

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT ZENO FIROVICH,

Defendant-Appellant.

UNPUBLISHED

July 25, 1997

No. 189674

Kent Circuit Court

LC No. 94-003588 FC

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of first degree murder, arising from the strangling death of his wife. Defendant admitted killing his wife, but claimed that he did so under circumstances which would reduce the crime to manslaughter or second degree murder.

Defendant first contends that the trial court erred in overruling hearsay objections to testimony by various witnesses, all close associates or relatives of the deceased, concerning threats defendant made against the victim. Assuming, *arguendo*, that these statements could not have been properly admitted without regard to hearsay principles simply to explain the victim's subsequent conduct, and to establish her fear of defendant and thus undercut any assertion that she would provoke him to violence, based on *People v Cameron*, 52 Mich App 463, 465-466; 217 NW2d 401 (1974), nonetheless, each of the threats in question appears to have been made by defendant shortly before the victim repeated them to the various witnesses. Therefore, even if such statements were hearsay, they come within the excited utterance exception to the hearsay rule, MRE 803(2). *People v Kowalak (On Remand)*, 215 Mich App 554, 557-558; 546 NW2d 681 (1996).

Defendant also contends that reversible error occurred when evidence was introduced that, three and one-half years before the homicide, he knocked out some of the victim's teeth. Defendant argues the evidence was irrelevant and highly prejudicial. Although defense objections to such testimony were twice sustained on different grounds, such evidence was admitted without objection during redirect examination of witness Garner. This unpreserved, nonconstitutional error was not, on

* Circuit judge, sitting on the Court of Appeals by assignment.

this record, outcome determinative and therefore does not constitute reversible error. *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994).

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn