

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,)
)
 Plaintiff,)
)
 vs.)
)
 MOHAMED MOHAMED NOOR,)
)
 Defendant.)

STATE’S MEMORANDUM IN SUPPORT
OF MOTION TO ADMIT INTRINSIC
EVIDENCE FROM JULY 15, 2017

MNCIS No: 27-CR-18-6859

To: THE HONORABLE KATHRYN QUAINANCE, HENNEPIN COUNTY DISTRICT
COURT JUDGE; COUNSEL FOR DEFENDANT; AND DEFENDANT.

INTRODUCTION

The defendant is charged with second degree intentional murder, third degree murder, and second degree manslaughter. The State seeks to offer evidence at trial of events occurring shortly before the shooting on July 15, 2017. Approximately one hour and 40 minutes before the defendant shot and killed Justine Ruszczyk, he and his partner went to the same area for a police call stemming from three 911 calls from a single caller about events similar to those Ms. Ruszczyk reported in her two 911 calls. This is relevant and intrinsic evidence because it arose out of the same circumstances, completes the story of what happened that night, helps prove an element of the offense, and tends to disprove the defendant’s affirmative defense. The State therefore requests it be admitted.

STATEMENT OF FACTS

On July 15, 2017, at 11:27:01 p.m., Justine Damond Ruszczyk called 911 from inside her house at 5024 Washburn Avenue South, located in Minneapolis’s 5th Precinct. Her fiancé, Don Damond, was out of town for work. Ms. Ruszczyk told the 911 operator she could hear a woman

in the alley behind her house who was either having sex or being raped, that it had been going on for a while, and that the woman sounded distressed.

At this time, the defendant and Officer Matthew Harrity were on patrol in the 5th Precinct, operating Squad 530.¹ Officer Harrity was driving and the defendant was manning the squad computer. Forty-one seconds after Ms. Ruszczyk called 911, at 11:27:42 p.m., Minneapolis Emergency Communications (“MECC”) dispatched Squad 530 to her call via radio. The call said, “Squad 530 to 5024 Washburn Avenue South, female screaming behind building.” MECC also sent dispatch text to the defendant’s squad computer that read “BEHIND BLDG// HEARING F SCREAMING.” Five seconds later, at 11:27:47 p.m., by pressing a button on his squad computer, the defendant acknowledged they were going to the call and began travelling to the call location.

While Squad 530 was on the way to the call, at 11:35:22 p.m., Ms. Ruszczyk called 911 a second time, saying that officers had not yet arrived and she was worried they got the address wrong. The 911 operator verified the address and told her officers were on the way. Less than one minute later, at 11:36:04 p.m., MECC notified Squad 530 that the 911 caller had called back for an estimated time of arrival by sending text to their squad computer that read “CLR CB FOR ETA..ADV.”

Ten minutes after Ms. Ruszczyk’s first 911 call, at 11:37:28 p.m., Squad 530 acknowledged that it had arrived at the location. By 11:37:40 p.m., the defendant and Officer Harrity were driving south down the alley behind Ms. Ruszczyk’s house, which is south of 50th Street, between Xerxes and Washburn Avenues. Ms. Ruszczyk was on the phone with Mr. Damond at the time. Their call ended at 11:39:10 p.m. with Ms. Ruszczyk telling Mr. Damond, “Okay the police are here.”

Squad GPS data shows that Squad 530 was nearing the south end of the alley at 11:39:34 p.m., one minute and 54 seconds after entering the alley on the north end, and 24 seconds after Ms.

¹ The defendant and Officer Harrity’s squad car was #560, but their call sign for the night was #530.

Ruszczyk and Mr. Damond ended their call. At that time, the defendant entered “Code 4” into the squad computer. “Code 4” means that the officers are safe and do not need assistance. The officers were still parked at the end of the alley at 51st Street at 11:40:15 p.m., which is the last known time before the defendant fatally shot Ms. Ruszczyk. The next known time is fourteen seconds later, at 11:40:29 p.m., when Officer Harrity activated his body worn camera after the defendant had shot Ms. Ruszczyk.

Events Prior to the Shooting on July 15, 2017

One and a half hours before the shooting, the defendant and Officer Harrity responded to a call in the same area. That call originated at 9:15:53 p.m., when a woman who was out walking her dog first called 911 to report that she saw an “elderly woman” with “all her bags packed” who did not “seem to have a place to go or be very cognizant.” At that point in their shift, the defendant was driving and Officer Harrity was manning the squad computer. The call showed up on their squad computer as a caller requesting a welfare check on a 65-year-old female with large suitcases who might be lost or have dementia.² The call sat in a queue until 9:59:35 p.m., during which time the woman again called 911 twice (at 9:24:07 p.m. and 9:29:25 p.m.) to update them as to the 65-year-old female’s location. This information showed up on the defendant’s squad computer as the female being at 48th Street and Vincent Avenue (at 9:25:23 p.m.), then at 48th Street and Xerxes Avenue (at 9:30:37 p.m.). The dispatch text also relayed that the caller insisted on following the woman and was requesting an ETA.³

² The actual text read “CLR REQ CKWEL OF: WF 65 YO. WRG: GRY SHIRT WITH LARGE SUIT CASES – CLR WORRIED SHE IS LOST/DEMNTIA ISSUES.”

³ The actual text read “CLR CB..F NOW AT 48/XERXES AV..CLR INISTS ON FOLLOWING F ..CLR REQ ETA..TC ADVD.”

At 9:59:35 p.m., the defendant and Officer Harrity self-assigned to the call.⁴ They were two blocks away from the woman's last known location when they self-assigned, and they logged their arrival just a few seconds later. At 10:00:33 p.m., the defendant and Officer Harrity asked dispatch to contact the 911 caller again because they did not see anyone. At 10:02:07 p.m., after contacting the 911 caller, dispatch informed the defendant and Officer Harrity that the woman was last seen near the bus stop at 50th Street and Xerxes Avenue.⁵ The bus stop at 50th Street and Xerxes Avenue is approximately 140 feet from the entrance to the alley between Xerxes and Washburn Avenues.⁶ At 10:02:24 p.m., Officer Harrity radioed that they had already checked that area but would do so again. At this point, they were approximately, and only, 140 feet from the alley they would later enter when responding to Ms. Ruszczuk's call, and approximately 650 feet from where she would die one hour and 38 minutes later. Less than a minute later, the defendant and Officer Harrity entered "Code 4" and drove straight back to the 5th Precinct Station at 31st Street and Nicollet Avenue for their dinner break.⁷

The defendant and Officer Harrity returned to duty at 11:12:40 p.m. After a brief trip to 26th Street and Stevens Avenue for an unrelated call,⁸ their next call, 15 minutes after ending their dinner break, was Ms. Ruszczuk's. Asked later if he drew any connection between the call that brought him to 50th and Xerxes for a woman wandering with dementia and the call that brought him to the alley of the same block one hour and 34 minutes later for a call of a woman screaming in the alley, Officer Harrity said he did not.

⁴ Squad computers display a list of pending calls that officers can self-assign to if available.

⁵ This text read "ON CB TO CLR - CK WEL LS AT 50 ST W/XERXES AV S RIGHT BY THE BUS STOP - CLR NO LONGER SEES THE CKWEL.

⁶ www.google.com/maps

⁷ The defendant and Officer Harrity did not actually clear the call from the computer until 10:22:27 p.m., just as they were parking at the 5th Precinct Station for their dinner break.

⁸ The defendant and Officer Harrity were dispatched to assist a lieutenant on a call, but the lieutenant cancelled the request for assistance before they arrived.

ARGUMENT

THE DEFENDANT’S RESPONSE TO A SIMILAR 911 CALL IN THE SAME AREA SHORTLY BEFORE THE SHOOTING IS ADMISSIBLE AS INTRINSIC EVIDENCE.

In Minnesota, “evidence of another crime is intrinsic to the charged crime and therefore admissible without regard to Minn. R. Evid. 404” if:

(1) the other crime arose out of the same transaction or series of transactions as the charged crime, and (2) either (a) the other crime is relevant to an element of the charged crime, or (b) excluding evidence of the other crime would present an incoherent or incomplete story of the charged crime.

State v. Hollins, 765 N.W.2d 125, 132 (Minn. Ct. App. 2009). Said differently, when “two or more offenses are linked together in point of time or circumstances so that one cannot be fully shown without proving the other,” the Minnesota Supreme Court has “recognized that the general rule against admitting other crime evidence should not necessarily preclude the state from ‘making out its whole case[.]’” *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997) (quoting *State v. Wofford*, 114 N.W.2d 267, 271 (Minn. 1962)).

Here, of course, the proffered evidence is not a “crime” as referenced in *Hollins*, but in general, rules on the admissibility of a criminal defendant’s prior acts are similar regardless of whether the act is “bad.” *See, e.g., State v. McLeod*, 705 N.W.2d 776, 785-86 (Minn. 2005); Minn. R. Evid. 404(b) (“Evidence of another crime, wrong, *or act . . .*”) (emphasis added). The *Hollins* test is simply a test of relevancy like Minn. R. Evid. 401 or 403; it just recognizes that the admissibility of a defendant’s prior acts may require additional analysis. Here, that additional analysis is satisfied.

In this case, the defendant responded to a call of a woman with dementia wandering the streets in the same location where Ms. Rusczyk reported a woman in distress just one and a half hours later. This event is intrinsically linked to the shooting of Ms. Rusczyk. Both cases brought

the defendant to the northern mouth of the alley at 50th Street between Xerxes and Washburn Avenues. Both cases entailed multiple 911 calls being made to get the police to arrive more quickly. Both cases entailed the same unique facts—a woman in distress at night in an area of the city that typically does not generate a lot of calls for service.

Further, based on the first 911 caller's updates as to the 65-year-old's location—48th and Vincent, 48th and Xerxes, then 50th and Xerxes—that woman appeared to be walking southwest. The apparent path of her wandering could very well have put her in the exact location Ms. Ruszczyk called about. The defendant had every reason to think the calls were potentially linked, if not definitely about the same woman. Therefore, under the first prong of the *Hollins* test, it “arose out of same transaction or series of transactions as the charged crime.” 765 N.W.2d at 132.

The second prong of *Hollins* is also satisfied because the prior 911 call is relevant to an element of the charged crime—namely, the defendant's intent at the time he shot Ms. Ruszczyk—and it serves to complete the story of the charged crime.⁹ In both calls, within about three minutes, after having made only the most nominal effort to find citizens in distress, the defendant entered “Code 4” and cleared the scene. This is relevant to his state of mind. The fact that the defendant demonstrated no appreciable concern for a woman or women about whom there had been a total of five 911 calls in approximately two hours in the same location shows that he was acting recklessly as a police officer. His lack of investigative curiosity and indifference to citizens in need in two almost back-to-back cases demonstrates a disregard for public safety. The calls were clearly important; the first 911 caller felt so concerned for the woman's safety that she followed the woman for about three city blocks while updating dispatch, and Ms. Ruszczyk similarly called the police for an update when officers had not promptly arrived. In light of this, the urgency with

⁹ Note that the second prong of *Hollins* only requires one of these to be true (the evidence is relevant to an element of the crime *or* necessary to complete the story). *Hollins*, 765 N.W.2d at 132. In this case, both are satisfied.

which the defendant and his partner dismissed these calls suggests that he felt there was no danger to others, and certainly not himself. It therefore shows that when he shot Ms. Ruszczyk, he did so without fear, without provocation, and without any justifiable reason for using force.

In addition, the State cannot present a coherent or complete story without presenting evidence of the prior 911 calls. The defendant claims he aimed and fired at Ms. Ruszczyk because he feared for his own life and that of his partner.¹⁰ But the circumstances surrounding the prior 911 call contradict his claim. As argued in previous filings, the defendant had every reason to believe the person approaching his squad car was a victim, a concerned citizen, or the person who had just called 911, but even those options do not tell the whole story. Rather, in light of the previous 911 call to the same area regarding a woman with dementia, the defendant *also* had every reason to think the person approaching his squad was a woman who had been wandering the streets in distress for the past few hours. The State is entitled to introduce this evidence to show just how unreasonable the defendant's decision to use force was; it "serve[s] to complete the picture . . . not to paint another picture." *State v. Lynch*, 590 N.W.2d 75, 81 (Minn. 1999) (quoting *State v. Berry*, 484 N.W.2d 14, 18 (Minn. 1992)).

The relevance of the prior call is immediately apparent in light of what the State must prove in this case. "The State has the burden of proving beyond a reasonable doubt that the defendant was not authorized to use deadly force." 10 Minn. Prac. Jury Instr. Guides-Criminal CRIM JIG 7.11 (6th ed.). Whether a police officer can use deadly force is "limited by what a reasonable peace officer in the same situation would believe to be necessary." *Id.* In determining whether the defendant's actions were reasonable, the jury will have to "look at those *facts known to the officer at the precise moment* he acted with force." *Id.* (emphasis added). In this case, all of the facts

¹⁰ Defendant's Reply to State's Response to Defendant's Motion to Dismiss, 9/12/2018, at 20.

known to the defendant at the time of the murder show that his use of deadly force was excessive and unreasonable.

The reasonable police officer is responsible for remembering and knowing all sorts of information while on his shift. He must remember what he learned at roll call about particular crimes, suspects, and bulletins. He is responsible for information about criminal activity occurring days or weeks earlier. He is responsible for knowing the precinct he patrols and the crimes occurring in it. He is responsible for knowing everything that happens on his shift and certainly important information from the last call he took.

The most important piece of information the defendant had when he shot Ms. Rusczyk was that he was just at that location on a similar call 100 minutes earlier. He knew that on the previous call, he did not see the woman who was the subject of three 911 calls. Likewise, he knew, in those moments leading up to Ms. Rusczyk's death, that he had still not seen another woman (or possibly the same woman) who was the subject of two additional 911 calls. He knew there was a bicyclist in front of his squad car, and obviously did not consider the bicyclist to be a threat (or a suspect, for that matter). This thought process should have been at the forefront of the defendant's mind when he acted with force. He should have known the person approaching his vehicle was likely a 911 caller or a woman in need of help. In light of this information, it was his duty to take the *seconds* it would have required to assess the person approaching his vehicle, or at the very least, issue commands or ask questions before acting with deadly force. Instead, when Ms. Rusczyk approached his vehicle, he "aimed and fired once at the specific person standing in the squad window."¹¹

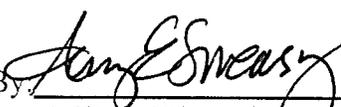
¹¹Defendant's Reply to State's Response to Defendant's Motion to Dismiss, 09/12/2018, at 20.

CONCLUSION

The defendant's response to a similar 911 call in the same area as the shooting is admissible and relevant as intrinsic evidence. It shows that the defendant and his partner made no effort to help a woman or women who appeared to be in distress in the area. This demonstrates that the defendant acted recklessly when he decided to shoot the next, and first, person he encountered less than two hours later. The evidence completes and clarifies the story of the events leading up to Ms. Ruszczyk's death. It also tends to disprove the defendant's affirmative defense of reasonable use of force. Accordingly, the State respectfully requests the Court allow the State to introduce the evidence.

Respectfully submitted,

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