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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2091**

State of Minnesota,
Respondent,

vs.

Michael Doss,
Appellant.

**Filed October 12, 2010
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19HA-CR-08-5045

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

James C. Backstrom, Dakota County Attorney, Helen R. Brosnahan, Assistant County Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Marie L. Wolf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of terroristic threats, arguing that the district court committed reversible error by allowing two police officers to testify that the

victim's screams at the crime scene were the worst that they had heard in their experience as police officers. Because the error was harmless, we affirm.

FACTS

Appellant Michael Doss was charged with terroristic threats and domestic assault by strangulation for allegedly strangling and threatening to kill his girlfriend, P.J., during a domestic dispute. The case was tried to a jury. The state called Sergeant Donald Stenger and Officer Dallas Moeller as witnesses.

Sergeant Stenger testified that on November 27, 2008, he was dispatched to Doss's apartment on a report of a domestic assault in progress involving a weapon. Sergeant Stenger testified that as he approached Doss's apartment, he heard hysterical screams coming from within the apartment. The state asked Sergeant Stenger whether the screams made an impression on him. Defense counsel objected, arguing that Sergeant Stenger's impressions were irrelevant and that the question called for an opinion. The district court overruled the objection, and Sergeant Stenger testified: "I've been an officer for about 14 years at that point, and these screams were worse than I've ever heard. I've probably responded to hundreds of domestic incidents in my career and this was hysterical, this was immediate danger I believed." Because of the screams, Sergeant Stenger tried to kick down the door to Doss's apartment.

Similarly, Officer Moeller testified that when he arrived outside of Doss's apartment, he heard a women "screaming at the top of her lungs." He added: "[I]n the five years that I've worked . . . I haven't heard anything like that . . . where I thought for sure someone is getting killed in there." After he entered the apartment, Officer Moeller

observed P.J. curled up in a fetal position, hysterically screaming. Officer Moeller testified that P.J. told him that she was extremely frightened because Doss had dragged her across the floor.

P.J. also testified at trial. She said that she and Doss had argued, Doss was “hollering,” and she was scared. She also testified that Doss threatened to kill her, grabbed her around the neck, and dragged her across the floor. Doss also looked for a knife in his jacket and grabbed a fork from the kitchen when he could not find the knife.

Doss presented the jury with a significantly different version of the events. Doss testified that he and P.J. argued about P.J.’s dog, but the argument never turned physical. He also claimed that he and P.J. were asleep in his bedroom when he heard the police at his door. Doss denied that he grabbed a fork to threaten P.J. and that he threatened to kill her.

The jury found Doss not guilty of domestic assault by strangulation but guilty of terroristic threats. This appeal follows.

D E C I S I O N

Doss claims that the district court erred by allowing the officers to testify that P.J.’s screams were worse than anything they had heard in their experience as police officers, arguing that the testimony was not helpful to the jury or relevant to any disputed issue. Doss also argues that the testimony was highly prejudicial in that it carried “an imprimatur of police authority,” allowed the jury to ignore evidence that was inconsistent with his guilt, and “inordinately” influenced the jury to convict. Doss asks this court to reverse and remand for a new trial.

“Generally, a reviewing court defers to the district court’s evidentiary rulings and will not overturn the rulings absent a clear abuse of discretion.” *State v. Dobbins*, 725 N.W.2d 492, 505 (Minn. 2006). The appellant bears the burden to show that the district court abused its discretion and that the error was prejudicial. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Doss asserts that the officers’ opinions regarding P.J.’s screams constituted expert testimony and that we should analyze their relevancy in this context. The state counters that the officers did not provide expert testimony. We need not decide whether the officers provided expert testimony because regardless of that determination, the officers’ opinion testimony was not relevant.

Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. “Evidence which is not relevant is not admissible.” Minn. R. Evid. 402.

While the officers’ testimony that they heard P.J. screaming when they arrived at the apartment was relevant because it refuted Doss’s claim that P.J. was sleeping when the officers arrived, the officers’ opinion testimony that P.J.’s screams were the worst that they had ever heard did not have “any tendency to make the existence of any fact that [was] of consequence to the determination of the action more probable or less probable.” Minn. R. Evid. 401. The testimony was therefore irrelevant and inadmissible. *See* Minn. R. Evid. 401, 402. We next consider whether the erroneous admission of this testimony necessitates reversal.

The erroneous admission of evidence does not warrant reversal if the error was harmless. See *State v. Blasus*, 445 N.W.2d 535, 540 (Minn. 1989) (applying harmless error analysis to the erroneous admission of evidence). When a district court has erred in admitting evidence, the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). If there is a reasonable possibility that the verdict might have been more favorable to the defendant without the evidence, then the error is prejudicial. *Id.* In completing a “harmless-error” analysis, the inquiry is not whether the jury could have convicted the defendant without the error, but rather, what effect the error had on the jury’s verdict, “and more specifically, whether the jury’s verdict is surely unattributable to [the error].” *State v. King*, 622 N.W.2d 800, 811 (Minn. 2001) (quotation omitted).

Doss argues that it is likely that the jury’s decision to convict him of terroristic threats was not based on the evidence itself, “but on the irrelevant testimony of the police officers about the blood-curdling screams that indicated to them, in their experience as police officers, that a horrible crime was taking place.” But Doss’s argument that the jury was inappropriately swayed by the officers’ opinion testimony is refuted by the jury’s verdicts. P.J. testified that Doss threatened to kill her and that he grabbed her by the throat. But she also testified that her ability to breathe was not impeded, thereby negating one of the elements of domestic assault by strangulation. See Minn. Stat. § 609.2247, subd. 1(c) (2008) (defining “strangulation” as “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or

neck or by blocking the nose or mouth of another person”). The jury apparently credited this testimony, and despite the officers’ suggestion that P.J.’s screams indicated that she was in “immediate danger” or “getting killed,” the jury acquitted Doss of domestic assault by strangulation. The acquittal indicates that the jury objectively assessed P.J.’s credibility and the officers’ opinion testimony and that it considered the elements of the charged offenses. The acquittal also indicates that the jury found all of P.J.’s testimony credible—basing its guilty verdict on her testimony that Doss threatened to kill her and its not guilty verdict on her testimony that Doss did not impede her breathing. Because the jury’s verdict is surely unattributable to the officer’s comparative testimony regarding P.J.’s screams, we affirm.

Affirmed.

Dated:

Judge Michelle A. Larkin