

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY RAY MINGO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37782

FILED

JAN 02 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon, burglary, and violation of a protective order. The district court sentenced appellant Billy Ray Mingo to serve several prison terms totaling 30 to 75 months.

The sole issue raised on appeal is whether the district court abused its discretion in admitting an audiotape of several 9-1-1 calls. The tape included eyewitness accounts of the incident where Mingo rammed his vehicle into the car of the victim. Most of the eyewitness reported observing a hit-and-run accident. Some of the witnesses provided identifying information such as the license plate number of the vehicle involved in the incident or a physical description of the driver. The tapes also included two calls from the victim herself on her cell phone, describing events as the incident unfolded. Initially, the victim called police to report that her husband was following her in violation of a protective order. However, while the victim was on the phone with police dispatch, Mingo rammed the victim's car with his vehicle, and then proceeded to chase the victim into a stranger's house.

Mingo argues that the district court erred in admitting the 9-1-1 tape because: (1) it contained inadmissible hearsay; (2) it violated his

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Sixth Amendment right to confront the witnesses against him; and (3) it was unduly prejudicial pursuant to NRS 48.035. We conclude that the district court did not err in admitting the 9-1-1 tape.

We conclude that the statements contained on the tape were admissible under both the present sense impression and the excited utterance exception to the hearsay rule.¹ The witness statements had sufficient indicia of reliability because they were made either while the declarant was under the stress of excitement caused by a startling event² or while the declarant was perceiving the incident or immediately thereafter.³ Moreover, we conclude that the tape's admission into evidence did not violate appellant's right to confront witnesses against him because the statements contained particularized guarantees of trustworthiness in that they were made to report a crime as it occurred or immediately after it occurred.⁴ Finally, we conclude that the district court did not abuse its discretion in finding that the probative value of the statements on the tape outweighed their prejudicial value.⁵ The tape was highly relevant because it was used by the State to provide a more

¹NRS 51.095 (excited utterance exception); NRS 51.085 (present sense impression exception).

²See NRS 51.095; Dearing v. State, 100 Nev. 590, 691 P.2d 419 (1984).

³See NRS 51.085; Lisle v. State, 113 Nev. 679, 941 P.2d 459 (1997).


⁴See Franco v. State, 109 Nev. 1229, 1236-37, 866 P.2d 247, 252 (1993) (holding that a statement of a non-testifying hearsay declarant is admissible under the Confrontation Clause if it is deemed reliable).

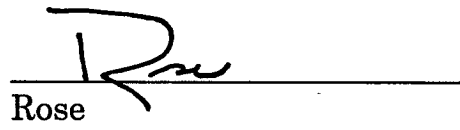
⁵Atkins v. State, 112 Nev. 1122, 1133, 923 P.2d 1119, 1126 (1996) (noting that the district court has "considerable discretion" in determining the relevance and admissibility of evidence, and this court will not disturb the district court's determination absent a clear abuse of that discretion).

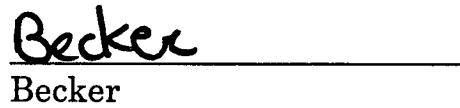
complete and accurate view of the incident as it occurred, and it corroborated the victim's account of events.⁶

Having considered Mingo's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Joseph T. Bonaventure, District Judge
Amesbury & Schutt
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

⁶See Shults v. State, 96 Nev. 742, 616 P.2d 388 (1980).