STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0476

State of Minnesota,
Respondent,

vs.

Willie James Patterson,
Appellant.

Filed March 4, 2013
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-11-30153

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth A. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

William M. Ward, Chief Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Schellhas, Judge.

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

WORKE, Judge

Appellant challenges his assault convictions, arguing that the district court abused its discretion by admitting identification evidence and by declining to admit reverse-*Spreigl* evidence. We affirm.

D E C I S I O N

Out-of-court identification

A jury found appellant Willie James Patterson guilty of first-, second-, and third-degree assault for stabbing D.B. while D.B. sat in his vehicle following an argument with his ex-girlfriend, J.W. Appellant argues that the district court abused its discretion by admitting D.B.'s out-of-court identification of appellant. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. . . . [A]ppellant 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).

Hearsay, "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," is generally inadmissible. Minn. R. Evid. 801(c), 802. But a statement "of identification of a person made after perceiving the person" is not hearsay if the declarant is available for cross-examination. Minn. R. Evid. 801(d)(1)(C). Appellant asserts that D.B.'s identification from a photo-lineup was inadmissible because rule 801(d)(1)(C) applies only to identifications of unknown assailants, and D.B. knew appellant.

Appellant relies on *State v. Robinson*, in which the victim told nurses that her ex-boyfriend hit her and caused the injuries for which she sought treatment, but later testified that the defendant accidentally injured her. 718 N.W.2d 400, 402-03 (Minn. 2006). There, the supreme court emphasized the distinction between an out-of-court identification of an unknown offender, which is admissible under rule 801(d)(1)(C), and an accusation of a known offender, which is not contemplated by the rule. *Id.* at 408. The court explained that the rationale for the rule is that an out-of-court identification of an unknown offender would tend to be more probative than a trial identification. *Id.* The supreme court held that "[r]ule 801(d)(1)(C) does not extend to the out-of-court accusation against an offender whose identity was well-known to the victim." *Id.*

We are presented with a similar situation here. On May 23, 2011, Sergeant Bruce Kohn interviewed D.B., who had been stabbed three days earlier. D.B. told the sergeant that he knew the person who stabbed him and he had seen and spoken to the person when the assault occurred. D.B. called the assailant "Willie" and "Doonie." He characterized him as his ex-girlfriend's current boyfriend. In a photo-lineup, D.B. identified appellant as the person who stabbed him. Like *Robinson*, this is an accusation against an offender whose identity is well-known to the victim. *See id.* This out-of-court identification was inadmissible under rule 801(d)(1)(C).

In *Robinson*, however, the supreme court determined that the victim's statement had guarantees of trustworthiness and, although not admissible as an identification, it was admissible under the residual hearsay exception. *Id.* at 410. An out-of-court statement is admissible as substantive evidence if it is within an exception to the hearsay rule, such as

the residual exception. *State v. Greenleaf*, 591 N.W.2d 488, 502-03 (Minn. 1999). Under this exception, a statement is admissible if it is not specifically included as an exception to the hearsay rules, but has circumstantial guarantees of trustworthiness, and

> if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) 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.

To determine whether a hearsay statement has "sufficient guarantees of trustworthiness," we analyze the totality of the circumstances. *State v. Martinez*, 725 N.W.2d 733, 737 (Minn. 2007). In doing so, this court looks "to all relevant factors bearing on trustworthiness." *State v. Stallings*, 478 N.W.2d 491, 495 (Minn. 1991). Relevant factors may include whether: (1) there is a confrontation problem because the declarant is unavailable for cross-examination; (2) there is dispute regarding whether the declarant made the statement or what the statement is about; (3) the statement was against the declarant's penal interest; and (4) the state's other evidence strongly corroborated the truth of the statement. *Martinez*, 725 N.W.2d at 737. We also consider that the purpose of the rules of evidence is to see that "the truth [] be ascertained and proceedings justly determined." *See* Minn. R. Evid. 102.

D.B.'s statement has sufficient guarantees of trustworthiness. First, D.B. testified and was available for cross-examination; thus, no confrontation issue exists. Second, D.B. admitted that his signature and initials appear on the photo-lineup report and his

statement was recorded; therefore, no dispute exists regarding the nature of the statement. Third, D.B. admitted that he was talking to J.W. when he was assaulted, which is against his penal interest because at the time an order for protection prohibited him from having contact with J.W. Fourth, the state's evidence corroborates the truth of D.B.'s statement, because three other witnesses testified that "Doonie" is the same person as appellant, witnesses testified that "Doonie" and J.W. were in a relationship at the time of the assault, and one witness identified appellant as the only person near D.B. when D.B. was assaulted. While D.B. could not recall his out-of-court identification of appellant during his trial testimony, based on the totality of the circumstances, the statement had sufficient guarantees of trustworthiness. Finally, considering that the purpose of the rules of evidence is to seek the truth, the statement was properly admitted in light of D.B.'s evasive testimony. The district court did not abuse its discretion by admitting the photo-lineup-identification evidence as substantive evidence under the residual hearsay rule.

Appellant also asserts that the identification evidence was inadmissible because the state called D.B. solely to impeach him, a situation referred to as "the Dexter problem." *Oliver v. State*, 502 N.W.2d 775, 778 (Minn. 1993). A Dexter problem occurs when

> a prosecutor calls a witness who has given a prior statement implicating the defendant, but that witness has since retracted the statement and signified an intent to testify in defendant's favor if called by the prosecutor. If the prosecutor is permitted to call this witness and use the prior statement for impeachment purposes, there is a large risk that the jury, even if properly instructed, will consider the prior statement as substantive evidence.

State v. Ortlepp, 363 N.W.2d 39, 42-43 (Minn. 1985). This problem, however, is avoided if the evidence is admissible under an exception to the hearsay rule. *See State v. Dexter*, 269 N.W.2d 721, 721 (Minn. 1978) (observing that the state was "seeking . . . to present, in the guise of impeachment, evidence which is not otherwise admissible"); *see also Ortlepp*, 363 N.W.2d at 44.

Although D.B. was a reluctant witness and testified at appellant's trial only after being subpoenaed, there is no evidence that the state knew that D.B. planned to testify inconsistently with his prior statement. And D.B.'s testimony, while evasive and confusing, did not include a recantation of a prior statement. Finally, the prior statement was properly admitted as substantive evidence under the residual hearsay exception. Appellant's argument fails.

Reverse-*Spreigl*

Appellant also argues that the district court abused its discretion by excluding evidence that J.W. previously assaulted D.B. to support appellant's defense that J.W. stabbed D.B. This court reviews district court rulings on evidentiary issues for an abuse of discretion. *Amos*, 658 N.W.2d at 203. If this court concludes that the district court abused its discretion by making an erroneous evidentiary ruling, we must then determine whether the error was harmless. *State v. Larson*, 787 N.W.2d 592, 597 (Minn. 2010). The error is harmless "unless there is a reasonable possibility that the verdict might have been different if the evidence had been admitted." *Id.* (quotation omitted).

Criminal defendants have a right to present a complete defense, including "the right to present evidence showing that an alternative perpetrator committed the crime

with which the defendant is charged." *Id.* (quotation omitted). As part of an alternative-perpetrator defense, a defendant may "present evidence of other crimes, wrongs, or bad acts committed by the alleged alternative perpetrator in order to cast reasonable doubt upon the identification of the defendant as the person who committed the charged crime." *State v. Jones*, 678 N.W.2d 1, 16 (Minn. 2004). This evidence is often referred to as "reverse-*Spreigl*" evidence. *Woodruff v. State*, 608 N.W.2d 881, 885 (Minn. 2000). Before introducing reverse-*Spreigl* evidence, the defendant must show: "(1) by clear and convincing evidence that the third party participated in the reverse-*Spreigl* incident; (2) that the reverse-*Spreigl* incident is relevant and material to defendant's case; and (3) that the probative value of the reverse-*Spreigl* evidence outweighs its potential for unfair prejudice." *Id.*

Appellant sought to introduce a police report from January 2009:

> Victim states that suspect who is his [e]x-girlfriend and that he has a child with was at his apartment. Victim states that they got into argument and suspect got mad and grabbed him by the back of the neck and scratched him with her finger nails. Victim states that suspect also had knife in her hand and when he tried to take it away suspect cut him on the lip.

Appellant argues that this report established J.W.'s stabbing of D.B. on a previous occasion. The district court found that this report failed to establish by clear and convincing evidence that the prior act occurred. The district court did not abuse its discretion by excluding this evidence because this report does not show that anything transpired following the report, and does not include the suspect's account of events.

Additionally, appellant mischaracterizes this as a "stabbing," when the report states only that the "suspect had a knife" and D.B. was injured while trying to take it away from her.

Additionally, as part of appellant's alternative-perpetrator defense, the district court allowed appellant to present evidence of an OFP that J.W. had against D.B., stating:

> As I understand the alternative perpetrator defense here . . . [the assailant] would have to be someone else that was present at the scene at the time that [D.B.] was assaulted . . . [and] J.W. [was] there.
>
> I'm assuming that the reasoning behind asking [D.B.] [about the OFP] is that he was on probation at the time. He wasn't supposed to violate the [OFP] and that the reason that he blamed [appellant] is because he wasn't supposed to have any contact with [J.W.] and if he acknowledged that he had contact with [her] he would be in violation of the OFP and in violation of his probation conditions to remain law abiding.

Two police officers testified about the OFP, and D.B. admitted that he was aware of the OFP. Appellant was also permitted to offer evidence that before the stabbing, D.B. and J.W. were on their way to a court hearing regarding their children, and D.B. intended to obtain temporary custody of the children.

Appellant also presented evidence that there were other people present when D.B. was stabbed, but police officers failed to follow up with interviews. J.W. testified that she and D.B. argued prior to the assault, which upset her teenage sons, and she had to restrain her sons from attacking D.B. J.W. further testified that as she left the scene, she observed some guys with guns pull up and argue with D.B. Appellant offered evidence of an alternative perpetrator. The district court did not abuse its discretion in refusing to admit the reverse-*Spreigl* evidence

Affirmed.