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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1924**

State of Minnesota,  
Respondent,

vs.

Dearlo Delaen Martin,  
Appellant.

**Filed July 20, 2010  
Affirmed  
Klaphake, Judge**

Hennepin County District Court  
File No. 27-CR-09-13412

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Minge, Judge.

**UNPUBLISHED OPINION**

**KLAPHAKE**, Judge

De'Arlo De'Laen Martin appeals from his conviction of first- and second-degree assault and his sentence, arguing that the district court abused its discretion by refusing to

admit a witness's exculpatory statement and by permitting a person who was neither a victim nor a resident in the community affected by the crime to make a victim impact statement. At trial, appellant urged admission of the exculpatory statement under Minn. R. Evid. 804(a)(5), which permits admission of a hearsay statement when the declarant is unavailable and "the proponent of the statement has been unable to procure the declarant's attendance . . . by process or other reasonable means." Appellant asserts that the district court plainly erred by refusing to admit the exculpatory statement under the residual exception to the hearsay rule.

Because appellant's objection to the district court's ruling did not alert the court to the detailed arguments he now raises on appeal and because the court did not plainly err in its ruling, we affirm appellant's conviction. Because the district court did not abuse its discretion by permitting a former resident of the community to make a victim impact statement, we affirm appellant's sentence.

## **DECISION**

### *Exculpatory Statement*

We review the district court's evidentiary rulings for a clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Appellant has the burden of establishing both an abuse of discretion and prejudice as a result of the erroneous ruling. *Id.* A defendant has a constitutional right to present a complete defense. *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010). But "when a defendant seeks to introduce exculpatory evidence based on an alternative perpetrator theory, the court must still

evaluate this evidence under the ordinary evidentiary rules as it would any other exculpatory evidence.” *State v. Jones*, 678 N.W.2d 1, 16 (Minn. 2004).

At trial, appellant urged admission of the exculpatory statement under Minn. R. Evid. 804(a)(5), which permits admission of a hearsay statement when the declarant is unavailable and “the proponent of the statement has been unable to procure the declarant’s attendance . . . by process or other reasonable means.” The district court refused to accept the statement because appellant had not personally served the declarant with a subpoena and therefore the declarant was not unavailable under the rule. *See State v. Carlson*, 408 N.W.2d 192, 194 (Minn. App. 1987) (affirming district court’s suppression of statements when state failed to confirm service of subpoena on witness). This ruling was not an abuse of discretion.

On appeal, appellant argues that the district court should have admitted the statement under Minn. R. Evid. 807, the residual exception to the hearsay rule. Under this rule, a statement not specifically covered by rules 803 and 804, but which has equivalent circumstantial guarantees of trustworthiness, may be admitted if the court determines that the statement is evidence of a material fact, the statement is more probative on an issue than other procurable evidence, and the purposes of the rules and the interests of justice would be served by admitting the statement. *Id.*

Generally, “[a]n objection must be specific as to the grounds for challenge.” *State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). In *Rodriguez*, defense counsel objected to a witness’s use of the word “kidnapping” to describe the charged offense on the grounds that it called for a legal

conclusion. *Id.* On appeal, Rodriguez asserted that the district court erred by permitting the testimony because it was an inadmissible hearsay statement. *Id.* In affirming the district court's ruling, this court stated, "Rodriguez' objection to the word 'kidnapping' on grounds of a 'legal conclusion' could not have alerted the trial court to the detailed hearsay and confrontation clause arguments Rodriguez now raises on appeal." *Id.* Here, the district court focused on the proffer that appellant made, which required a ruling on whether or not the declarant was available. The district court did not consider the very different requirements of the residual exception to the hearsay rule.

Generally, an issue cannot be raised for the first time on appeal. *State v. Anderson*, 733 N.W.2d 128, 134 (Minn. 2007). We nevertheless can review an issue not raised to the district court if it "implicates a plain error affecting substantial rights." *Id.* An error is plain if it is clear and obvious. *Jenkins*, 782 N.W.2d at 230. If we determine that there was plain error that affected a party's substantial rights, we must evaluate whether the error should be addressed in order to ensure fairness and the integrity of the judicial process. *Id.*

Because appellant did not offer the exculpatory statement under the residual exception, he did not provide a showing of "equivalent circumstantial guarantees of trustworthiness." Minn. R. Evid. 807. The district court did not have the benefit of the arguments that appellant makes here on appeal. Further, the declarant was not available for cross-examination, and his statement had not been subject to examination in any tribunal, something which can supply circumstantial guarantees of trustworthiness. *See, e.g., State v. Martinez*, 725 N.W.2d 733, 738 (Minn. 2007); *State v. Robinson*, 718

N.W.2d 400, 408-09 (Minn. 2006) (affirming admission of evidence under residual exception based on totality of circumstances supporting circumstantial guarantees of trustworthiness and noting that declarant testified and was cross-examined); *State v. Ortlepp*, 363 N.W.2d 39, 44 (Minn. 1985) (concluding that hearsay statement was “particularly reliable” because the declarant testified and was subject to cross-examination).

Finally, because a police witness testified as to the content of the exculpatory statement, appellant’s substantial rights were not affected. The district court did not commit plain error by refusing to admit the exculpatory statement.

#### *Victim Impact Statement*

Appellant asserts that the district court abused its discretion by permitting Cicily Williams, a former Minneapolis resident, to make a victim impact statement, contending that the district court was swayed or its sentencing decision was tainted by inclusion of this impact statement.

Under Minn. Stat. § 611A.038(b) (2008),

[a] representative of the community affected by the crime may submit an impact statement in the same manner that a victim may. . . . This impact statement shall describe the adverse social or economic effects the offense has had on the persons residing and businesses operating in the community where the offense occurred.

The use of the word “may” suggests that the district court has discretion to determine whether to accept the impact statement. The statute does not define “representative of the community,” but by the language of the statute, “victim” and “representative of the

community” are two distinct concepts. Williams spoke in general terms about the effect of juvenile crime and gun violence on the north Minneapolis community and stated that she left the community because of crime. This statement is within the broad parameters set forth in the statute.

Appellant argues that the district court refused his request for a downward durational departure, perhaps because the court was swayed by Williams’ statement. We note that the district court also refused the state’s request for a “top of the box” presumptive sentence and instead imposed the presumptive sentence. We will rarely reverse the district court’s imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). The district court made no remarks about the victim impact statements, and there is no indication in the record that the court relied on the victim impact statements in reaching its sentencing decision.

The district court did not abuse its discretion by admitting Williams’ victim impact statement. We therefore affirm appellant’s sentence.

**Affirmed.**