COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-1578

COMMONWEALTH

vs.

SARAH M. SCAFURI.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

A District Court jury convicted the defendant of reckless operation of a motor vehicle, leaving the scene of a personal injury, and assault and battery by means of a dangerous weapon.[1] On appeal, the defendant claims the judge erroneously admitted a hearsay statement in violation of the confrontation clause and that the evidence was insufficient to support convictions for leaving the scene of a personal injury and assault and battery by means of a dangerous weapon. Alternatively, the defendant argues that even if the evidence was sufficient to prove assault and battery by means of a dangerous weapon beyond a reasonable

[1] The judge allowed a motion for a required finding of not guilty on a charge of possession of marijuana and the Commonwealth elected not to proceed on a speeding charge.

doubt, the judge erred in failing to instruct the jury regarding proximate and intervening causes. We affirm.

Background. We summarize the evidence the jury could have found, viewing it in the light most favorable to the Commonwealth. Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979). On June 18, 2018, at approximately 3 A.M., Adelinda Rodriguez, while emptying her trash outside her apartment in Springfield, observed a man and a woman arguing in a red minivan parked in the apartment building's parking lot. The man seated in the passenger seat told Rodriguez to "[m]ind your business" and began "cursing" at her. Rodriguez responded in kind and the man reached out and grabbed Rodriguez by her hands. As Rodriguez struggled with the passenger, the driver, later identified as Sarah Scafuri, the defendant, "revved" the engine, put the minivan in gear, and began to drive forward, dragging Rodriguez through the parking lot and down the driveway.

Rodriguez's "nephew," whom she called Vilo, came to her aid as the minivan started to move.[2] Vilo grabbed the minivan over Rodriguez's body and told Rodriguez to let go. Rodriguez fell off the van at the end of the driveway before it entered the street. Rodriguez was screaming and covered with blood. The minivan drove off with Vilo holding on to its exterior.

[2] Vilo was not a blood relative, but a boy from Rodriguez's neighborhood who was friendly with her.

Meanwhile, Springfield police officers were conducting an unrelated investigation on Pine Street approximately one mile away. They observed the minivan speeding toward them with someone "hanging out the front passenger door." The officers drew their weapons and ordered the driver of the minivan to stop. After the minivan came to a stop, the occupants were ordered from the minivan and placed in separate cruisers. Vilo was very "antsy." Vilo said that he was trying to stop the minivan because it had just hit and injured his aunt at 500 Hancock Street. The police officers responded "right away" to 500 Hancock Street and talked to Rodriguez who was "completely covered in blood everywhere, from head to toe."

Discussion. 1. Vilo's statement. On appeal, the defendant claims that Vilo's statement was inadmissible hearsay and violated his constitutional right to confront witnesses against her. We conduct a two-part inquiry to determine the admissibility of the out-of-court statement. First, we evaluate whether a hearsay exception applies. Second, "the statement must be appraised under the criteria of Crawford-Davis and Commonwealth v. Gonsalves, 445 Mass. 1, 3 (2005), to determine if it satisfies the confrontation clause of the Sixth Amendment." Commonwealth v. Burgess, 450 Mass. 422, 431 n.6 (2008). The defendant objected to Vilo's statement on hearsay grounds.

The judge ruled that Vilo's statement was admissible under the excited utterance exception to the rule against hearsay. That is, the statement was a spontaneous reaction to a startling event rather than product of reflective thought. See Mass. G. Evid. § 803(2) (2020). The judge's determination on this point is entitled to great deference and will not be overturned unless he abused his discretion. Commonwealth v. Smith, 460 Mass. 385, 391 (2011). Here, there was evidence of two startling events within a relatively short period. First, Vilo witnessed Rodriguez being pulled through the parking lot as she struggled with the minivan's passenger. Second, Vilo was transported approximately one mile at high speed while hanging from the passenger door. We agree with the judge that these events were sufficiently startling to trigger an excited utterance.

We are not persuaded by the defendant's argument that Vilo's statement was not a spontaneous reaction to those startling events. While one officer described Vilo's tone as "neutral" and his statement was not made until after he had been placed in a police cruiser and questioned, those facts are not dispositive. "[A] declarant may be under the stress of a startling event without appearing to be frantic or excited." Commonwealth v. Wilson, 94 Mass. App. Ct. 416, 422 (2018). "[T]he question is not simply whether the declarant shows any particular form of 'excitement,' but[,] rather[,] whether the

declarant was acting spontaneously under the influence of the incident at the time the statements were made, and not reflectively." Commonwealth v. Baldwin, 476 Mass. 1041, 1042 (2017). We also consider whether the statement was made in the same location as the exciting event, id., and whether the statement was made in response to a medical emergency. See Wilson, supra.

Here, one police witness described Vilo as "antsy" at the time of the statement and another testified that Vilo was "screaming, asking for police." The evidence also showed that Vilo made the statement at the location of the vehicle stop and relatively soon after witnessing Rodriguez being dragged through the parking lot by the minivan. Vilo told the police that Rodriguez had been injured in the process. In these circumstances, we discern no abuse of discretion in the admission of the statement as an excited utterance.

We turn to the defendant's argument that admission of Rodriguez's statement violated the defendant's right to confront witnesses against her. Because this argument was not preserved at trial, we review for a substantial risk of a miscarriage of justice.[3] Commonwealth v. Alphas, 430 Mass. 8, 13 (1999). As a

[3] The defendant objected on hearsay grounds, arguing that the statement did not qualify as an excited utterance. The defendant did not object on constitutional grounds. "Where the defendant advanced precise grounds at trial in support of his

general rule, out-of-court statements deemed testimonial in nature are inadmissible under the confrontation clause of the Sixth Amendment to the Constitution, unless the witness is available at trial, or the witness is unavailable, but the defendant had a prior opportunity to cross-examine the witness. See Gonsalves, 445 Mass. at 3. Answers to police questions objectively intended "to enable police assistance to meet an ongoing emergency" are nontestimonial. Burgess, 450 Mass. at 428. "Nontestimonial statements . . . do not give rise to a right of confrontation and may be admitted if the admission is consistent with Massachusetts evidence law." Commonwealth v. Nesbitt, 452 Mass. 236, 244 (2008).

The defendant claims that Vilo's statements were testimonial and inadmissible because "[t]here was no continued threat to the public, and there were no injuries to Vilo or to any other person." We disagree. One officer testified that Vilo explained that "he was trying to stop the van because he had just hit his aunt" and "[t]hat she had been injured." A second officer testified that Vilo said Rodriguez was in "possibly critical condition because she was just dragged from this vehicle." The officers responded to Rodriguez's address

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objection, he may not rely on a different ground in his appeal." Commonwealth v. Carlson, 448 Mass. 501, 506 (2007). The record does not support the defendant's argument that the judge prevented her from fully stating her objection.

and immediately confirmed that she had been injured and needed medical assistance. This record supports a conclusion that the primary purpose of the statement was to provide help to the victim in an emergency situation rather than to create an out-of-court substitute for trial testimony. See Commonwealth v. Wardsworth, 482 Mass. 454, 464, n.18 (2019) (touchstone of confrontation clause analysis is the primary purpose of the statement). Accordingly, we discern no constitutional error in the admission of Vilo's statements, much less a substantial risk of a miscarriage of justice.

2. Sufficiency a. Leaving the scene of a personal injury. To prove the offense of leaving the scene of a personal injury, the Commonwealth was required to establish that (1) the defendant operated a motor vehicle, (2) on any way, (3) while operating the motor vehicle the defendant collided with or otherwise injured another person, (4) the defendant knew that she collided with or caused injury to another person, and (5) the defendant failed to stop and provide her name, address and motor vehicle registration. Commonwealth v. Porro, 74 Mass. App. Ct. 676, 679-680 (2009). The defendant contends that the evidence was insufficient to prove beyond a reasonable doubt that she knew that she had collided with or caused injury to another person. We disagree.

The jury heard evidence that (1) the passenger yelled at Rodriguez to mind her own business and then grabbed her by the arms, (2) the defendant "revved" the engine while the minivan was in park, (3) the defendant put the minivan in gear and drove "fast" down the driveway as Rodriguez hung on and screamed in the open window, (4) Rodriguez fell away from the minivan at the end of the driveway, (5) the defendant did not stop and sped away with Vilo hanging out the passenger window, and (6) Rodriguez was covered with blood and transported to the hospital by ambulance. This evidence, viewed in the light most favorable to the Commonwealth, was sufficient for a rational jury to conclude that the defendant knew that she collided with or caused injury to another person. See Latimore, 378 Mass. at 676-677.

b. Assault and battery by means of a dangerous weapon. A reckless assault and battery by means of a dangerous weapon is the intentional commission of a reckless act that causes physical or bodily injury to another. See Commonwealth v. Burno, 396 Mass. 622, 625 (1986).[4] To establish a reckless assault and battery by means of a dangerous weapon, the

[4] The jury was instructed on two theories of assault and battery by means of a dangerous weapon -- intentional assault and battery and reckless assault and battery. Because the Commonwealth proceeded primarily on a theory of reckless assault and battery by means of a dangerous weapon, we confine our analysis to that theory.

Commonwealth must prove beyond a reasonable doubt "(1) that the defendant's conduct involve[d] a high degree of likelihood that substantial harm will result to another, or that it constitute[d] . . . a disregard of probable harmful consequences to another, and (2) that, as a result of that conduct, the victim suffered some physical injury" (quotation and citation omitted). Commonwealth v. Louis, 94 Mass. App. Ct. 404, 406 (2018). For the first time on appeal, the defendant argues that there was insufficient evidence of causation, specifically, that there was insufficient evidence that Rodriguez's injuries were proximately caused by the defendant's conduct.[5] Accordingly, we review to determine if there was error and, if so, whether the error created a substantial risk of a miscarriage of justice. Commonwealth v. Marinho, 464 Mass. 115, 119 (2013).

"The Commonwealth may establish causation in an assault and battery case by proving beyond a reasonable doubt that the defendant either directly caused or directly and substantially set in motion a chain of events that produced the serious injury in a natural and continuous sequence" (quotations and citation omitted). Id. Here, the jury could have found that the defendant caused Rodriguez's injuries by putting the minivan in

[5] The defendant's motion for a required finding of not guilty was limited to the argument that there was insufficient evidence that the red minivan struck Rodriguez.

gear and driving fast down the driveway with knowledge that Rodriguez was hanging from the passenger window. A proximate cause need not be the sole or exclusive cause of the injury, so long as it is a contributing factor along with other factors. See Commonwealth v. Baker, 67 Mass. App. Ct. 760, 764 (2006). Simply put, viewing the evidence in the light most favorable to the prosecution, the jury could reasonably have found that the defendant's actions substantially set in motion a chain of events that involved a high degree of likelihood that substantial harm would result to another and that did, in fact, result in Rodriguez's injuries.

Finally, the defendant argues that even if the evidence of causation was sufficient, the judge's failure to instruct the jury on proximate and intervening causes created a substantial risk of a miscarriage of justice. We review the jury instructions as a whole and do not require specific language as long as the legal concepts are properly conveyed. Marinho, 464 Mass. at 122. The defendant cites no authority, and we have found none, for the proposition that an instruction on proximate and intervening causes was required in this context. The judge gave the model instruction for the crime of assault and battery by means of a dangerous weapon. See Criminal Model Jury Instruction for Use in the District Court 6.300. That instruction adequately covered the elements of the offense and

nothing more was required. See Commonwealth v. Daye, 411 Mass. 719, 739 (1992) (specific language not required "so long as the charge, as a whole, adequately covers the issue" [citation omitted]). "Because there was no error of law, there was no substantial miscarriage of justice." Marinho, supra.

Judgments affirmed.

By the Court (Massing, Kinder, & Grant, JJ.[6]),

Joseph F. Stanton

Clerk

Entered: November 19, 2020.

[6] The panelists are listed in order of seniority.