STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1247

In the Matter of the Welfare of:
D. C. M., Child.

Filed June 9, 2009
Affirmed
Bjorkman, Judge

Rice County District Court
File No. 66-JV-08-535

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G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, 218 Northwest 3rd Street, Faribault, MN 55021 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

In this appeal from his delinquency adjudication for aiding and abetting check forgery, appellant challenges the district court's decision to admit cash-register receipts

as evidence of the value of the forged checks. Because the district court did not abuse its discretion or plainly err, we affirm.

FACTS

Appellant D.C.M. worked as a cashier at a Wal-Mart store in Faribault. A.M., an acquaintance of D.C.M., stole a purse and asked D.C.M. whether he would be willing to accept checks she found in the purse. A.M. offered to "get [D.C.M.] some things from Wal-Mart if he would let the checks go through." Three times during the following week, A.M. went to Wal-Mart, selected items she wished to purchase, and brought them to D.C.M.'s checkout lane. Each time, D.C.M. rang up the items and A.M. paid with a stolen check, forging the signature of the owner of the checkbook. D.C.M. knew A.M. was not the owner of the checkbook but accepted the checks.

After the owner of the checkbook reported the theft to police, Detective Lisa Petricka of the Faribault Police Department initiated an investigation. As part of the investigation, Petricka contacted Wal-Mart with the information she had about the checks that had been written on the account and asked to view the receipts generated in connection with each of the three purchases. Petricka also reviewed video surveillance from the store and learned that D.C.M. had been the cashier for all three purchases.

D.C.M. was charged by petition filed in Rice County Juvenile Court with three felony counts of aiding and abetting check forgery. The petition alleged that the value of the forged checks totaled more than $250, making the charged offenses felonies. At trial, the district court admitted as business records the three receipts Petricka obtained from Wal-Mart, overruling D.C.M.'s hearsay objection. The district court found D.C.M. guilty

and adjudicated him delinquent on one count of aiding and abetting possession of forged checks totaling more than $250. This appeal follows.

D E C I S I O N

D.C.M. argues that the district court erred in admitting the three Wal-Mart receipts. He contends that the receipts constituted inadmissible hearsay and that admission of the receipts based solely on Petricka's testimony violated his confrontation rights under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004). "Evidentiary rulings lie within the discretion of the district court and will not be reversed absent a clear abuse of discretion. But whether the admission of evidence violates the Confrontation Clause is a question of law subject to de novo review." *State v. Johnson*, 756 N.W.2d 883, 889 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Dec. 23, 2008).

I. The district court did not abuse its discretion in admitting the receipts as business records based on Petricka's testimony.

Out-of-court statements are hearsay and generally inadmissible to prove the truth of the matter asserted. Minn. R. Evid. 801; Minn. R. Evid. 802. But Minn. R. Evid. 803(6) permits admission of hearsay evidence that qualifies as a record of "regularly conducted business activity." Business records are admissible under this exception if

> the custodian or another qualified witness can testify that the records were (1) made by a person with personal knowledge of the matters recorded and a business duty to report accurately or from information transmitted by a person with such knowledge, (2) made at or near the time of the recorded event, (3) kept in the course of a regularly conducted business activity, and (4) made as part of the regular practice of that business activity.

In re Child of Simon, 662 N.W.2d 155, 160 (Minn. App. 2003). The business-records exception requires only that "the person attempting to lay foundation . . . be familiar with how the business in question compiles its documents." *Id.* (citing *Nat'l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 61 (Minn. 1983)).

Petricka's testimony was the sole basis for admitting the three receipts. She testified that she had worked on fraud or forgery cases at the Faribault Wal-Mart on at least 10 to 20 prior occasions. While investigating those cases, she had "become familiar with Wal-Mart's procedures regarding how they accept checks and their procedures dealing with money" and with "how they keep their information regarding receipts and credit card information and check information." She testified:

> I know that it's all computerized, and that as long as I come out with a copy of the check or the check or a credit card or debit card and I have the account number, it's all into the computer system, and I present that number to them, they type it in, and they can tell what dates the card or check has been used on.

Petricka further testified that the method Wal-Mart used to generate and maintain the records in this case was the same she had observed during her prior fraud investigations at Wal-Mart. Petricka's testimony established her familiarity with Wal-Mart's system of creating and maintaining receipts and check information. She was thus qualified to testify for purposes of the business-records exception.

Petricka's qualified testimony addressed the admissibility criteria identified in the business-records exception. She testified that she obtained information about the receipts from a Wal-Mart loss-prevention employee. As noted above, Petricka was aware,

through her previous investigations of fraud at this Wal-Mart store, of how the store generates and maintains electronic records of receipts. That the records were created and stored electronically suggests that they were "made at or near the time of the recorded event," namely the fraudulent purchases. Similarly, Petricka's testimony that Wal-Mart regularly kept the receipt records indicates that the receipts were "made as part of" Wal-Mart's "regular practice." We conclude that the district court acted well within its broad discretion in determining that the receipts are business records.

D.C.M. contends that even if the receipts are business records, they were prepared in anticipation of litigation and are therefore inadmissible. *See* Minn. R. Evid. 803(6) ("A memorandum, report, record, or data compilation prepared for litigation is not admissible under this exception."). We disagree. In determining whether a document offered under rule 803(6) was prepared for litigation, "a district court must consider when and by whom the report was made and the purpose of the report." *Simon*, 662 N.W.2d at 161. Petricka testified that she requested access to information that she knew Wal-Mart generated and stored for its own internal purposes prior to her investigation. The fact that Petricka requested the receipts from Wal-Mart as part of her investigation does not mean that the receipts were "prepared for litigation."

II. The district court did not plainly err by failing to exclude the receipts on Confrontation Clause grounds.

D.C.M. also argues that admission of the receipts based solely on Petricka's testimony violated his rights under the Confrontation Clause. But D.C.M. did not object to admission of the receipts on this basis at trial. D.C.M.'s objection on hearsay grounds

did not adequately alert the district court to the issue he now raises on appeal. *Cf. Johnson*, 756 N.W.2d at 891 (distinguishing between admissibility of evidence under a hearsay exception and admissibility of evidence under Confrontation Clause). A defendant does not preserve an objection for appeal if he objects at trial on grounds different from those argued on appeal. *State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993); *see also State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989) (stating that appellate courts generally will not decide issues raised for the first time on appeal).

Nonetheless, we may review D.C.M.'s argument for plain error. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "The plain error standard requires that the defendant show: (1) error; (2) that was plain; and (3) that affected substantial rights." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002) (citing *Griller*, 583 N.W.2d at 740). An error is plain if it "contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). We correct plain error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

The Confrontation Clause precludes the introduction of hearsay statements that are testimonial in nature when the declarant is unavailable and the defendant has not had a prior opportunity to cross-examine the declarant. *Crawford*, 541 U.S. at 68, 124 S. Ct. at 1374; *State v. Wright*, 726 N.W.2d 464, 472 (Minn. 2007). "The critical question under *Crawford* is whether the statement at issue is testimonial." *State v. Tscheu*, 758 N.W.2d 849, 864 (Minn. 2008) (citing *Davis v. Washington*, 547 U.S. 813, 821, 126 S. Ct. 2266,

2273 (2006)). And whether a statement is testimonial turns on "whether it was prepared for litigation." *State v. Caulfield*, 722 N.W.2d 304, 309 (Minn. 2006).

We generally do not consider evidence like the receipts at issue here to be "prepared for litigation," primarily because the underlying data were recorded well before litigation and for a separate purpose. In *State v. Vonderharr*, for example, we concluded that the defendant's driver's license records were not prepared for the purpose of litigation but rather "to provide current information about the license status of drivers to ensure that only drivers with valid licenses operate motor vehicles in the state." 733 N.W.2d 847, 852 (Minn. App. 2007). By contrast, our supreme court determined that laboratory reports implicate a defendant's confrontation right when they contain the results of scientific analysis conducted to assist a police investigation. *Caulfield*, 722 N.W.2d at 309-10 (holding that a laboratory report identifying a substance as cocaine was testimonial because it was "clearly prepared for litigation" in response to a request for testing after the defendant was arrested). Thus, the mere act of requesting a printed presentation of previously recorded data does not convert the regular, business purpose for recording the data—maintaining safe public roadways, as in *Vonderharr*, or, as here, managing a store—into a litigation purpose, even if the request is motivated by litigation.

Because the receipts contain previously recorded data, not the results of analysis performed for litigation, the district court did not plainly err by failing to exclude them based on the Confrontation Clause.

Affirmed.