STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

State of Minnesota

Plaintiff,

vs.

Kevin Quinton Haynes,

Defendant.

ORDER
Court File No. 27-CR-13-25074

This matter came on for a contested hearing regarding the Defendant's motion to suppress before the Honorable Kathryn L. Quaintance, Judge of District Court, on March 13, 2014. On May 5, 2014, the Defendant filed a memorandum in support of its motion. On May 22, 2014, the State submitted written argument in opposition to the motion.

Cheri Townsend, Assistant Hennepin County Attorney, appeared and submitted argument for the State.

Jane Imholte, Assistant Hennepin County Public Defender, appeared and submitted argument for the Defendant.

IT IS HEREBY ORDERED that

1. The Defendant's Motion to Suppress is DENIED.
2. The attached memorandum is incorporated into this order.

BY THE COURT:

Kathryn L. Quaintance
Judge of District Court

Dated: 7/23/14

MEMORANDUM

NOW THEREFORE, based upon the evidence adduced, the argument of counsel, and all the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

On November 6, 1996, police officers were dispatched to a known address in Minneapolis, Hennepin County, Minnesota, on a report of sexual assault. Upon arrival, officers made contact with the victim, an eighty-two year old female. The victim reported that around 8:30pm, she was approached by an unknown male in the alley behind her residence. The male pushed the victim to the ground and demanded her money. The victim yelled for help, and the male suspect covered her mouth with his hand and said, "I have a knife." The suspect forced vaginal intercourse upon the victim. He then fled on a bicycle. Officers later recovered a knife and sheath from the scene of the incident.

Officers transported the victim to North Memorial Medical Center, where she reported the assault. The victim underwent a sexual assault examination, and told the nurse she had been punched in the face and suffered a broken dental bridge in her mouth. The victim had facial cuts and bruises. The examining physician noted petechiae – an indication of bleeding beneath the skin - on the victim's vaginal wall, as well as a laceration on the vaginal wall that was still bleeding.

With the victim's consent, the sexual assault resource nurse collected vaginal swabs to detect seminal fluid. A serologist from the Minnesota Bureau of Criminal Apprehension ("BCA") analyzed the swabs on December 20, 1996, and detected human semen. The victim passed away from unrelated causes in May of 2008 at the age of ninety-four. On April 20, 2011, a BCA scientist performed DNA profiling on the semen identified from swabs taken from the victim and obtained a match to a known profile from Kevin Quinton Haynes, Defendant herein.

On August 13, 2013, the Defendant was charged with the sole count of Criminal Sexual Conduct in the First Degree pursuant to Minn. Stat. § 609.342, subd. 1(e)(i). On March 14, 2014, the Defendant moved this Court to suppress the statements offered by the victim to the sexual assault resource nurse at the hospital on the night of the incident. The Defendant argued these statements were testimonial and therefore inadmissible pursuant to the confrontation clauses of the Minnesota and United States constitutions. The State objected, and the parties requested a hearing.

At the hearing, the State called as a witness Dr. Carolyn Garcia, the sexual assault resource nurse who treated the victim on the night of the incident. Garcia is currently an associate professor and sexual assault nurse examiner. She also serves on the board of the International Association of Forensic Nurses. Garcia has been an examiner since 1996. When she conducted the examination of the victim, she was employed by the Hennepin County Medical Center, and was not affiliated with law enforcement.

Garcia testified that sexual assault nurse examiners differ from other nurses because they receive additional training that enables them to perform both medical and forensic examinations on victims of sexual assault. The protocol for treating these victims, explained in detail by Dr. Garcia, is standard nationwide. Dr. Garcia sits with each victim and explains options for treatment. She informs the victim that with their consent, specimens can be taken and provided to law enforcement or the BCA for processing. When someone is unsure as to whether she wants specimens taken for law enforcement or BCA processing, Garcia recommends specimens be taken so as not to lose the opportunity to do so. The specimens are only forwarded to investigative agencies if the victim makes a police report. The majority of the close to 500 exams Garcia has conducted did not involve law enforcement or the BCA. Garcia agreed that

sexual assault exams are usually emergency situations that should be assessed "fairly soon and fairly quickly."

Per protocol, after informing the victim about treatment options, Garcia performs a head to toe physical examination and inquires as to what happened. According to Garcia, these inquiries are made to determine where to look for injuries and for the purposes of providing care.

Garcia testified that the victim told her in the course of treatment that on the night of November 6, 1996, she was walking her dog when a man appeared with a knife, demanding her money. The suspect then pushed her to the ground and pulled off her pants. At the time of the incident, the victim did not know whether she was vaginally penetrated. Garcia then followed protocol and examined the victim head to toe. She documented and photographed injuries on the victim's neck, face, and genital area. She consulted with a physician regarding further treatment for a vaginal tear, which was still bleeding. The victim consented to vaginal swabs to collect specimens for law enforcement and the BCA. Garcia noted that if the victim had not consented to providing specimens for law enforcement purposes, photographs would not have been taken.

According to Garcia, the purpose for the examination is dual. "I am there to document and to care for them medically and then because I am a sexual assault nurse examiner I am trained to also look for specimens and take swabs that could potentially be used by law enforcement or a legal entity." She further testified that because her purpose is to provide medical care, she will never have a case where a victim will ask for a forensic collection of specimens without a medical exam. "Sexual assault nurse examiners are first nurses and then they have the forensic expertise," she said. "My first reason for being there is to make sure that the person is going to be okay medically. The specimens that could be useful from a forensic perspective might or might not be collected in that situation so they are secondary but it's dual."

At the hearing, the State offered Exhibit 1: County Attorney File 13-5883, and Exhibit 2: the Curriculum Vitae of Dr. Carolyn M. Garcia. Both were received without objection. After the hearing, both parties submitted briefs on the matter. The court took the matter under advisement to determine whether the victim's statements made to Dr. Garcia should be suppressed.

CONCLUSIONS OF LAW

The Defendant argues statements made by the victim to Garcia during the sexual assault exam were testimonial and would violate his right to constitutional right to confront his accusers if admitted at trial. The Court finds that because the primary purpose of the examination was to address the victim's medical condition, the statements are non-testimonial, and are admissible at trial.

I.

Under both the Minnesota and the federal constitutions, a criminal defendant has a fundamental right to be confronted with the prosecution's witnesses. Minn. Const. Art. I, § 6; U.S. Const. Amend. VI. The Minnesota Supreme Court interprets the Confrontation Clause of State Constitution identically to the Confrontation Clause of the Federal Constitution. *State v. Rodriguez*, 754 N.W.2d 672 (Minn. 2008). The right to confrontation has ancient roots, and was considered time-honored long before the federal constitution was adopted. *See Coy v. Iowa*, 487 U.S. 1012, 1015 (1988). The right to confrontation applies to those who give testimony as a solemn declaration or affirmation to establish a fact. *Crawford v. Washington*, 541 U.S. 36 (2004); *State v. Burrell*, 697 N.W.2d 579 (Minn. 2005). The right to confrontations applies to out-of-court statements, regardless of whether they are otherwise admissible under rules of evidence. *Crawford*, 541 U.S. at 61.

In the important decision of *Crawford v. Washington*, the U.S. Supreme Court held that prior "testimonial" statements are never admissible under the confrontation clause unless: (1) the witness is unavailable; and (2) the defendant had an opportunity to cross-examine the witness at the time the statement was made. *Id.* at 59. The *Crawford* court further held that "testimonial" statements include statements made in circumstances that would lead an "objective" person to reasonably believe they would be available for use in later trial. *Id.* at 51-52; *State v. Scacchetti*, 690 N.W.2d 393, 396 (Minn Ct. App. 2005).

Two years later, the U.S. Supreme Court clarified the criteria for determining whether a statement is testimonial in *Davis v. Washington*, 547 U.S. 813 (2006). Without attempting an "exhaustive classification," the court held that a statement is non-testimonial if made in circumstances "objectively indicating" that the "primary purpose" of the interrogation is "to enable the police to meet an ongoing emergency." 547 U.S. at 822. Statements are testimonial, on the other hand, if the objective circumstances indicate there is no ongoing emergency, and the primary purpose is to "establish or prove past events potentially relevant to later criminal prosecution" *Id.* More recently, the Supreme Court further clarified the rule in holding that the existence of an emergency "is simply one factor—albeit an important factor—that informs the ultimate inquiry regarding the "primary purpose" of an interrogation." *Michigan v. Bryant*, 131 S.Ct. 1143, 1157 (2011). The *Bryant* court reiterated "that the existence *vel non* of an ongoing emergency is not the touchstone of the testimonial inquiry; rather, the ultimate inquiry is whether the "primary purpose of the interrogation [was] to enable police assistance to meet [the] ongoing emergency." *Id.* at 1165, *citing Davis*, 547 U.S. at 822.

In determining the primary purpose of an interrogation, the focus is not only on the state of mind of the declarant. *See State v. Caulfield*, 722 N.W.2d 304, 309 (Minn. 2006); *State v.*

Weaver, 733 N.W.2d 793, 800 (Minn. Ct. App. 2007). Rather, the focus is on "the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred." *Bryant*, 131 S.Ct. at1157. The combined inquiry accounting for both the interrogator and the declarant "ameliorates problems that could arise from looking solely at one participant." *Id.* at 1161. Ultimately, the determination of "primary purpose" depends on specific facts of each situation. *See Bryant*, 131 S.Ct. at 1157-62. If statements include both testimonial and nontestimonial material, only the testimonial material must be excluded. *State v. Washington*, 725 N.W.2d 125, 131 (Minn. Ct. App. 2006).

Confrontation is basic to the constitutional criminal process and must be "zealously protected." *State v. Page*, 386 N.W.2d 330 (Minn. Ct. App. 1986). The state bears the burden to establish that the challenged statements are not testimonial. *Crawford*, 541 U.S. at 68. The underlying purpose of the confrontation clause is to augment accuracy in the fact-finding process by ensuring that the defendant has an effective means to test adverse evidence. *Ohio v. Roberts*, 488 U.S. 56 (1980).

II.

In Minnesota, the Supreme Court has held that statements made by a victim to a sexual assault examining nurse were non-testimonial. In *State v. Scacchetti*, the court held that the statements to a nurse practitioner at Midwest Children's Resource Center ("MCRC) were non-testimonial because they were primarily made in order to assess the victim's medical health and because no government actor was involved in producing the statements. 711 N.W.2d 508, 515-16 (Minn. 2006).

In *State v. Krasky*, 736 N.W.2d 636 (Minn. 2007), the Minnesota Supreme Court again held that statements of a sexual assault victim made to a nurse MCRC were non-testimonial. The court concluded that the primary purpose of the victim's statements to the nurse was for medical treatment. 736 N.W.2d at 641 ("We conclude the primary purpose of T.K.'s statements to Carney was to assess and protect T.K.'s health and welfare.") This finding was made despite the fact that the victim was jointly referred to the nurse by social services and law enforcement. *Id.*

III.

In light of this authority, the court now turns to the facts of this case to determine whether the statements the Defendant seeks to suppress are testimonial. The victim told Dr. Garcia she was walking her dog when a man appeared with a knife, demanding her money. The suspect then pushed her to the ground and pulled off her pants. At the time of the incident, the victim did not know whether she was penetrated. Garcia then examined the victim head to toe, documented and photographed injuries on the victim's neck, face, and genital area, and consulted with a physician regarding whether stitches would be required for a vaginal tear, which was still bleeding. The victim consented to vaginal swabs to collect specimens for law enforcement and the BCA.

Garcia testified that she is not and has never been affiliated with or employed by law enforcement in her nearly twenty years as a nurse. No member of law enforcement was present at the examination. She further testified that the purpose of the examination is dual – to care for victims medically and to look for specimens and take swabs that could potentially be used by law enforcement or a legal entity. Garcia clarified that sexual assault resources nurses are "nurses first," that most examinations she conducts do not involve law enforcement, and that while she

does conduct exams solely for medical purposes at the victim's request, she never conducts exams solely for forensic purposes. In other words, Garcia always conducts exams for the purpose of medical care in her capacity as a sexual assault nurse, and sometimes will also conduct a forensic examination. At the conclusion of direct examination, *Garcia* said, "My first reason for being there is to make sure that the person is going to be okay medically. The specimens that could be useful from a forensic perspective might or might not be collected in that situation so they are secondary..." Garcia agreed that sexual assault exams are usually emergency situations that should be assessed "fairly soon and fairly quickly."

The court finds that the primary purpose of the statements made by the victim to Dr. Garcia were for the purposes of medical care and to address an on-going emergency. Garcia met the elderly victim in the hospital, where she was taken for treatment. No law enforcement personnel were present. The victim was not asked investigative questions by Garcia, such as what the Defendant looked like or where the incident occurred. She had just been raped, was bruised and bleeding, and was telling the nurse how she was injured. At this time, the state of her health was in doubt, a factor that *Krasky* found sufficient on its own to deem a statement non-testimonial. 736 N.W.2d at 641. While the victim consented to forensic testing, Garcia testified that collecting specimens for investigative purposes was "secondary" to that of her ensuring her medical health.

The Defendant argues that the statements are testimonial because an objective witness would believe that they would be available for use at trial, and because there was no on-going emergency when the victim was examined by Garcia. In light of our authority, the Court disagrees with the premise on which these arguments are based. The dispositive inquiry is not whether the statements would lead a participant to believe the statements would be available for

use at trial. Nor is it whether an on-going emergency existed when the victim was interviewed. While these analyses are informative, the court must ultimately decide, as the U.S. Supreme Court clearly instructed in *Bryant*, the "primary purpose reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred." Thus, even if the court were to find there was no on-going emergency, a statement may still be non-testimonial. *Bryant* 131 S.Ct. at 1160 ("on-going emergency" only a factor in determining whether a statement is testimonial). *Krasky*, the one post-*Davis* Minnesota case involving a victim's statements to a nurse, does not even address the issue of whether there existed an on-going emergency. Instead, it found the victim's statements to be non-testimonial because they were made for the purpose of the victim's medical care. *Krasky*, 736 N.W.2d at 641 ("We conclude that the primary purpose of T.K.'s statements to Carney was to assess and protect T.K.'s health and welfare.").[1] The statements were made primarily for the same purpose in this case.

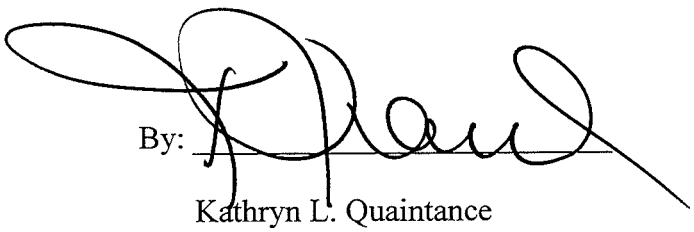
Finally, even if the primary purpose of the victim's statements to Garcia were for preserving evidence at trial, the Defendant's motion to suppress still fails because Garcia was not acting as an agent for law enforcement. Garcia testified she has never been affiliated with law enforcement and does not conduct interviews at the direction of law enforcement. Further, she did not ask questions to elicit statements helpful to law enforcement, such as what the Defendant looked like and where the incident occurred. And as previously noted, Garcia testified that she is

[1] Instead of interpreting *Krasky* as discounting the "on-going emergency" requirement, one could interpret the case as holding a post-assault medical examination constitutes an "on-going emergency." The U.S. Supreme Court appears to agree with this broad interpretation of what an "on-going emergency" really means. *See Bryant*, 131 S.Ct. at 1159 (noting the court in error "construed *Davis* to have decided more than it did and thus employed an unduly narrow understanding of 'ongoing emergency' that *Davis* does not require."). Both interpretations lead this court to the same conclusion.

a nurse providing medical care first. In sum, there is no indication that Garcia was acting as a "proxy for law enforcement." *See Id.*

Based on the testimony of Dr. Garcia, and consistent with the factually similar Minnesota cases of *Scacchetti* and *Krasky*, the Court finds the statements made in the course of this examination were for the primary purpose of medical care. The Court further finds Dr. Garcia was not serving as a proxy for law enforcement during her interview with the victim. Therefore, the statements are non-testimonial, and admission at trial would not violate the Defendant's right to confront his accusers.

Dated: 7/23/14

By: 

Kathryn L. Quaintance
District Court Judge