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ATTORNEYS FOR APPELLANT:

GREGORY F. ZOELLER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

DANA LEON
Warsaw, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

STATE OF INDIANA,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 43A03-0906-CR-274
	)	
RONNIE S. ZENTZ,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT
The Honorable Duane G. Huffer, Judge
Cause No. 43D01-0808-FD-129

December 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff State of Indiana appeals the trial court's order excluding from evidence statements made by appellee-defendant Ronnie S. Zentz's (Zentz) wife to an Emergency Medical Technician (EMT). The State argues that the trial court erred by finding that Twila Zentz's (Twila) statements constituted inadmissible hearsay and that the admission of those statements would have violated Zentz's right of confrontation. Finding no error, we affirm.

FACTS

During the early morning hours of July 29, 2008, a group of EMTs for the Syracuse Fire Department was dispatched to a residence. After the scene was secured by police, the EMTs entered the residence and found Twila, who had a laceration on her chin and blood covering the front of her shirt. Twila was yelling, screaming, and crying. She had been drinking and was slurring her speech and staggering around when the EMTs began treating her. While treating her, one of the EMTs began questioning Twila about her injury. In response, Twila blurted out that her husband had hit her on the chin after they returned from a party. The EMT later testified that the questioning was not done for the purpose of medical treatment of Twila but to aid the police. Tr. p. 61-62.

On August 18, 2008, the State charged Zentz with class D felony domestic battery. Subsequently, Twila filed multiple letters with the trial court indicating that her injuries were not the result of Zentz striking her. On May 18, 2009, the day before trial, Zentz filed a motion in limine, seeking to exclude certain portions of the State's evidence, including the statements made by Twila to the EMT on the night of the incident.

On May 19, 2009, just before trial was scheduled to begin, the trial court held a hearing on Zentz's motion. After hearing oral argument and the State's offer of proof, the trial court granted the motion and excluded Twila's statements from evidence. Twila had been subpoenaed to testify at trial but failed to appear. As a result, the State moved to dismiss the charge against Zentz and the motion was granted. The State now appeals.

DISCUSSION AND DECISION

In reviewing a trial court's decision to exclude evidence, we must determine whether the record discloses substantial evidence of probative value supporting the trial court's decision. State v. Washington, 898 N.E.2d 1200, 1203 (Ind. 2008). The State is appealing from a negative judgment; therefore, it must establish that the trial court's ruling was contrary to law. Id.

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The United States Supreme Court has concluded that, pursuant to this clause, "testimonial statements" of a witness who does not appear at trial are inadmissible unless the witness was unavailable to testify and the defendant had a prior opportunity for cross-examination. Crawford v. Washington, 541 U.S. 36, 53-54 (2004).

In distinguishing between testimonial and nontestimonial statements, the United States Supreme Court has explained that statements made in the course of a police investigation can fall into either category:

> [s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Davis v. Washington, 547 U.S. 813, 822 (2006). There are several factors to consider in determining whether the primary purpose of an interrogation is to enable police assistance to meet an ongoing emergency:

> (1) whether the declarant was speaking about events as they were actually happening or describing past events; (2) whether the declarant was facing an ongoing emergency; (3) whether the nature of the questions asked by law enforcement were such that they elicited statements necessary to resolve the present emergency rather than simply to learn about past events; and (4) the level of formality of the interrogation.

Gayden v. State, 863 N.E.2d 1193, 1197 (Ind. Ct. App. 2007) (interpreting Davis), trans. denied.

Here, there was no ongoing emergency. The residence had been secured by police officers, so there was no threat of danger to the people at the scene. And although Twila was distraught and bleeding, her only injury was a laceration to her chin, so her life was not endangered by the wound. When the EMT who was treating her began questioning her about the cause of her injury, the EMT was admittedly doing so to aid the police rather than for the purpose of Twila's medical treatment. And Twila was speaking about something that had already occurred in the past rather than something that was occurring as she described it. Although the level of formality of the interrogation was decidedly

minimal, the remaining three factors weigh heavily in favor of a conclusion that Twila's statements to the EMT were testimonial rather than nontestimonial. Therefore, the trial court properly concluded that the admission of these statements would have violated Zentz's Sixth Amendment right of confrontation, granting Zentz's motion in limine and excluding the evidence.[1]

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.

[1] Inasmuch as we have concluded that the trial court properly granted Zentz's motion on this basis, we need not also consider the State's hearsay argument.