

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT HENRY PETERS, JR.,

Defendant-Appellant.

UNPUBLISHED

December 7, 1999

No. 215912

Muskegon Circuit Court

LC No. 96-140100 FC

Before: Jansen, P.J., and Hoekstra and J. R. Cooper*, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based conviction of second-degree murder, MCL 750.317; MSA 28.549. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant and his brother, Paul Peters, who is not a party to this appeal, were charged with murder in the death of Brian Wierda. Approximately two months after the murder occurred, Paul asked Connie Harris, defendant's former girlfriend, to visit him in jail. Paul told Harris that her father and brother had requested that he and Robert steal a car for them. At Robert's and Paul's direction, Mary Jagger brought Wierda to the home of a friend so that his car could be taken. When Wierda discovered Paul attempting to steal the car, he engaged Paul in a fight. Defendant intervened in the altercation and kicked Wierda in the head and stomped on his chest. After defendant and Paul forced Wierda into the woods, Robert hit Wierda in the head with a piece of wood, and then stated that they needed to kill him. Paul left to retrieve his father's knife, and Robert stabbed Wierda in the chest and face. Robert then made Paul stab Wierda in the abdomen. Robert took the knife back, and slit Wierda's throat. Paul concealed the body in the woods and hid Wierda's jacket. The following day, Paul and Robert dragged the body further into the woods.

The trial court granted the prosecution's motion in limine to admit Paul's statement in the case against defendant as a statement against interest pursuant to MRE 804(b)(3). The trial court concluded

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

that the statement was against Paul's penal interest, and had sufficient indicia of reliability. *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993).

Defendant pleaded guilty to second-degree murder in exchange for dismissal of charges of open murder and felony-murder, MCL 750.316; MSA 28.548, and a supplemental charge of habitual offender, second offense, MCL 769.10; MSA 28.1082. He reserved the right to appeal the trial court's decision to admit Paul's statement. Subsequently, and in accordance with the parties' agreement, the trial court sentenced defendant to thirty-five to sixty-five years in prison.

We generally review a trial court's decision regarding the admissibility of evidence for an abuse of discretion, *People v Adair*, 452 Mich 473, 485; 550 NW2d 505 (1996); however, the application of the constitutional standard to essentially uncontested facts is not entitled to such deference as constitutional issues and questions of law are reviewed de novo. *People v Stevens*, 460 Mich 626, 631; ___ NW2d ___ (1999).

If a declarant's statement inculcating an accomplice is made in the context of a narrative of events at the declarant's initiative without prompting or inquiry and is, on the whole, clearly against the declarant's penal interest, the entire statement, including those portions that inculcate another, is admissible as substantive evidence pursuant to MRE 804(b)(3). The admission of such a statement does not violate the Confrontation Clause, US Const, Am VI, if the prosecutor establishes that the declarant is unavailable as a witness and that the statement bears adequate indicia of reliability, or falls within a firmly rooted hearsay exception. *Poole, supra*, pp 161, 164.

Defendant argues that the trial court abused its discretion by admitting Paul's statement as substantive evidence in his case. We disagree and affirm. Paul's statement indicated that he assisted in forcing Wierda into the woods, stabbed Wierda after defendant had done so, and concealed the body and Wierda's jacket. At a minimum, the statement indicated that Paul faced criminal liability as an aider and abettor in Wierda's murder. MCL 767.69; MSA 28.979; CJI2d 8.1. The finding that the statement was against Paul's penal interest in that it so tended to subject him to criminal liability that a reasonable person in his position would not have made the statement unless believing it to be true was not clearly erroneous. MRE 804(b)(3); *People v Barrera*, 451 Mich 261, 268-269; 547 NW2d 280 (1996). Admission of the statement did not violate the Confrontation Clause. *Poole, supra*, p 163. Paul was not available as a witness because he was also being prosecuted for Wierda's murder in a separate case and the statement related to the murder. *Id.* Moreover, the statement had sufficient indicia of reliability. Although the statement was not made contemporaneously with the event to which it referred, it was a noncustodial, voluntary statement, made without inquiry or prompting, and was made to an acquaintance to whom Paul was likely to speak the truth rather than to law enforcement officials. While the statement shifted some blame to defendant, it acknowledged Paul's involvement in the incident. The trial court found that by making the statement Paul may have been attempting to avenge himself, at least to some extent, and may have had a motive to distort the truth. More factors favored admission of the statement than militated against its admission. *Id.*, p 165. The

trial court's decision that the statement could be admitted as substantive evidence in defendant's case did not constitute an abuse of discretion.

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jessica R. Cooper