said that, contrary to her wishes, he continued to call her every day. The investigators learned that Sameru owned a maroon four-door car that is consistent with L.T.'s description and with a car captured by a nearby surveillance video-camera around the time of the 911 calls. The investigators also learned that Sameru's cell phone was in the area of the crime around the time of the 911 calls, even though he lived in Minneapolis.

The state filed criminal charges against Sameru in February 2014 and later amended the complaint twice. In the second amended complaint, the state charged Sameru with attempted second-degree murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2012), and first-degree assault, in violation of Minn. Stat. § 609.221, subd. 1 (2012). In September 2014, after a rule 20 competency evaluation, the district court found that Sameru was

incompetent to stand trial. In December 2014, Sameru was civilly committed. In December 2018, after an evaluation determined that Sameru's competency had been restored, the district court reinstated the criminal charges.

By that time, L.T. no longer was available to testify because she had passed away. In January 2020, Sameru moved to suppress four statements previously made by L.T.: the two 911 calls and two statements she made to police officers in investigative interviews on the evening of the incident and the following day. Sameru argued that all four statements were inadmissible under the Confrontation Clause of the Sixth Amendment to the United States Constitution. The state conceded that the two statements L.T. gave to police officers in investigative interviews were inadmissible, but the state opposed Sameru's motion with respect to the 911 calls. The district court denied Sameru's motion to the extent he sought to suppress evidence of the 911 calls.

The case was tried to a jury on five days in March 2020. The state introduced audio-recordings and transcripts of L.T.'s two 911 calls. The jury found Sameru guilty on both counts. In April 2021, the district court imposed a sentence of 183 months of imprisonment on count 1. Sameru appeals.

DECISION

Sameru argues that the district court erred by denying his motion to suppress evidence of the two 911 calls on the ground that their admission violated his rights under the Confrontation Clause.

A.

The Sixth Amendment to the United States Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. The Confrontation Clause prohibits the admission of a prior testimonial statement of a person who does not testify at trial unless the person is unavailable for trial and the defendant had a prior opportunity to cross-examine the person. *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). But this rule of prohibition applies only to statements that are testimonial in nature; if a prior statement is nontestimonial in nature, the person who made the statement is not a "witness" for purposes of the Confrontation Clause. *Davis v. Washington*, 547 U.S. 813, 821 (2006). Accordingly, the admissibility of a prior statement under the Confrontation Clause depends on whether a statement is testimonial or nontestimonial in nature. *Id.* If a prior statement is testimonial in nature, the statement is inadmissible for purposes of the Confrontation Clause; but if a prior statement is nontestimonial in nature, the statement is not inadmissible for purposes of the Confrontation Clause. *Id.*

Statements made to police officers and other law-enforcement personnel may be either testimonial or nontestimonial. *Id.* at 822. Such a statement is deemed nontestimonial if it was "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.* On the other hand, such a statement is deemed testimonial if "the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past

events potentially relevant to later criminal prosecution." *Id.* This court applies a *de novo* standard of review to a district court's decision to admit a statement despite an objection based on the Confrontation Clause. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006).

B.

This case concerns the admissibility of statements made not in a formal interrogation but in 911 calls. Both the United States Supreme Court and the Minnesota Supreme Court have considered the admissibility of audio-recordings of 911 calls. In *Davis*, a woman called 911 to report that Davis was assaulting her in her home. 547 U.S. at 817-18. The 911 call began while Davis was present in the home. *Id.* The Court concluded that the statements made by the woman while Davis was still in the home were nontestimonial in nature, and thus admissible, because their primary purpose was to assist police in responding to an ongoing emergency. *Id.* at 828-29. The Court reached that conclusion because the 911 caller was "speaking about events *as they were actually happening*, rather than 'describ[ing] past events'"; the caller was facing an ongoing emergency; the "elicited statements were necessary to be able to *resolve* the present emergency, rather than simply to learn . . . what had happened in the past"; and the caller's statements were made frantically, not in a controlled environment similar to an interrogation at a police station. *Id.* at 827 (alteration in original) (quoting *Lilly v. Virginia*, 527 U. S. 116, 137 (1999) (plurality opinion)).

In *State v. Wright*, 726 N.W.2d 464 (Minn. 2007), two women called 911 to report that Wright had pointed a handgun at each of them and threatened them. *Id.* at 467-68. The women called 911 after Wright had left the apartment, but they expressed their fear

that Wright might return to the home and harm them. *Id.* at 468. The 911 call continued until the 911 operator informed the women that police officers had apprehended Wright. *Id.* The Minnesota Supreme Court concluded that the women's statements were nontestimonial in nature, and thus admissible, because their primary purpose was to enable law enforcement to meet an ongoing emergency, which included the need to reassure the women that they were safe because Wright had been apprehended. *Id.* at 474-75.

C.

In this case, the district court determined that L.T.'s statements in the 911 calls are nontestimonial in nature, and thus admissible, because there was an ongoing emergency. The district court reasoned that L.T. called 911 "to seek help for a person being assaulted" and that her statements were "necessary to resolve the emergency and enable a police response." Sameru contends that the district court erred on the ground that there was no ongoing emergency at the times of the 911 calls. He notes that both of L.T.'s 911 calls were made after the assault had occurred and after the attacker had driven away.

The district court's conclusion that L.T.'s 911 calls concerned an ongoing emergency is consistent with the applicable caselaw. L.T.'s 911 calls are similar to the 911 call in *Davis* in that L.T. spoke about a situation that was ongoing, her colloquy with the 911 operator was conducted for the purpose of resolving the ongoing situation, and she spoke frantically. *See* 547 U.S. at 827. Also, L.T.'s 911 calls are similar to the 911 call in *Wright* in that the suspect had fled. *See* 726 N.W.2d at 467-68, 474-75. Nonetheless, as in *Wright*, the emergency was ongoing. The ongoing emergency in this case was A.A.'s need for medical attention. The need to provide medical treatment to a crime victim may

be an ongoing emergency for purposes of the Confrontation Clause. In *State v. Warsame*, 735 N.W.2d 684 (Minn. 2007), a woman told a police officer that her boyfriend had just "beat [her] up," and the officer observed that the woman had physical injuries and was distraught. *Id.* at 687. The woman made additional statements to the officer in response to his questions. *Id.* at 687-88. The supreme court determined that the woman's statements were nontestimonial in nature, and thus admissible, because they were made for the purposes of resolving an ongoing emergency. *Id.* at 693. The supreme court reasoned as follows:

> As first responders to emergencies, police are often required to assess a party's injuries and determine whether those injuries must be immediately addressed and whether the party requires additional assistance from paramedics or other health care professionals. In order to make that assessment, officers must inevitably learn the circumstances by which the party was injured, and if the circumstances of the questions and answers objectively indicate that gaining such information is the primary purpose of the interrogation, then the party's statements are nontestimonial.

Id.

The rationale of *Warsame* applies with full force to this case. L.T. called 911 for the primary purpose of prompting first responders to find A.A. and give him emergency assistance. In the first 911 call, L.T. asked the 911 operator to send officers because she was concerned about a person who apparently had been beaten. In the second 911 call, L.T. provided the 911 operator with specific information about A.A.'s location so that emergency responders could find him. Both 911 calls ended when the 911 operator informed L.T. that emergency assistance was on its way or was at the scene. The

circumstances are properly deemed an ongoing emergency even though L.T. was not the person who required emergency assistance.

D.

Sameru also contends, in the alternative, that the district court erred by admitting the entire audio-recording of each 911 call. He asserts that at least some portions of the 911 calls are testimonial in nature, and he contends that the district court should have admitted only the nontestimonial portions and ordered redactions of the testimonial portions. There is some support in the caselaw for the presentation of evidence in such a manner. In *Davis*, the Court acknowledged the possibility that a 911 call that begins with nontestimonial statements could "evolve into testimonial statements," and the Court suggested that a trial court, "[t]hrough *in limine* procedure," could "redact or exclude the portions of any statement that have become testimonial." *See* 547 U.S. at 828-29 (quotation omitted). But Sameru did not ask the district court to redact any portions of the audio-recordings or transcripts of L.T.'s 911 calls. The absence of such a request denied the state the opportunity to address the issue in the district court and denied the district court the opportunity to rule on the issue. Thus, this court will not consider the issue for the first time on appeal. *See State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989); *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 13-14 (Minn. 1965); *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996); *State v. Brunes*, 373 N.W.2d 381, 386 (Minn. App. 1985), *rev. denied* (Minn. Oct. 11, 1985).

In sum, L.T.'s 911 calls are nontestimonial in nature, which means that their admission into evidence did not violate Sameru's rights under the Confrontation Clause.

Thus, the district court did not err by denying Sameru's motion to suppress evidence of statements made by L.T. during the 911 calls.

Affirmed.