STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1026

State of Minnesota,
Respondent,

vs.

Christopher Lee Rogers,
Appellant.

Filed September 19, 2022
Affirmed
Cochran, Judge

Becker County District Court
File No. 03-CR-20-2064

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

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Cochran, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal, appellant challenges his convictions of second-degree and fifth-degree assault. He argues that the district court abused its discretion by admitting an out-of-court statement made by the victim and recorded on video into evidence under the

excited-utterance exception to the general rule prohibiting the admission of hearsay. In a pro se supplemental brief, appellant also argues that the district court "violated" Minn. R. Evid. 801(d)(1) by admitting the video and related testimony into evidence. Because we conclude that the district court did not abuse its discretion by admitting the video of the victim's prior statement and related testimony into evidence, we affirm.

FACTS

Early in the evening on October 18, 2020, two individuals, R.R. and B.S., went to the trailer house of another individual. B.S. drove and R.R. rode in the passenger seat. When they reached the house, B.S. stopped the car in the driveway. There were two or three people standing outside the house. After the vehicle stopped and while R.R. was still sitting in the car with his head turned toward the backseat, someone "swung open" R.R.'s passenger-side door. R.R. "spun around" and "something hit [him]" twice in the face, "square on the nose and just under [his] right eye." He told B.S., "[L]et's get out of here." She backed up the vehicle, and they left the property. B.S. drove R.R. home, which took about ten minutes. After R.R. returned home, R.R.'s girlfriend called 911. She made the call at 7:37 p.m. About ten minutes later, the first of two police officers arrived at R.R.'s residence. When the officer asked R.R. who had assaulted him, he told the officer that it was appellant Christopher Rogers. This exchange was recorded by the officer's body-worn camera. The two responding officers arrested Rogers later that night.

Respondent State of Minnesota charged Rogers with second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2020). The complaint alleged that Rogers hit a known victim in the face with a large knife, causing him to bleed

from a cut below his right eye. The state later filed an amended complaint that added a second charge of felony fifth-degree assault, in violation of Minn. Stat. § 609.224, subd. 4(b) (2020).

Before the case proceeded to a jury trial, Rogers filed a motion in limine seeking an order prohibiting the state from introducing any out-of-court statement made by the alleged victim either through law enforcement testimony or through the admission of body-worn camera video captured by law enforcement. The state filed an opposing motion seeking an order *allowing* the state to introduce evidence, through testimony and/or body-worn camera video, of the victim's prior statement to law enforcement.

At a pretrial hearing, the district court heard arguments from the parties on the admissibility of the body-worn camera video and related testimony from the responding officers. The parties agreed that if the victim's testimony at trial turned out to be consistent with his identification of Rogers as his assailant in the video, then the video could be admitted as a record of a prior consistent statement under Minn. R. Evid. 801(d)(1)(B). But if the victim's testimony at trial turned out to be *inconsistent* with his earlier statement, the parties disagreed as to whether the video would be admissible. The state argued that the video should be admitted under the excited-utterance exception to the hearsay rule. Rogers contended that the excited-utterance exception did not apply.

The district court filed a written order addressing the parties' motions. The district court ruled that the state could introduce the body-worn camera video at trial *after* the victim testified in open court subject to cross-examination if the victim's trial testimony turned out to be consistent with his prior statement. In the alternative, if the victim's trial

testimony turned out to be inconsistent with his prior statement, the district court concluded that the prior statement was admissible under Minn. R. Evid. 803(2), the excited-utterance exception to the hearsay rule. The district court concluded that the excited-utterance exception applied because the prior statement related to a startling event, the statement was given shortly after the alleged incident, and the victim's voice appeared to the district court "to be distressed from the alleged incident."

At trial, the victim's testimony was inconsistent with his prior statement. Specifically, R.R. testified that Rogers was *not* his assailant. He testified that he saw the person who hit him but did not recognize that person. He acknowledged that he initially told the responding officer that Rogers was the person who assaulted him, but he claimed that this was a false identification and that he did not name Rogers based on his own observation. Instead, he testified that, on the drive back home, B.S. told him that Rogers had hit him. R.R. further testified that Rogers is his girlfriend's cousin and that he and Rogers have known each other for about 15 years.

The prosecution then introduced the officer's body-worn camera video of R.R. telling law enforcement that Rogers had assaulted him, recorded on the day the incident occurred. The video captured the following exchange:

> OFFICER: Who got stabbed?
> R.R.: Me.
> O: Are you okay?
> . . . .
> R: Yeah. He hit me with something first, and then he—
> O: Who was it?
> R: Christopher Rogers . . . my girlfriend's cousin.
> . . . .
> O: What happened? Where'd he go?

> . . . .
> R: I didn't even see him coming. I was in the car, had the seatbelt on. And the passenger's door opened up and he said [unintelligible] something to do with Uncle Dale's lockbox. And I didn't even realize it was Chris until he hit me. And he hit me and I felt the blood come out of my face and then he hit me again and I knew he had something in his hand, something hard. And then he's standing at the passenger's door . . . with a big blade in his hand and he said "I'll kill you, I'll kill you right now right here."

When asked if he recalled the exchange, R.R. said "[n]ot really. I was obviously intoxicated slightly." R.R. testified that he believed his memory was affected because he had been drinking before he went to the trailer house with B.S. He acknowledged that he did "[n]ot especially" want to testify and agreed with the prosecutor that Rogers "is essentially [his] family." He also testified that he "didn't realize who [he] was implicating at the time" because he knew Rogers under a different last name.

In contrast to R.R.'s testimony, B.S. testified at trial that Rogers was the person who assaulted R.R. She testified that Rogers came up to the car, opened the passenger-side door, and started yelling at R.R., who remained seated with his seatbelt on. She further testified that, although she looked away at the moment of impact, she was certain that Rogers hit R.R. And she told law enforcement on the day of the incident that Rogers was the assailant.

The two officers who responded to the 911 call each testified about the night's events. The first officer to respond testified that he questioned R.R. about the assault and took photographs of the wound on his face. The second officer, who arrived after the first

officer had interviewed R.R., testified that he assisted the first officer with the rest of the investigation. The state called the officers to testify before calling R.R. to the stand.

The jury found Rogers guilty of both second-degree and fifth-degree assault. The district court sentenced Rogers only on the second-degree assault conviction because the two convictions resulted from the same behavioral incident.

Rogers appeals.

DECISION

Rogers challenges his assault convictions and argues that he is entitled to a new trial because the district court abused its discretion by admitting into evidence the body-worn camera video that captured the victim's out-of-court statement implicating Rogers under the excited-utterance exception to the hearsay rule. In a pro se supplemental brief, Rogers also argues that the district court's admission of the video and related testimony from the responding officers "violated Minn. R. Evid. 801(d)(1)."

We review a district court's evidentiary rulings, including a determination that a statement meets the requirements of a hearsay exception, for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019); *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Hallmark*, 927 N.W.2d at 291 (quotation omitted). We will not set aside a district court's factual findings unless they are clearly erroneous. *State v. Prtine*, 784 N.W.2d 303, 312 (Minn. 2010). Findings of fact are clearly erroneous if, based on the entire record, "we are

left with the definite and firm conviction that a mistake occurred." *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010).

I. The district court did not abuse its discretion by admitting the victim's out-of-court statement implicating Rogers, which was recorded by a responding officer, under the excited-utterance exception to the hearsay rule.

The Minnesota Rules of Evidence generally exclude as hearsay any statement made out of court and offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c), 802. But certain exceptions allow hearsay to be admitted based on other indicia of reliability. *See* Minn. R. Evid. 803, 804. One such exception is for excited utterances. Minn. R. Evid. 803(2). An "excited 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.*

To be admissible as an excited utterance, a statement must meet three requirements: (1) "there must be a startling event or condition," (2) "the statement must relate to the startling event or condition," and (3) "the declarant must be under a sufficient aura of excitement caused by the event or condition to insure the trustworthiness of the statement." *State v. Daniels*, 380 N.W.2d 777, 782 (Minn. 1986) (quoting Minn. R. Evid. 803(2) cmt.). "As the time lapse between the startling event and subsequent statement increases[,] so does the possibility for reflection and conscious fabrication," but there are "no fixed guidelines" with respect to timing. *Id.* (quoting Minn. R. Evid. 803(2) cmt.); *see also State v. Hogetvedt*, 623 N.W.2d 909, 913 (Minn. App. 2001) ("The lapse of time between the startling event and the out-of-court statement is not always determinative."), *rev. denied* (Minn. May 29, 2001). Rather, to determine whether a

statement is admissible as an excited utterance, the district court "must consider all relevant factors *including* the length of time elapsed, the nature of the event, the physical condition of the declarant, [and] any possible motive to falsify." Minn. R. Evid. 803(2) cmt. (emphasis added).

Here, the district court concluded that R.R.'s out-of-court statement identifying Rogers as his assailant, captured in the body-worn camera video, was admissible as an excited utterance. The district court based this determination on several findings. First, "[t]he recorded statement related to a startling event." Second, the statement "was given shortly after the alleged incident," as evidenced by the fact that the victim's wound was still bleeding when law enforcement responded to the 911 call. Third, the victim's voice appeared to be "distressed from the alleged incident." And finally, "the alleged victim did not have a motive to falsify his statement."

Rogers argues that the district court abused its discretion in two ways when it determined that R.R.'s out-of-court statement, recorded by the officer's body-worn camera, met the criteria for an "excited utterance." First, he argues that the district court abused its discretion by admitting R.R.'s statement under the excited-utterance exception because too much time elapsed between the startling event and R.R.'s statement for the statement to qualify as an excited utterance. Second, Rogers argues that the district court clearly erred by finding that R.R.'s voice appeared to be "distressed from the alleged incident." We are not persuaded by either argument.

Length of Time Elapsed

Neither the caselaw nor the record supports Rogers's argument that too much time elapsed between the startling event and the statement for the excited-utterance exception to apply. As Rogers acknowledges, there are no fixed guidelines with respect to timing when determining whether a declarant made a statement under a "sufficient aura of excitement." *Daniels*, 380 N.W.2d at 782. The time elapsed between a startling event and a subsequent statement is therefore not always determinative of an excited-utterance analysis. *Id.* at 783; *Hogetvedt*, 623 N.W.2d at 913. The supreme court has affirmed the admission of statements made up to 90 minutes after a startling event occurred where the evidence established a sufficient basis for the statement's trustworthiness. *State v. Berrisford*, 361 N.W.2d 846, 850 (Minn. 1985) (concluding that a witness statement made 90 minutes after a startling event was an excited utterance based on evidence that the declarant remained "unnerved").

Here, the district court found that R.R. made the statement at issue "shortly" after the assault. The record supports this finding. R.R. and B.S. both testified that they left the trailer house immediately after the assault occurred, arriving at R.R.'s home ten minutes later at most. R.R.'s girlfriend then called 911, and the first of two police officers arrived at R.R.'s home and heard his account of the incident another ten minutes after receiving the call. The first officer to respond testified at trial that R.R.'s girlfriend must have called soon after the assault occurred because the cut on R.R.'s face was still bleeding when the officer arrived. And as R.R. "was dabbing with [a] napkin, there was still fresh blood coming off of his wound onto the napkin." The second officer who investigated the

incident also testified that R.R.'s injury looked recent, though the officer acknowledged on cross-examination that he did not know when exactly the incident occurred. This evidence supports the district court's finding that a fairly short period of time—though a minimum of 20 minutes—elapsed between the assault and R.R.'s statement to the first responding officer.[1]

Because caselaw establishes that there are "no fixed guidelines" with respect to timing and the record supports the district court's determination that the time elapsed between the assault and the statement made to the first responding officer was fairly short, we conclude that Rogers's timing argument does not warrant reversal.

Stress of Excitement Caused by Startling Event

Rogers next argues that the district court clearly erred by finding that R.R.'s voice appeared to be "distressed from the alleged incident." This finding supported the district court's implicit determination that R.R. was still under the stress of excitement caused by the assault at the time he made the statement to the responding officer. We will not set aside a district court's factual findings unless they are clearly erroneous—leaving us with the "definite and firm conviction that a mistake occurred." *Prtine*, 784 N.W.2d at 312; *Andersen*, 784 N.W.2d at 334.

We discern no clear error in the district court's finding that R.R.'s voice appeared to be "distressed." As the district court noted, the body-worn camera video shows R.R.

[1] Rogers asserts that 45 minutes passed between the assault and R.R.'s statement to police but does not provide record support for this assertion, referring only to an unsupported argument made by the state's attorney at the motion hearing.

appearing rattled and speaking quickly in an anxious tone. The first officer who responded to the 911 call testified that R.R. was "in distress" and "very excited" when the officer first interviewed him. The second officer to arrive also testified that R.R. appeared "panicked" and "in distress." B.S.'s corroborating testimony that it was Rogers who assaulted R.R. further suggests that the recorded statement is trustworthy. *See Berrisford*, 361 N.W.2d at 850 (noting that corroborating evidence may provide "circumstantial guarantees of trustworthiness" when assessing whether a statement qualifies as an excited utterance).

In addition, we reject Rogers's assertion that R.R.'s statement to the first responding officer was comparable to the one at issue in *State v. Page*, 386 N.W.2d 330, 334 (Minn. App. 1986), *rev. denied* (Minn. June 30, 1986). In *Page*, this court concluded that the district court abused its discretion by admitting a statement made by a witness to law enforcement as an excited utterance when the only evidence of the declarant's emotional state was an officer's testimony that the declarant had "calmed down" before giving the officer any information. 386 N.W.2d at 334. Here, by contrast, the record evidence includes a video of the victim's emotional state that the district court independently assessed, as well as the testimony of the responding officers that R.R. was still "in distress" when he made the statement recorded by the first officer's body-worn camera.

In sum, we conclude that the district court did not clearly err by finding that R.R.'s voice appeared to be "distressed from the alleged incident" in the video. Because this finding formed the basis for the district court's implicit determination that R.R. was still under the stress of excitement caused by the assault at the time he made the statement to the officer, we further conclude that the district court did not abuse its discretion by

admitting the video under the excited-utterance exception to the hearsay rule. Rogers has failed to meet his burden to demonstrate an abuse of discretion based on the district court's application of Minn. R. Evid. 803(2).

II. Rogers's pro se arguments based on Minn. R. Evid. 801(d)(1) are unavailing.

In a supplemental pro se brief, Rogers raises two arguments based on Minn. R. Evid. 801(d)(1). Rule 801(d)(1) provides that, when a declarant testifies at trial and is subject to cross-examination, certain prior out-of-court statements by the declarant are not hearsay and, therefore, not subject to hearsay rules. Specifically, if a declarant's prior statement is *inconsistent* with the declarant's testimony at trial and was given under oath, the prior statement is not hearsay. Minn. R. Evid. 801(d)(1)(A). If a declarant's prior statement is *consistent* with the declarant's testimony at trial, the prior statement is not hearsay if it is "helpful to the trier of fact in evaluating the declarant's credibility as a witness." Minn. R. Evid. 801(d)(1)(B).

Rogers argues that the district court "violated Minn. R. Evid. 801(d)(1)" by (1) admitting the body-worn camera video and (2) allowing the responding officers "to testify about their conversations with the victim concerning the alleged assault."

Rogers argues that the district court erred by admitting the body-worn camera video because R.R.'s statement in the video was not made under oath and therefore could not be admitted under Minn. R. Evid. 801(d)(1)(A) as a prior inconsistent statement. Rogers is correct that R.R.'s prior inconsistent statement recorded in the body-worn camera video was not admissible under Minn. R. Evid. 801(d)(1)(A) because the prior statement was not given under oath as required by the rule. But the district court did not admit the statement

as nonhearsay under Minn. R. Evid. 801(d)(1)(A). Instead, as discussed above, the district court admitted the statement under Minn. R. Evid. 803(2), the excited-utterance exception to the hearsay rule. Accordingly, Rogers's pro se argument regarding the admission of the video is not persuasive.

Rogers also argues that the district court violated rule 801(d)(1) by admitting testimony of the responding officers "about their conversations with [R.R.] concerning the alleged assault." Rogers argues that "the whole purpose of [Minn. R. Evid. 801(d)(1)] was flouted" because the responding officers testified at trial about R.R.'s prior statement before R.R. himself testified.

This argument is unavailing because the responding officers' testimony does not appear to have "violated Minn. R. Evid. 801(d)(1)" as Rogers contends. While the responding officers did testify before R.R., the first one testified on direct examination only that he "[came] to suspect" Rogers as the assailant without explaining the source of that suspicion. It was not until defense counsel cross-examined the first responding officer that any potential inconsistency between R.R.'s prior identification of Rogers and his expected trial testimony was raised. Counsel for the defense asked the officer if R.R. had later changed his story. At that point, the state objected on hearsay grounds because R.R. had not yet testified. The district court sustained the objection. With regard to the second officer, R.R.'s initial identification of Rogers was mentioned only once on redirect examination, when the prosecutor asked the officer why he went to Rogers's house on the night of the incident. The officer answered that "[R.R.] had indicated that [Rogers] was the person . . . who had assaulted him." The defense did not object to this exchange. And

this exchange does not implicate hearsay because it was not offered to prove the truth of the matter asserted but rather to explain why the officers later went to Rogers's house. *See* Minn. R. Evid. 801(c) (defining hearsay in relevant part as a statement offered to prove the truth of the matter asserted).

Finally, even if the admission of the officers' testimony had constituted error by the district court, the admission would not require reversal because the video of R.R.'s incriminating statements was properly admitted later as an excited utterance. As a result, the admission of the officers' testimony was unlikely to have substantially affected the jury's verdict. *See State v. Smith*, 825 N.W.2d 131, 138 (Minn. App. 2012) (reviewing unobjected-to admission of a police officer's testimony about a victim's prior out-of-court statement for plain error that affects a defendant's substantial rights); *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (explaining that plain error affects a defendant's substantial rights if there is a reasonable likelihood that the error substantially affected the verdict).

Conclusion

In sum, we conclude that the district court did not abuse its discretion by admitting the body-worn camera video of the victim's statement implicating Rogers because the video was properly admitted under the excited-utterance exception to the hearsay rule. We further conclude that Rogers's additional pro se arguments do not warrant reversal.

Affirmed.