STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1443

State of Minnesota,
Respondent,

vs.

Hassan Abdi,
Appellant.

Filed September 12, 2022
Affirmed
Bratvold, Judge

Stearns County District Court
File No. 73-CR-20-5040

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Halbrooks, Judge.[*]

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from the district court's judgment of conviction for threats of violence, appellant argues the district court abused its discretion by admitting (1) expert testimony on the common characteristics of battered women and (2) hearsay evidence of a prior inconsistent statement by a witness. Because the expert testimony was helpful to the jury, and the hearsay evidence was admissible, we conclude the district court did not abuse its discretion. Thus, we affirm.

FACTS

The following summarizes the record, including the evidence received during trial. On July 30, 2020, police officers responded to an apartment in Waite Park to investigate a woman's 911 call describing physical abuse by her husband. Shortly after police arrived, the victim, N.A., gave one officer a recorded statement.[1] N.A. stated that her husband, appellant Hassan Abdi, slapped her with an open hand and punched her with a closed fist four times on both sides of her neck and head, and threatened to get a knife and kill her. N.A. said Abdi confronted her about 30 minutes earlier in front of their three children, who began crying. N.A. explained that she was pregnant and afraid for herself and her children. N.A. also stated that Abdi had beaten her before, and she called the police, who let Abdi

[1] This statement was recorded on the officer's body camera and is referred to as "recorded police statement" throughout this opinion. The recording was received as an exhibit during trial and was played for the jury.

stay in their home. Police arrested Abdi and transported him to the Stearns County Jail. Abdi denied assaulting or threatening N.A.

Respondent State of Minnesota charged Abdi with (1) felony-level threats of violence under Minn. Stat. § 609.713, subd. 1 (2018), (2) misdemeanor-level domestic assault for acts causing fear of immediate bodily harm or death under Minn. Stat. § 609.2422, subd. 1(1) (2018), and (3) misdemeanor-level domestic assault for intentional infliction of or attempt to inflict bodily harm on another under Minn. Stat. § 609.2422, subd. 1(2) (2018). The district court entered a pretrial domestic-abuse no-contact order (DANCO) directing Abdi to have no contact with N.A. and to stay away from their home.

In May 2021, the district court ruled on the parties' motions in limine. Relevant to the issues on appeal, the district court reserved ruling on the state's motion to introduce expert testimony. The district court's order stated, "It is likely that the Court will grant the State's request to introduce expert testimony limited to general characteristics of victim behavior and counterintuitive behaviors provided that the State lays foundation that the testimony is relevant." The district court also preliminarily granted the state's motion to introduce N.A.'s statements during the 911 call as an excited utterance "provided that foundation [was] laid."

During the July 2021 jury trial, N.A. testified that she and Abdi have a "very good" relationship. She explained that on the day of the 911 call, their son was injured, after which she and Abdi argued. N.A. denied that Abdi threatened or assaulted her. During their argument, N.A. asked Abdi to leave the apartment, but after he refused, she called the police. She gave the recorded police statement "because at the time all [she] want[ed] them

to do [was] just get [Abdi] out of [her] apartment." N.A. testified that "[she] did lie" about Abdi hitting her and threatening her with a knife. N.A. answered, "Yes," when Abdi's attorney asked if she lied because her "hormones" made her "irrational at the time." N.A. explained that "[a]nytime [she] became pregnant," she would ask Abdi to leave the apartment and that Abdi has "never" hit her.

After N.A. testified, the state sought to introduce her recorded police statement. Abdi objected to the evidence as inadmissible hearsay. The district court overruled the objection and admitted the recorded police statement under Minnesota Rule of Evidence 807, the residual hearsay exception. The recorded police statement was played for the jury.

The jury heard testimony from two police officers, the 911 operator, and a domestic-violence expert. Abdi renewed his objection to the expert testimony, which the district court overruled. Melissa Scaia testified about common characteristics of domestic-violence victims, including the reasons for which a victim may recant accusations of abuse and common behaviors of domestic abusers as those behaviors relate to the victim.[2]

[2] Abdi's brief to this court does not challenge Scaia's qualifications to testify or the foundation for her opinion testimony. The record establishes that Scaia is the director of international training for Global Rights for Women, "worked as the executive director of Advocates for Family Peace . . . an organization that provides advocacy services to women and children affected by domestic violence," "conducts training to international . . . audiences on domestic violence theory, public awareness and domestic violence, and the co-occurrence of domestic violence and child abuse," "has provided peer counseling, legal advocacy, and support to over 500 battered women and has conducted focus groups with battered women as an academic and consultant," and "is familiar with the current literature on victim behaviors in domestic violence situations."

On June 30, 2021, the jury found Abdi guilty of all three counts. The district court cancelled the pretrial DANCO and instructed Abdi to contact probation immediately and follow all recommendations made as part of the presentence-investigation process before sentencing. On August 19, 2021, the district court stayed imposition of Abdi's sentence and placed him on probation for five years with conditions.

This appeal follows.

DECISION

I. The district court did not abuse its discretion by admitting expert testimony on battered-woman syndrome, including the common reasons for which a victim recants an allegation of domestic violence.

Abdi argues that the district court abused its discretion in allowing Scaia to testify because evidence about domestic-violence victims and abusers was not helpful to the jury. Essentially, Abdi argues that the district court should have granted his motion in limine and erred by allowing Scaia to testify at all. The state contends that the district court correctly determined that Scaia's testimony was helpful to the jury. We review a district court's decision to admit expert testimony for abuse of discretion. *State v. Garland*, 942 N.W.2d 732, 742 (Minn. 2020). Abdi must show both that the district court abused its discretion and that he was prejudiced as a result. *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997).

When considering whether to admit expert testimony, a district court must determine whether the testimony will help the jury resolve relevant factual questions presented at trial. Minn. R. Evid. 702; *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). A court determines helpfulness by considering whether the testimony "will assist

the trier of fact to understand the evidence or to determine a fact in issue" and whether the subject "is within the knowledge and experience of a lay jury." Minn. R. Evid. 702; *State v. Helterbridle*, 301 N.W.2d 545, 547 (Minn. 1980). A district court must also balance the relevance and probative value of the testimony against the danger of creating unfair prejudice, the potential for confusing or misleading the jury, and other concerns. Minn. R. Evid. 401, 403.

A court determines the relevance of expert testimony on domestic violence, also described as "battered-woman syndrome," by considering "whether the proffered evidence demonstrated that the proponent had the type of relationship about which the expert will testify." *State v. Hanks*, 817 N.W.2d 663, 668 (Minn. 2012) (citing *State v. MacLennan*, 702 N.W.2d 219, 235 (Minn. 2005)). The Minnesota Supreme Court has held that expert testimony on battered-woman syndrome passes the helpfulness test when it "help[s] the jury to understand the behavior of a woman suffering from the syndrome, which might otherwise be interpreted as a lack of credibility" and which is "not within the understanding of an ordinary lay person." *Grecinger*, 569 N.W.2d at 195 (citing *State v. Hennum*, 441 N.W.2d 793, 798 (Minn. 1989)).

Abdi claims the state failed to show his relationship with N.A. fits with battered-woman syndrome. Abdi relies on *Hanks*, where the supreme court held that the district court did not abuse its discretion by excluding expert testimony offered by the defendant because she failed "to establish the type of relationship that would give rise to battered woman syndrome." 817 N.W.2d at 669.

In *Hanks*, the state charged Hanks with the murder of her domestic partner. *Id*. at 666. To support her defense, Hanks described the male victim as abusive because he tried to control Hanks by urging her to stay home with the children, managing their finances, becoming angry when she had social plans, disabling her vehicle so she could not drive it, and making verbal threats against her. *Id.* at 666, 669. The supreme court reasoned that expert testimony on battered women was not helpful because Hanks "never claimed that [the victim] physically abused her or even that she was afraid of [him]. At most, she was afraid that [he] would hurt her children if she left him." *Id.* at 669.

We are not persuaded by Abdi's argument. Here, the record includes evidence showing Abdi had abused N.A. repeatedly. During her call to 911, N.A. said that Abdi "will beat [her] up" and "is killing [her]." When N.A. gave the recorded police statement, she stated that Abdi hit her "about four times" on her head and neck, by first slapping her and then punching her. N.A. also told police that Abdi threatened to "stab [her] with a knife." When the officer asked whether it was "the first time" Abdi had beaten her, N.A. responded, "No," and stated that Abdi assaulted her "once before." N.A. continued to explain that when she called the police, they told Abdi that "he can stay home." Thus, unlike the relationship in *Hanks*, N.A. and Abdi's relationship is "the type of relationship that would give rise to battered woman syndrome." *See id.*

The state also points out that N.A.'s credibility was a central issue in the case, and Scaia's testimony was helpful to the jury because it "shed[] light on why" N.A. would recant her statements to police to remain in an abusive relationship.

Grecinger supports the state's argument. There, the supreme court determined that expert testimony on battered-woman syndrome was admissible "because it could help the jury understand behavior that might otherwise undermine the complainant's credibility": the victim returned to a relationship with her abuser, told contradictory stories about how her injuries were inflicted, waited three years to pursue prosecution, and recanted the statement she made to police about the abuse. *Grecinger*, 569 N.W.2d at 195-96. When expert testimony on domestic violence was admitted in *Grecinger*, the victim's credibility was at issue because the defense attorney attacked the victim's credibility in opening statements and questioned the victim about why she returned to her relationship with the defendant and why she recanted her allegations against the defendant. *Id.* at 194.

Like the victim's credibility in *Grecinger*, N.A.'s credibility was a central issue at trial. In opening statements, the defense attorney stated that N.A. "fabricated a story to get her husband out of the apartment because she was upset with him" and that since the allegations, N.A. "has told the prosecution over and over again that what she told the police was a lie, and now she is going to come in here under oath and tell you the truth." N.A. later testified that she and Abdi have a "very good" relationship, denied that Abdi threatened or assaulted her, and testified that "[she] did lie" about Abdi hitting her. N.A. also testified that she did not "believe that [she] said he threatened [her] with a knife," but if she did, it was "also a lie."

Thus, N.A.'s credibility was a central issue because the jury was presented with two versions of what happened—N.A.'s recorded police statement, during which she alleged Abdi's abuse, and N.A.'s testimony, during which she recanted those accusations.

Grecinger suggests this is exactly the situation when expert testimony may help the jury. 569 N.W.2d at 195 ("[I]t seems clear that the expert's testimony on battered woman syndrome could help the jury understand why [the victim] returned to the relationship . . . after the incident, told contradictory stories about how her injuries were inflicted, . . . and recanted statements she made to the police and the district court regarding [the] abuse."); *see also State v. Valentine*, 787 N.W.2d 630, 639 (Minn. App. 2010) (stating that the "state may elicit expert testimony about battered-woman syndrome to explain a victim's counterintuitive behavior and exculpatory account of an incident" if the testimony is limited to a description of "the syndrome and its characteristics," and the expert does not opine about whether the victim suffers from the syndrome). We conclude that the district court did not abuse its discretion when it determined that Scaia's testimony "would help the jury to understand the behavior of a woman suffering from the syndrome, which might otherwise be interpreted as a lack of credibility." *Grecinger*, 569 N.W.2d at 195.

Abdi makes two more arguments about Scaia's expert testimony. First, he argues that because the district court lifted the pretrial DANCO, did not impose a probationary DANCO, and did not give Abdi any jail time at sentencing, it was "strongly impl[ied] that the judge did not view . . . Abdi's conviction as a particularly serious offense." Abdi contends this is "absolutely inconsistent with a conclusion that the relationship was one with long-term and frequent physical abuse . . . [or] that Abdi was involved in victim intimidation and witness tampering."

Abdi's argument is not supported by the record. Although the district court lifted the pretrial DANCO at N.A.'s request and did not impose a probationary DANCO, the

district court instructed Abdi "to follow up with corrections by the end of business tomorrow to complete [his] PSI as quickly as possible and to start programming as quickly as possible" and warned Abdi that if the district court received a report that Abdi did not abide by these instructions, the district court would "consider changing [its] order." The district court also imposed five years of probation and ordered Abdi to complete 24 sessions of domestic-abuse counseling or educational programming.

Second, Abdi argues that Scaia "improperly injected the issue of religious community pressure causing victim recantations in a case with an all-white Stearns County jury, with a Somali defendant, and with an alleged victim wearing clothing identified as Islamic female dress—a hijab with a face veil." We are troubled that Abdi's brief includes no citation to the record to support his claim of an "all-white" jury or any references to the defendant's or victim's religion, nationality, or attire. We may disregard any argument that is not supported by the record. *See State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2001) ("A reviewing court cannot base its decision on matters outside the record on appeal." (quotation omitted)); *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that a party's failure to support an argument with proper "argument or authorities" will not be considered on appeal (quotation omitted)).

Even so, Abdi correctly cites caselaw that cautions about the admission of expert testimony on domestic violence as it relates to a defendant's nationality or ethnicity. In *State v. Vue*, the expert testified that "the Hmong culture . . . is slower to change than other cultures" and that he strongly agreed "that, *particularly among older Hmong citizens where English is nonexistent or very difficult at best* . . . the isolation that comes from not being

able to go to a mall and shop and exchange normal conversation with shopkeepers or other people in society has kept Hmong women . . . prisoners in their homes." 606 N.W.2d 719, 722-23 (Minn. App. 2000). We determined that the district court abused its discretion in admitting this expert testimony because the testimony "went far beyond describing Hmong cultural practices that would help explain the alleged victim's behavior." *Id.* at 723.

Still, Scaia's testimony is unlike the testimony Abdi highlights from *Vue*. Scaia made one statement in over thirteen pages of testimony about how religious beliefs, generally, could affect a victim's decision to recant an abuse allegation.[3] Scaia did not mention Somali culture, Islam, or a hijab. Abdi, therefore, has not demonstrated that the expert testimony went beyond what was helpful to the jury.

Thus, the district court did not abuse its discretion by admitting Scaia's testimony as helpful to the jury because her testimony offered information on issues central to N.A.'s

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[3] Scaia's only testimony discussing religion is in the following:

> Yeah, I think they do that just—once, again, whatever they need at the time, whether, you know, it's safety, whether it's the car, whether they need him to be good to the kid because, you know, he's threatened that not to go well, you know, a whole bunch of reasons, but you know, there's a whole bunch of things in terms of—sometimes for people it's faith, right, it's their religious beliefs.
>
> Religious beliefs can be big in terms of my sense of family is "I'm not going to be seen in my community as breaking up this family. That would ostracize me, you know, in my community." I remember a number of times meeting with victims and this one time her phone was ringing just—I said "You can answer that." And she said "Well, I'm going to, but I want you to listen because I want you to know what I'm dealing with."

credibility, including the common characteristics of domestic-abuse victims and the common reasons for which a victim decides to recant abuse allegations. Because we determine the district court did not abuse its discretion, we need not address Abdi's arguments on prejudice.

II. The district court did not abuse its discretion by admitting N.A.'s hearsay statement.

Abdi argues that the district court erred by admitting N.A.'s recorded police statement over Abdi's objection, contending the statement was hearsay and did not fall under any of the exceptions to the rule excluding hearsay. "We review a district court's evidentiary ruling on hearsay for an abuse of discretion." *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). "A defendant claiming error in the trial court's reception of evidence has the burden of showing both the error and the prejudice resulting from the error." *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

Hearsay statements are generally inadmissible. Minn. R. Evid. 802. But Minnesota Rule of Evidence 807, the residual hearsay exception, 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. The analysis under rule 807 has two parts: (1) examination of the proffered statement's trustworthiness and (2) consideration of the three other criteria enumerated in the rule. *State v. Hallmark*, 927 N.W.2d 281, 292-93 (Minn. 2019).

The district court admitted N.A.'s recorded police statement under rule 807, reasoning that "admission of the statement does serve the general purposes of the rules of evidence and it does bear a number of circumstantial guarantees of trustworthiness" and stating that credibility would be left to the jury. We consider the district court's decision to admit the challenged evidence under both parts of the rule 807 analysis.

A. Trustworthiness

In evaluating the statement's trustworthiness, "the district court must examine the circumstances actually surrounding the making of the statements," *id.* at 292, including, but not limited to (1) whether the declarant testifies, admits making the prior statement, and is available for cross-examination; (2) whether the statement is recorded, establishing what the declarant said; (3) whether the statement is against the declarant's penal interest; (4) the extent of evidence corroborating the statement; (5) the extent to which the declarant made the statement voluntarily; (6) whether the declarant made the statement under oath and subject to cross-examination; (7) the declarant's relationships to the parties in the litigation; (8) the declarant's "motivation to make the statement"; (9) the declarant's "personal knowledge" of the statement; (10) whether the declarant recanted; and (11) the declarant's character for truthfulness and honesty, *Vangrevenhof*, 941 N.W.2d at 736 n.1.

As this list suggests, circumstances showing a witness has recanted a prior statement may detract from trustworthiness. *Hallmark*, 927 N.W.2d at 293. When considering whether to admit a recanted statement, a court should consider whether "(1) other uncontradicted evidence discredits the declarant's recantation; (2) the declarant possesses a motive to falsely recant; (3) the declarant's recantation is itself inconsistent; and (4) the

prior hearsay statements are strongly corroborated by evidence admitted at trial." *Id.* (quotation omitted).

Abdi claims the district court failed to properly evaluate the recorded police statement because it did not have equivalent circumstantial guarantees of trustworthiness. Abdi argues the statement was made the night of the alleged incident when N.A. was "furious with Abdi for criticizing her parenting," "telling her brother to leave," and "telling her that she could not take their children to her mother's apartment"; N.A. was pregnant and testified that pregnancy made her "hormones" difficult to control and caused her to want Abdi out of the home; and there was no physical evidence of Abdi's assault of N.A.

We are not persuaded. The district court stated that it considered the totality of the circumstances before determining whether N.A.'s statement was trustworthy under rule 807. The district court considered many factors that affected the trustworthiness of N.A.'s statement to police, including circumstances both favorable and unfavorable to admission. Chief among these considerations were that (1) N.A. testified under oath and was subject to cross-examination on her prior statement; (2) N.A. voluntarily gave the statement to police; (3) the officer asked open-ended questions, and N.A. provided a detailed explanation about the abuse; (4) N.A.'s recorded police statement tracks N.A.'s 911 call; (5) N.A.'s recorded police statement at the apartment is consistent with the more formal statement she later gave to police; (6) N.A.'s recorded police statement occurred shortly after the 911 call and shortly after the abuse; (7) N.A.'s motive for lying to police includes wanting Abdi out of the apartment; (8) N.A.'s motive to recant was to protect Abdi, on whom she depended financially; and (9) N.A.'s statement that Abdi had previously

assaulted her. Thus, the district court did not abuse its discretion as it properly considered the totality of the circumstances to determine N.A.'s recorded police statement had circumstantial guarantees of trustworthiness.

B. Rule 807 admissibility and harmless error

The second step in determining whether evidence is admissible under the residual hearsay exception considers the three factors the rule provides. A district court may admit trustworthy hearsay if (1) it is offered as evidence of a material fact; (2) it is more probative than any other evidence the proponent can find with reasonable effort; and (3) "the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence." Minn. R. Evid. 807.

Abdi does not address the first two rule 807 factors. Rather, he argues that N.A.'s recorded police statement did not satisfy the third factor. The state responds that the district court properly considered all three factors under rule 807 and determined N.A.'s recorded police statement served the rules and interests of justice as the statement was trustworthy. The state also argues that any error was harmless because N.A.'s statement is admissible under the excited-utterance exception.

We are persuaded that the district court did not abuse its discretion in determinizing that the recorded police statement satisfied all three factors under rule 807. Alternatively, any error in admitting the recorded police statement under rule 807 was harmless because it was also admissible as an excited utterance.

"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" is admissible under the

excited-utterance hearsay exception. 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).

Here, N.A. was involved in a startling event because Abdi assaulted her, and her recorded police statement was directly related to Abdi's assault, so the first two requirements are satisfied. *See* Minn. R. Evid. 803(2). Caselaw explains that the third requirement is also satisfied. N.A. was still under the aura of excitement of the startling event when she spoke with police 30 minutes after the assault. The interviewing officer testified that N.A. was "a little upset," that "she seemed like she really wanted to talk to [him], let [him] know what was going on," that she repeated her story multiple times, that N.A. was "[v]ery rapid with her speech patterns," and that "[a] lot of things were reiterated, she seemed very concerned about her safety and the safety of her children." *See Hogetvedt*, 623 N.W.2d at 913 (holding it was "reasonable to conclude [the victim] was still under stress from the incident" three hours after an assault occurred given the extent of her injuries and the nature of the assault). We specifically reject Abdi's argument that physical injury is needed to show a declarant is under the aura of excitement. Caselaw does not support Abdi's position. *See Daniels*, 380 N.W.2d at 782-83 (holding statements made an

hour after the startling event were admissible as excited utterances even though the children sustained no physical injuries).

Thus, the district court did not abuse its direction when it considered rule 807 admissibility requirements and determined N.A.'s recorded police statement was admissible. Alternatively, we conclude that any error was harmless.

Affirmed.