

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN STEPHEN SALTER,

Defendant-Appellant.

UNPUBLISHED

March 31, 2000

No. 211369

Detroit Recorder's Court

LC No. 97-004286

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charge against defendant arose from the allegation of his nine-year-old stepdaughter that he anally penetrated her. Complainant's mother testified over defendant's objection that complainant told her defendant had been messing with her. The court sustained plaintiff's relevancy objection to defendant's query to complainant's mother about a previous abusive relationship. Defendant testified that he did not penetrate complainant. The court found defendant guilty, and sentenced him to twenty to forty years' imprisonment.

On appeal, defendant argues that the trial court abused its discretion in finding that complainant's statement to her mother constituted an excited utterance under MRE 803(2), and in precluding defendant from offering evidence of complainant's mother's prior abusive relationship. We disagree.

A trial court's decision on an evidentiary issue is reviewed for abuse of discretion. *People v Adair*, 452 Mich 473; 550 NW2d 505 (1996). MRE 803(2) defines an excited utterance as a statement relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event. The trial court did not abuse its discretion in finding that complainant was under the stress of her assault at the time she made her declaration to her mother. The statement came within a day of the assault, and complainant was crying and in distress when police arrived.

Statements made under these circumstances constitute excited utterances under MRE 803(2). *People v Houghteling*, 183 Mich App 805, 806-808; 455 NW2d 440 (1990).

Defendant was not denied due process of law when the court upheld the prosecutor's objections to his cross-examination of complainant's mother regarding a previous abusive relationship. Defendant failed to show how this evidence would be relevant. The trial court did not abuse its discretion in limiting the cross-examination to relevant matters. *People v Williams*, 191 Mich App 269, 273; 477 NW2d 877 (1991).

We affirm.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey