This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1559

State of Minnesota,
Respondent,

vs.

K'lob Jaymes Stewart,
Appellant.

Filed December 5, 2022
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CR-20-15936

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from a judgment of conviction of aiding and abetting third-degree assault under Minn. Stat § 609.223.1(2018), appellant argues that (1) the district court abused its discretion by admitting appellant's child's out-of-court statement under the

excited-utterance exception and (2) the probative value of child's out-of-court statement was substantially outweighed by the danger of unfair prejudice. We affirm.

FACTS

A.R. and appellant K'lob Jaymes Stewart dated for a period of time and share a child in common. When their relationship ended, appellant began dating Corrie Thompson. Thompson was named as a co-defendant in the jury trial of this case.

On July 06, 2020, at around 1:50 a.m., officers responded to a disturbance call and were dispatched to A.R.'s residence to investigate. When the officers arrived, they found A.R. covered in blood. They also found blood markings at the entryway and throughout the residence. One of the officers observed A.R.'s face being obscured by blood and her eye swollen shut. They also observed A.R. and appellant's child, who was nearly three years old at the time of the assault, sitting next to her. A.R. informed officers that appellant came to her residence with Thompson and appellant's two brothers. A.R., appellant, and Thompson had an argument over Facebook posts and a fight broke out between them. Appellant ordered Thompson to "go get her," so Thompson grabbed A.R. by the hair and threw her on the floor. Thompson began punching A.R. in the head and face, then started kicking her. Appellant joined Thompson in kicking her while appellant held the child. Eventually, appellant, Thompson, and appellant's two brothers left, and A.R. called 911.

Because of the graphic nature of A.R.'s injuries and while A.R. received treatment, an officer escorted child to a squad car outside of A.R.'s residence. The officer's bodycam video shows child sitting in the squad car on the officer's lap when, unsolicited, child blurts out, "Daddy hurt Mommy."

Respondent State of Minnesota charged appellant with both first-degree and third-degree assault. The state also moved to admit the statement "Daddy hurt Mommy" under the excited-utterance exception. On July 19, 2021, the district court held a hearing on preliminary motions including the state's motion on the child's statement. The state argued that the statement qualified as an excited utterance and should be admitted because the child was present when the assault took place. Appellant argued that the child was merely repeating what she heard mother telling police.

At the start of jury trial, the district court denied the state's motion to admit the statement "Daddy hurt Mommy." It explained:

> [W]hile this may meet the definition of an excited utterance, I find that the prejudicial effect substantially outweighs any probative value. I actually struggled to find any probative value . . . because the statement . . . "Daddy hurt Mommy" could mean one of two things: It could mean: I saw Daddy hurt Mommy; which could have some probative value. It could [also] mean: I heard Daddy hurt Mommy, . . . but I didn't witness it myself.

For that reason, the district court denied the state's motion and determined that, while child's statement may qualify as an excited utterance, the statement had no probative value. However, during trial, the district court heard testimony that child witnessed the assault, which supported child's statement having probative value. The district court reversed its prior determination on child's statement and allowed the video of the statement to come in. The state also moved to amend its complaint to reflect the aiding-and-abetting charge on both the first-degree and third-degree assault charges. The district court granted the amendment.

The jury found appellant guilty only of aiding and abetting third-degree assault under Minn. Stat. § 609.223.1 (2018). A presentence investigation revealed that appellant had three prior violent offenses. At the time of sentencing, appellant was on extended juvenile jurisdiction with a stayed 86-month sentence for two pending matters. The district court revoked his probation and executed a concurrent 86-month sentence on those cases. It imposed a 24-month sentence on this case to run consecutively with his 86-month sentence. This appeal follows.

DECISION

I. Standard of review.

Appellant argues that the district court abused its discretion by admitting child's out-of-court statement "Daddy hurt Mommy" as an excited utterance and revisiting its prior ruling. Appellant also argues that, even if the statement qualifies as an excited utterance, the statement's probative value is substantially outweighed by its danger of unfair prejudice. We are not persuaded.

We review the district court's decision on the admissibility of hearsay evidence for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). "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." *Id.* "A defendant claiming error in the district court's reception of evidence has the burden of showing the error and prejudice resulting from the error." *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009).

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). The district court may admit a hearsay statement under the excited-utterance exception if it determines that the statement (1) is an excited utterance and (2) the statement's probative value is not substantially outweighed by the danger of unfair prejudice. Minn. R. Evid. 803(2); Minn. R. Evid. 403. We will address in turn the district court's decision on excited utterance and its probative value versus prejudice.

II. The district court properly exercised its discretion by determining that child's out-of-court statement "Daddy hurt Mommy" qualified as an excited utterance.

Appellant argues that the district court never determined that child's out-of-court statement "Daddy hurt Mommy" qualified as an excited utterance. Appellant also argues that child's statement fails to meet all the elements of an excited utterance. We disagree.

Before trial, the district court stated that "while this may meet the definition of an excited utterance, I find that the prejudicial effect substantially outweighs any probative value." In other words, the district court undertook the two-part analysis of child's statement and determined that it was an excited utterance but lacked probative value. The district court therefore determined that child's out-of-court statement qualifies as an excited utterance.

As to appellant's second argument, a hearsay statement qualifies as an excited utterance when three requirements are met: "(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 [e]nsure the trustworthiness of the statement." *State v. Daniels*, 380 N.W.2d 777, 782 (Minn. 1986). "It is for the [district] court, in the exercise of its discretion in making discretionary rulings,

to determine whether the declarant was sufficiently under the aura of excitement." *State v. Edwards*, 485 N.W.2d 911, 914 (Minn. 1992) (quotation omitted).

Here, appellant only disputes that child was not under sufficient aura of excitement to ensure trustworthiness of the statement. While the district court did not explicitly analyze the factors of the excited-utterance exception, the record supports its ultimate determination. The rationale behind the excited-utterance exception stems from the "belief that the excitement caused by the event eliminates the possibility of conscious fabrication, and [e]nsures the trustworthiness of the statement." *State v. Daniels*, 380 N.W.2d 777, 782 (Minn. 1986). "As the time lapse between the startling event and subsequent statement increases so does the possibility for reflection and conscious fabrication." *Id.* The Minnesota Supreme Court in *Daniels* held that statements from two small children were admissible as excited utterances despite the hour-long lapse of time. *Id.* The supreme court explained that neither of the children appeared to have "had the time nor the motive to fabricate the story," and "the evidence corroborating their statements is strong." *Id.* Like in *Daniels,* the possibility of conscious fabrication is not present here. Child witnessed appellant assault A.R. Shortly after, child was escorted to a squad car, and, at the 27-minute mark, child spontaneously said, "Daddy hurt Mommy." There is no indication that child had a conscious motive to fabricate her statement.

In addition, the corroborating evidence supporting the trustworthiness of child's statement is strong. A.R. testified that child was present during the assault, that appellant was holding child, and that she saw child's "little legs" while appellant kicked her. A.R. also testified that, after the assault, child looked frightened and in shock. One of the officers also provided testimony that child was crying and seemed very sad. Because the

record supports that all three requirements of the excited-utterance exception are met, the district court did not abuse its discretion by determining that the statement qualified as an excited utterance.

III. The district court did not abuse its discretion by determining that child's statement was more probative than prejudicial.

Appellant argues that, even if the district court determined that child's statement qualified as an excited utterance, the statement's probative value is outweighed by its danger of unfair prejudice. Minn. R. Evid. 403. Appellant also claims that the district court did not determine the probative value of the statement. We are not persuaded.

Here, the district court properly reconsidered the state's motion and allowed child's statement to come in after hearing testimony supporting that child was in fact a witness to the assault, stating:

> I am going to reverse my . . . earlier ruling. My earlier ruling was not that this was not an excited utterance . . . rather, I concluded . . . that, while this may be an excited utterance, it did not pass . . . under Rule 403 because I did not find probative value to the statement . . . what has changed in my mind is the probative value, which I do now find exists, and that is because of . . . evidence in the victim's testimony that the child was not only physically present at the residence at the time of the . . . assault, but that the child was, in fact, being held at or over the assault. And so I would make the preliminary finding under Rule 104 that the child was there as a witness, and . . . that renders the statement probative.

Simply put, once the district court found probative value to child's statement, it allowed the statement to come in as an excited utterance. During A.R.'s trial testimony, the district court heard evidence that child was in fact present and was being held by appellant when the assault occurred. It found that child witnessed the assault, rendering the statement probative. Minn. R. Evid. 104. As a result, the district court reversed its

decision on child's statement and allowed the statement to come in, determining that the probative value was not substantially outweighed by its unfair prejudice.

The district court also addressed appellant's concern of child's statement being unfairly prejudicial. It instructed the jury not to allow their emotions to override how they review the evidence. See *State v. Ferguson*, 581 N.W.2d 824, 833 (Minn. 1998) (stating that appellate courts assume that jury follows the district court's instructions). It also noted that other evidence of child being present during the assault had been presented to the jury. For example, the jury heard testimony from A.R. confirming that child was present during the assault, and the jury saw the video in which A.R. and child were in the hallway steps waiting for the police.

The district court carefully weighed the facts and appropriately determined that the child's statement had probative value and several factors limited any prejudice. As the only other witness to the assault, child's statement had strong probative value. Thus, we cannot say that the district court's decision "is against logic [or] the facts in the record." *Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). As a result, the district court did not abuse its discretion when it determined that the probative value of child's statement was not substantially outweighed by its prejudicial effect and admitted the statement.

Affirmed.