STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1541

State of Minnesota,
Appellant,

vs.

Amanda Mae Coleman,
Respondent.

Filed June 27, 2022
Affirmed
Slieter, Judge

Redwood County District Court
File No. 64-CR-21-434

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

Jenna M. Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for appellant)

Mark D. Nyvold, Fridley, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this pretrial appeal, appellant State of Minnesota argues that the district court abused its discretion by denying its motions to (1) admit a hearsay statement by the alleged victim to police, either as an excited utterance or a residual-hearsay exception, and

(2) disqualify respondent's counsel for purportedly having made herself a necessary witness. Because the district court properly exercised its discretion by concluding that the hearsay exceptions do not apply, and that respondent's counsel is not a necessary witness, we affirm.

FACTS

In June 2021, respondent Amanda Mae Coleman and her boyfriend, A.R., were in the same house in Redwood Falls when A.R. apparently called C.W., his mother. C.W., in turn, called law enforcement and requested a welfare check based on concerns that Coleman had been drinking heavily, and that there was broken glass in the house. C.W. reported that Coleman had hit A.R., and that Coleman was passed out and may need an ambulance.

Redwood Falls police officers arrived at the residence shortly after being dispatched. After several minutes of knocking on the front door, shining flashlights into the house, and calling for the occupants, A.R. answered the door and stepped outside to speak with the officers. One officer observed that A.R. was visibly impaired, and A.R. admitted to consuming alcohol for the previous 24 hours. He later submitted to a preliminary breath test which displayed an alcohol concentration of 0.371.

A.R. "initially denied any cause for concern about a disturbance occurring inside of the residence" and "stated that everything was fine between [Coleman] and him." As A.R. continued speaking, he told another officer that he and Coleman had been arguing earlier that evening and Coleman had struck him with her fists "at least two or three times" on his

forearm, face and head, and that she grabbed and pulled his testicles. A.R. showed the officer a bruise on his arm.

Officers entered the residence, with A.R.'s consent, and observed Coleman lying on the kitchen floor. Coleman was passed out with a visible laceration on her foot. She was "extremely intoxicated" and incomprehensible. One officer observed that the living room showed signs consistent with a physical struggle and contained multiple broken beer bottles.

Coleman was arrested and transported to the hospital where she received treatment and was later taken to jail. The following day, the state charged Coleman with one count of gross misdemeanor domestic assault, in violation of Minn. Stat. § 609.2242, subd. 2 (2020).

Three months later, Coleman's counsel recorded a telephone conversation with A.R. during which he recanted his earlier statement to police by stating that Coleman had never hit him and that his bruises were caused by his construction work. A.R. later provided a similar recorded statement to Coleman's counsel, this time with an investigator present.

As a result of A.R.'s recantation, Coleman moved, pursuant to *State v. Dexter*, 269 N.W.2d 721 (Minn. 1978),[1] to prohibit the state from calling A.R. to testify at trial. The state moved to admit A.R.'s statement to police either as an excited utterance or pursuant to the residual-hearsay exception. The state also moved to disqualify Coleman's counsel because she had purportedly made herself a necessary witness by taking A.R.'s initial

[1] In *Dexter*, the supreme court held that the state was precluded from calling a witness only to impeach that witness with a prior inconsistent statement. 269 N.W.2d at 721.

recantation statement with no other witness present. The district court ruled that the state is prohibited from calling A.R. pursuant to *Dexter*, which the state does not challenge, and denied the state's motions. The state appeals.

DECISION

When reviewing a pretrial order suppressing evidence, we review the district court's factual findings for clear error and its legal conclusions *de novo*. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We will not overturn the district court's pretrial order unless the state demonstrates clearly and unequivocally that the district court erred in its judgment and the error will critically affect the outcome of the trial. *Id.*

The state asserts, and Coleman does not disagree, that the suppression of A.R.'s statement to police will critically affect the outcome of the trial because A.R.'s testimony is the state's only direct evidence that an assault occurred. Based on our review of the record, we conclude that the state has little to no other evidence of the alleged assault. Therefore, we conclude that suppression of A.R.'s statement to the police will have a critical effect on the outcome of the trial. *See id.* ("[B]ecause the suppression of evidence led to the dismissal of the charges against Gauster, it is not disputed that the suppression had a critical impact on the outcome of Gauster's case.").

I. Excited Utterance

"We review a district court's evidentiary ruling on hearsay for an abuse of discretion." *See State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020). "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." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

In *State v. Ortlepp*, 363 N.W.2d 39, 43 (Minn. 1985), the supreme court held even if the state is precluded from calling a witness pursuant to *Dexter*, the state may still offer the witness's testimony as substantive evidence if an exception to the hearsay rule applies. Relying on *Ortlepp*, the state argues that A.R.'s statement to police is admissible substantively as an excited utterance pursuant to Minn. R. Evid. 803(2) or as a residual hearsay exception pursuant to Minn. R. Evid. 807.

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." Minn. R. Evid. 803(2). To be admissible, an excited utterance 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). "The lapse of time between the startling event and the out-of-court statement is not always determinative." *State v. Hogetvedt*, 623 N.W.2d 909, 913 (Minn. App. 2001), *rev. denied* (Minn. May 29, 2001).

The district court denied the admission of A.R.'s statement as an excited utterance because "[b]ased on a totality of the circumstances, the Court does not find that th[e] 'excitement caused by the event eliminates the possibility of conscious fabrication' on

A.R.'s part, and 'insures the trustworthiness' of his statement to law enforcement." The record supports the district court's conclusion.

A. Startling Event

The state argues that "the district court did not analyze whether there was a startling event or condition," and that this omission tainted the district court's entire analysis. The record belies this claim. The district court addressed whether a startling event occurred, finding that "A.R. made the statements to the officers roughly 25 to 30 minutes after *the incident* occurred," and concluding that this fact is not fatal because "the lapse of time between *the startling event* and the out-of-court statement is not always determinative." (Emphasis added); *see Hogetvedt*, 623 N.W.2d at 913 ("The lapse of time between the startling event and the out-of-court statement is not always determinative."). Thus, it is clear that the district court concluded that a startling event had occurred.

B. The Statement Related to the Startling Event

The state next argues that the district court "did not analyze whether [A.R.]'s statements related to that startling condition." Again, the record does not support the state's contention. The district court addressed the issue, finding that A.R. "denied any disturbance," but "[h]is later statements do disclose reports of [Coleman] assaulting [him]." The district court also found that "while the later part of [A.R.'s] statement, the part during which he discloses details of an assault, is supported by some corroborating evidence (i.e., the bruises on the arm), other statements are not so supported." Thus, it is clear that the district court concluded that the statement related to the startling event.

C. Sufficient Aura of Excitement Ensuring Trustworthiness

The state argues that "the court failed to determine whether A.R. was under the 'aura of excitement.'" The record suggests otherwise. The district court found that

> the demeanor [A.R.] presented after the audio was initiated (which the Court has reviewed) demonstrate[d] no pressured speech, no excitement or agitation (except when he is told he was going to the hospital), and no specific statements to lead the Court to believe he was still operating under the excitement caused by the event.

The district court also found "that A.R. was significantly impaired" and "his speech [was] slurred and slow." Moreover, the district court found that because A.R.'s statement to police was "internally inconsistent," it lacked trustworthiness. The record supports the district court's findings.

The police recording captured A.R.'s statement, and reveals, as the district court found, "no pressured speech" and "no excitement or agitation." Additionally, there is ample record evidence that A.R. was very intoxicated, and there is nothing in the police reports indicating that A.R. was under an aura of excitement. Finally, and as already discussed, the record supports the district court's finding that A.R.'s statement was "internally inconsistent," and thus lacked trustworthiness.

Accordingly, because the district court's decision is not "based on an erroneous view of the law or . . . against logic and the facts in the record," it acted within its discretion when it determined that A.R.'s statement was inadmissible as an excited utterance. *Guzman*, 892 N.W.2d at 810.

II. Residual Hearsay

The state argues that the district court also abused its discretion by denying admission of A.R.'s statement to police pursuant to Minn. R. Evid. 807, the residual-hearsay exception.

Minnesota Rule of Evidence 807 provides that "[a] statement not specifically covered by rule 803 or 804 but having *equivalent circumstantial guarantees of trustworthiness*, is not excluded by the hearsay rule," if certain conditions are met. (Emphasis added).

As noted before, the district court acted within its discretion by concluding that A.R.'s statement to police was "internally inconsistent," and thus, lacked trustworthiness. This conclusion alone could end the rule 807 analysis and support our affirmance. However, because the district court and the parties analyzed rule 807, we now do so as well.

"The decision to admit hearsay statements under Rule 807 has two steps," only the first of which is at issue here. *State v. Hallmark*, 927 N.W.2d 281, 292 (Minn. 2019). The district court must first "look at the totality of the circumstances to determine whether the hearsay statement has circumstantial guarantees of trustworthiness." *Id.* (quotation omitted).[2] In doing so, "the district court must examine the circumstances actually surrounding the making of the statements," including

[2] The second step provides that the court may admit such a statement if (1) it "is offered as evidence of a material fact," (2) it "is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts," and (3) "the general purposes of these rules and the interests of justice will best be served by

> whether the statement was given voluntarily, under oath, and subject to cross-examination and penalty of perjury; the declarant's relationship to the parties; the declarant's motivation to make the statement; the declarant's personal knowledge; whether the declarant ever recanted the statement; the existence of corroborating evidence; and the character of the declarant for truthfulness and honesty.

Id. (quotation omitted).

"A district court must balance the totality of the circumstances surrounding the statement at the time it was made" and should "consider all relevant factors." *Vangrevenhof*, 941 N.W.2d at 737. However, it is not an automatic abuse of discretion if the district court fails to consider all relevant circumstances pursuant to rule 807. *Id.*

The district court found that "there are some factors that weigh in favor of admissibility." The record supports these findings. First, the record supports the finding that A.R.'s statement was made close in time to the event, within at least 25 minutes. Second, A.R.'s statement, although not against his penal interest, is against his personal-relationship interest with Coleman. *See State v. Plantin*, 682 N.W.2d 653, 659 (Minn. App. 2004) (holding that this factor may be satisfied if the declarant is now hostile to the state and supportive of the defendant and in a romantic relationship with the defendant), *rev. denied* (Minn. Sept. 29, 2004). Third, some other evidence, such as A.R.'s bruises, corroborate his statement. Fourth, no Confrontation Clause issue exists because A.R. could be called to testify and be cross-examined, and A.R.'s statement is recorded, removing any real dispute about what he said.

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admission of the statement into evidence." Minn. R. Evid. 807; *Hallmark*, 927 N.W.2d at 293-94.

However, the district court found that "[m]ore factors . . . weigh against a required finding of 'equivalent circumstantial guarantees of trustworthiness.'" It found that A.R.'s "statements [to police] were not made under oath," he was "obviously known to law enforcement to be significantly impaired by alcohol," and his statement was "not spontaneous – [it] came in response to questioning by law enforcement." The district court further found that A.R.'s actual spontaneous statement to police was "that nothing happened, that they were fine, and that he was concerned about [Coleman]'s mental and chemical health." Additionally, his statement to police "is internally inconsistent – he initially denies anything happening, and only later in response to questioning indicates [Coleman] struck him." Though "some corroborating evidence (the bruise on the arm) exists to support his statement, other evidence contradicts his statement that he was struck 2-3 times on the head with a closed fist ('I did not observe any marks or bruises on his head')," and there is no corroborating evidence of Coleman "grabbing/twisting his testicles or grabbing of his thigh (no descriptions of bruising or redness, no photographs, no medical reports etc.)." These findings are supported by the record, and therefore, are not clearly erroneous.

Accordingly, the district court properly exercised its discretion by denying the admission of A.R.'s statement to police pursuant to the residual hearsay exception.

III. Attorney Disqualification

The district court denied the state's motion to disqualify Coleman's counsel. The state argues that Coleman's counsel is a necessary witness to provide foundation for A.R.'s first recorded recantation because no other witness was present for the statement and,

therefore, must be disqualified from representing Coleman. We review a district court's attorney-disqualification order for an abuse of discretion. *M.M. v. R.R.M.*, 358 N.W.2d 86, 90 (Minn. App. 1984).

The Minnesota Rules of Professional Conduct prohibits a lawyer from acting "as an advocate at a trial in which the lawyer is *likely* to be a necessary witness" unless an exception applies. Minn. R. Prof. Conduct 3.7(a) (emphasis added). However, it is insufficient "[s]imply to assert that the attorney will be called as a witness, a too-frequent trial tactic." *Humphrey ex rel. State v. McLaren*, 402 N.W.2d 535, 541 (Minn. 1987). Simply put, the rule does not contemplate the forced disqualification of an attorney merely by calling or stating the intention to call that attorney as a witness. *State v. Fratzke*, 325 N.W.2d 10, 11 (Minn. 1982).

The district court properly exercised its discretion by denying disqualification of Coleman's trial counsel as a necessary witness. First, because we affirm the district court's denial of any hearsay exception, thereby prohibiting the state from presenting at trial A.R.'s statement to police, we can discern no likely scenario in which Coleman would offer A.R.'s first recanting statement into evidence such that its foundation would be required. Second, Coleman has "concede[d] not to use [the statement] at this point, based on the evidence [they] have," and would instead use the second recanting statement obtained with another witness present. Third, the state's counsel conceded during oral argument "that [it] really has no case" if it cannot present to the jury A.R.'s statement to police, and thus, there is likely no trial. Fourth, assuming a scenario exists which we cannot discern and which leads to the offering of the first recanting statement into evidence, Coleman has agreed to

stipulate to its foundation. Simply put, the state cannot demonstrate a "likely" scenario for which Coleman's counsel would be a necessary witness during trial. Minn. R. Prof. Conduct 3.7(a).

The district court acted within its discretion by denying the state's motion to disqualify Coleman's counsel.

Affirmed.