STATE OF MINNESOTA
IN COURT OF APPEALS
A10-480

State of Minnesota,
Respondent,

vs.

Collin Frank Goodwin,
Appellant.

Filed May 16, 2011
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR0839406

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Randall, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal from his conviction of second-degree assault for shooting a man outside a bar in south Minneapolis, appellant argues that the district court (1) abused its discretion by admitting, as an excited utterance, statements made to the victim by the victim's friend and (2) erred by refusing to suppress evidence found in appellant's home as a result of the search warrant because the warrant was not supported by probable cause. Appellant also raises prosecutorial misconduct and ineffective-assistance-of-counsel claims in his pro se supplemental brief. Because we conclude there were no prejudicial errors, we affirm.

FACTS

On July 19, 2008, C.G. was shot in the left side of his abdomen as he and some friends left a bar in south Minneapolis. When Officer Kurt Radke arrived at the scene, C.G. claimed that he had been shot by a "fat Indian dude." Officer Radke then searched the area and found a discharged 9-mm Speer Luger Plus-P shell casing. Officers also learned from witnesses at the scene that a red Cutlass was involved in the incident.

Before leaving the scene, Officer Radke spoke to a potential witness on the telephone. Based on this conversation, Officer Radke focused on appellant Collin Goodwin as a possible suspect. By reviewing appellant's driver's license photo, the officer learned that appellant is a large Native American. Surveillance video from the bar on the evening of the shooting showed appellant wearing a white T-shirt and a dark-colored baseball hat.

A few days after the shooting, Sergeant Kelly O'Rourke visited C.G. at the hospital where he was shown a six-person photographic lineup of Native Americans with heavy builds. After viewing each photo, C.G. identified appellant as the man who shot him. Law enforcement subsequently obtained a search warrant for three residences, one of which was located less than four blocks from the bar where the shooting occurred. In a bedroom at that residence, officers found mailings with appellant's name on them, as well as white tennis shoes, multiple dark-colored baseball hats, and jeans that were about appellant's size. Officers also discovered ten 9-mm Speer Luger Plus-P bullets wrapped in an orange bandana.

Appellant was charged with second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2006). The complaint was later amended to first-degree assault in violation of Minn. Stat. § 609.221, subd. 1 (2006). Appellant subsequently moved to suppress the evidence discovered during the execution of the search warrant, alleging that the warrant lacked probable cause. The district court denied the motion and the matter was set for trial.

At trial, C.G. testified that on the night of the shooting, he was at the bar drinking with friends. According to C.G., his friend Ralph appeared to be having a conflict with another man at the bar. C.G. testified that he and some friends left the bar around closing time through the front door. As they were walking toward the parking lot on the sidewalk next to the bar, a man walked past them and "kind of smile[d] at [them] funny." C.G. testified that when the group walked around the corner of the bar, he saw a large Native American man wearing a dark-colored baseball cap approach them. C.G. claimed

that the man pulled a black semi-automatic pistol from his waistband and shot him at close range. C.G. further testified that he was positive that appellant was the man who shot him.

C.G. testified that after the shooting, he was taken to the hospital where he underwent surgery for the gunshot wound. Testimony revealed that the bullet fractured C.G.'s left hip bone and that C.G. had two or three small holes in his small intestine and a larger hole in his large intestine. After the surgery, Ralph visited C.G. at the hospital. According to C.G., Ralph was upset and crying and claimed that he and appellant had been arguing over a girl and that C.G. had taken a bullet meant for Ralph. Appellant objected to this testimony, but the district court admitted Ralph's statement to C.G. as an excited utterance.

C.G. testified that he knew Ralph "[f]rom the neighborhood," but did not know his last name and did not know how to locate him. C.G. also acknowledged that none of his friends remained at the scene after the shooting, including Ralph, who was supposed to give him a ride to his brother's place. Investigating officers were unable to locate Ralph, and he did not testify at the trial.

A bar patron testified that he heard one or two shots and observed a maroon Cutlass leaving the scene "at a high rate of speed." A.W., the mother of a woman that appellant has two children with, also testified at trial. According to A.W., she allowed appellant to borrow her red Cutlass on the evening of the shooting.

Sergeant O'Rourke testified that he viewed the bar's surveillance video. According to Sergeant O'Rourke, the video depicts appellant raising his arm from his

waistband and pointing at C.G. and then C.G. falling to the ground. Sergeant O'Rourke also testified that another camera angle showed appellant quickly getting into the driver's side of a red car and the car then driving away. Sergeant O'Rourke further testified that in his 12 years of law enforcement, he had never seen the type of ammunition found at the scene of the shooting. Moreover, a BCA analyst agreed that the type of ammunition found at the scene is "atypical," and that in her three years of service, she had only seen 9-mm Speer Luger Plus-P bullets three or four times.

Appellant testified and admitted being at the scene of the shooting, but denied shooting C.G. Appellant explained that when he left the bar, his friend Joe Joe was outside arguing with Ralph and C.G. According to appellant, he heard Ralph talk about shooting Joe Joe, and that a brief altercation ensued. Appellant claimed that during the altercation, C.G. "jumped on the left side of me that's when I heard a shot and that's when I threw [C.G.] off of me towards the parking lot." Appellant testified that he initially thought he had been shot, but then noticed C.G. fall to the ground and "Ralph backing up with the gun in his hand." Appellant testified that he then fled the scene and decided not to report the shooting because a previous experience with law enforcement made him afraid to report the incident.

The jury found appellant guilty of first-degree assault. The district court then sentenced appellant to 98 months in prison. This appeal followed.

D E C I S I O N

I.

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

Generally, hearsay is inadmissible unless it qualifies under one of the exceptions provided in Minn. R. Evid. 803. *State v. Bauer*, 598 N.W.2d 352, 366 (Minn. 1999). One exception allows a statement that is made as an "excited utterance." Minn. R. Evid. 803(2). The basic elements of an "excited utterance" are "(a) that there be a startling event or condition, (b) that the statement relates to the event or condition, and (c) that the statement is made under the stress caused by the event or condition." *State v. Edwards*, 485 N.W.2d 911, 914 (Minn. 1992). The district court may exercise its discretion to admit such evidence if it determines that the declarant was "sufficiently under the 'aura of excitement'" when the statement in question was made. *Id.* (quoting *State v. Daniels*, 380 N.W.2d 777, 782 (Minn. 1986)).

Here, in admitting Ralph's statements as an excited utterance, the district court clarified that the startling event was not the shooting, but rather seeing the victim "in the condition that the person was in[:] bedridden having recently come out of surgery." Appellant argues that such an event does not qualify as a startling event because it was not a situation where Ralph "unexpectedly ran into [C.G.] at the hospital and learned

about [C.G.'s] condition." Thus, appellant argues that the district court abused its discretion by admitting, as an excited utterance, the statements Ralph made to C.G. at the hospital.

The state argues that the district court properly characterized the event as an excited utterance because cases from other jurisdictions have recognized that a startling event need not be the crime itself. *See e.g.*, *Esser v. Commonwealth*, 566 S.E.2d 876, 879 (Va. Ct. App. 2002) (concluding that the "basis of the excited utterance exception rests with the spontaneity and impulsiveness of the statement; thus, the startling event does not have to be the actual crime itself, but rather may be a related occurrence that causes such a reaction"). But appellant does not challenge the theory on which the court made its conclusion; rather appellant argues that this particular instance cannot be a startling event. We agree. The record indicates that Ralph consciously chose to visit C.G. in the hospital and that Ralph knew C.G. had been shot. Based on his knowledge of the events, seeing C.G. in a hospital bed following a surgery is not a startling event that would prompt a statement made under the stress of the event. Although Ralph may have been emotional when he saw the victim, an emotional statement is not in and of itself an excited utterance. Therefore, we conclude that the district court abused its discretion in admitting the statement as an excited utterance.

However, appellant is not entitled to a new trial "unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Asfeld*, 662 N.W.2d 534, 544 (Minn. 2003) (quotation omitted). Here, appellant cannot show any prejudice by the erroneously-admitted statements. The jury heard

witness testimony that a red Cutlass was involved in the incident, and A.W. testified that she let appellant borrow her red Cutlass on the evening of the shooting. Moreover, the jury saw still photographs from surveillance video footage of the events of the evening. And, although the photographs were not entirely clear, Sergeant O'Rourke's testimony provided a logical narrative of the events depicted in the photographs. The record further reflects that the same type of rare ammunition found at the scene of the shooting was discovered during a search of appellant's residence. Finally, and most importantly, C.G. positively identified appellant as the shooter. *See State v. Hill*, 285 Minn. 518, 518, 172 N.W.2d 406, 407 (1969) (stating that "[i]t is well-settled that a conviction can rest on the uncorroborated testimony of a single credible witness"). Therefore, in light of the evidence presented at trial, we conclude that the erroneously-admitted hearsay statements did not significantly affect the jury's verdict.

II.

Appellant next argues that the search warrant was not supported by probable cause. Thus, appellant contends that the district court erred by refusing to suppress the evidence found in appellant's home as a result of the search warrant.

Both the United States and Minnesota Constitutions require that a search warrant be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. In determining whether a warrant is supported by probable cause, this court gives great deference to the issuing court's probable-cause determination. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). Our review is limited to ensuring "that the issuing judge had a 'substantial basis' for concluding that probable cause existed." *State v. Zanter*, 535

N.W.2d 624, 633 (Minn. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332 (1983)).

Probable cause is defined as "a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quotation omitted). A probable-cause determination involves "practical considerations of everyday life," not legal technicalities. *State v. Hanson*, 355 N.W.2d 328, 329 (Minn. App. 1984) (quotation omitted). The issuing magistrate's task is to make a "practical, common-sense decision," in light of all the information provided, whether the search-warrant affidavit has established probable cause. *State v. Harris*, 589 N.W.2d 782, 788 (Minn. 1999) (quotation omitted). "Elements indicating probable cause include information linking the crime to the place to be searched, the freshness of the information, and the reliability of the sources of information." *State v. Hochstein*, 623 N.W.2d 617, 622 (Minn. App. 2001) (citing *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998)).

Here, the first few paragraphs of the search warrant affidavit establish that the victim was shot outside a bar and that the victim identified appellant as the shooter. The affidavit then provides:

> It should also be noted that while conducting research on [appellant] your affiant learned that on 03/09/2007 [appellant] was arrested with a 9mm handgun at which time he was quoted saying "I always carry a gun. You guys just got lucky. I'll be out in a couple of days and I'll still be driving the same car and I'll have a gun." . . . In addition, during the same arrest he admitted that he was Conservative Vice Lord criminal gang member with a street name of Big C.

> Upon further investigation and based on past knowledge of [appellant] your affiant knows him to live at 4131 38th avenue south the lower unit in Minneapolis, MN. It should also be noted that [appellant] uses this address to store his belongings and receive mail. This address is also occupied by the mother of one of his children, [K. G.] . . . . Your affiant has learned through this investigation that [appellant] has several children with different women and that he will spend time at multiple locations throughout south MPLS keeping belongings at all locations.

Appellant argues that the warrant lacked probable cause because the affidavit failed to establish facts linking the shooting to the place to be searched. We disagree. The affidavit stated that appellant was an admitted gang member who was recently arrested with a 9-mm handgun. The affidavit also stated that the affiant was familiar with appellant, and that the affiant knew that appellant and one of his children lived at the address to be searched. As the state points out, any number of reasonable inferences can be made from these facts, including the inference that the affiant obtained appellant's address from a prior police report. It is also reasonable to infer that appellant would keep extra bullets at his residence. *See State v. Pierce*, 358 N.W.2d 672, 674 (Minn. 1984) (stating that "the normal place one would keep extra bullets for his gun . . . would . . . be at his residence"). The record further reflects that the residence was only four blocks from the shooting. Although more information would have been helpful, given the totality of the circumstances and the reasonable inferences that can be made from the facts, we conclude that the district court did not err by concluding that the warrant was supported by probable cause.

We also note that even if we were to conclude that the warrant lacked probable cause, appellant cannot establish that he is entitled to a new trial. *See State v. Nelson*, 355 N.W.2d 134, 137 (Minn. 1984) (stating that the erroneous admission of evidence seized in violation of the Fourth Amendment is subject to the harmless error analysis). As discussed above, the jury heard testimony indicating that the car appellant was driving was connected to the shooting incident. Moreover, photographs from the surveillance video footage were admitted depicting the events surrounding the shooting. Finally, the jury heard C.G. positively identify appellant as his assailant. Thus, appellant is unable to show that any error in admitting the ammunition resulted in prejudice.

III.

In his pro se supplemental brief, appellant argues that (1) he was denied the effective assistance of counsel and (2) that he is entitled to a new trial due to prosecutorial misconduct. We have considered these arguments and conclude that they are without merit.

Affirmed.