STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 10, 2009
v	No. 287040 Kalamazoo Circuit Court
JEROME ALLEN WILLIAMS, Defendant-Appellant.	LC No. 2007-000604-FC

Before: Markey, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant Jerome Allen Williams was convicted of three counts of first-degree, felony murder, MCL 750.316(b); one count of first-degree, home invasion, MCL 750.110a(2); and perjury with respect to a prosecutor's investigative subpoena, MCL 767A.9(1)(b). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to life imprisonment without parole for each of his felony murder convictions, to 14 to 40 years' imprisonment for his perjury conviction, and to 219 months to 40 years' imprisonment for the home invasion conviction. Defendant appeals the judgment of sentence entered on July 1, 2008, and we affirm.

Defendant first argues that the trial court abused its discretion when it admitted codefendant Benjamin Platt and Andrew Miller's statements, arguing that the challenged statements were not against either Platt's or Miller's penal interests as required by MRE 804(b)(3), and that because the evidence was unreliable, it violated defendant's Confrontation Clause rights. "Whether the admission of the victim's statements to the police violated defendant's Sixth Amendment right of confrontation is a question of constitutional law that this Court reviews de novo." *People v Bryant*, 483 Mich 132, 138; 768 NW2d 65 (2009). Generally, a trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Taylor*, 252 Mich App 519, 521-522; 652 NW2d 526 (2002).

MRE 804(b)(3) provides:

> The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
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> * * *

> (3) *Statement Against Interest*. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Even though both statements implicated defendant as well as the declarant, this fact does not bar admission pursuant to MRE 804(3)(b). *People v Poole*, 444 Mich 151, 157; 506 NW2d 505 (1993), overruled on other grounds by *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004). Though defendant claims that these statements were not against the declarants' penal interests, a review of the record reveals that both declarants admitted in their respective statements to participating in the murders and home invasion such that they exposed themselves to criminal liability. Thus, the trial court did not abuse its discretion when it admitted this evidence pursuant to MRE 804(b)(3).

Additionally, the statements did not violate any of defendant's Confrontation Clause rights. The Sixth Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." US Const, Am VI; *People v Burton*, 219 Mich App 278, 287; 556 NW2d 201 (1996). The Confrontation Clause is not violated by admission of testimonial evidence as long as the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. *Crawford, supra* at 68; *Davis v Washington*, 547 US 813, 821; 126 S Ct 2266; 165 L Ed 2d 224 (2006); *People v Taylor*, 482 Mich 368, 377; 759 NW2d 361 (2008). Consequently, the Confrontation Clause is not implicated unless the statements of a declarant are testimonial. *Taylor, supra* at 377. "While nontestimonial statements are subject to traditional rules limiting the admissibility of hearsay, they do not implicate the Confrontation Clause." *Id.* Testimonial statements include statements made during police interrogations or during prior testimony, if the circumstances objectively indicate that the primary purpose of the interrogation was to establish or prove past events potentially relevant to later criminal prosecution. *Davis, supra* at 822; *Taylor, supra* at 377-378. Contrary to defendant's arguments, there is no need to engage in an analysis of whether the trial court's finding that statements were reliable was incorrect. Rather, we must first determine whether the statements were nontestimonial in nature.

A through review of the record reveals that Miller and Platt's statements were nontestimonial. Both statements were made spontaneously and voluntarily to acquaintances. Neither of these statements was made during a police interrogation or other formal proceedings. Though Miller was in jail at the time of his statement and McDaniel attempted to make a plea deal in exchange for the information that Miller provided, there is no evidence that McDaniel was working with the police to interrogate Miller. There is also no evidence that either statement was made for the primary purpose of establishing past events relevant to later criminal proceedings, particularly where Miller volunteered information to McDaniel without prompting. Because these statements were nontestimonial "they do not implicate the Confrontation Clause

and their admissibility is governed solely by MRE 804(b)(3)." *Taylor*, *supra* at 374. For reasons already expressed, defendant cannot prevail.[1]

Defendant also argues that his constitutional right to confront codefendant Angela McConnell regarding her March 28, 2007 statement to police was violated because defendant did not have a meaningful opportunity and a similar motive to cross-examine McConnell at the preliminary examination. "[T]estimonial hearsay evidence, such as a statement made to police, is admissible only in circumstances in which the declarant is unavailable, and only if the defendant had a prior opportunity to cross-examine the declarant." *People v Jambor (On Remand)*, 273 Mich App 477, 486-487; 729 NW2d 569 (2007), citing *Crawford*, *supra* at 36. It is undisputed that McConnell's statement to the police detective was testimonial in nature and that she was unavailable for trial. At the preliminary examination, however, defendant was represented by counsel and defense counsel cross-examined McConnell. Though defendant now claims he was not given a meaningful opportunity to cross-examine McConnell about her March 28, 2007, statement, he provides no reason why defense counsel was unable to do so. The challenged statement occurred before the preliminary examination, and defendant does not claim that he was unaware of the statement at the time of the preliminary examination. Because McConnell was unavailable, her statement was testimonial and defendant was provided an opportunity to cross-examine McConnell about the statement, defendant's Sixth Amendment confrontational rights were not violated.

We also reject defendant's argument that the trial court abused its discretion when it excluded evidence that McConnell withdrew her guilty plea. "Logical relevance is the foundation for admissibility of evidence." *People v Small*, 467 Mich 259, 264; 650 NW2d 328 (2002). MRE 402 provides:

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted by the Supreme Court. Evidence which is not relevant is not admissible.

Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. "Relevant evidence thus is evidence that is material (related to any fact that is of consequence to the action) and has probative force (any tendency to make the existence of a fact of consequence more or less probable than it would be without the evidence)." *People v Sabin (After Remand)*, 463 Mich 43, 57; 614 NW2d 888 (2000). "A material fact is one that is 'in issue' in the sense that it is within the range of litigated matters in controversy." *Id.* "If a witness is offering relevant testimony, whether that witness is truthfully and accurately testifying is itself relevant because it affects the probability of the existence of a

[1] We reject defendant's argument that the trial court abused its discretion when it permitted the prosecutor to question a police officer about a topic that was outside the scope of the direct examination. Defendant is correct that the trial court "may" have limited the cross-examination of the police officer, MRE 611(b), but the trial court was not required to do so. There was no error.

consequential fact." *People v Mills*, 450 Mich 61, 72; 537 NW2d 909 (1995), mod on other grounds 450 Mich 1212 (1995).

The trial court did not abuse its discretion because evidence of McConnell's withdrawn guilty plea was not relevant to the proceedings. At trial, significant evidence of McConnell's previous inconsistent statements were presented, including a letter she wrote that recanted her previous inculpatory testimony regarding all aspects of the Polderman murders, indicated that she lied about her and her codefendants' involvement, and asserted her desire to withdraw her guilty plea. During trial, McConnell's credibility was challenged repeatedly and evidence that she actually withdrew her plea was not "of consequence" to any facts at issue. *Sabin, supra* at 57.

Finally, "defendant has failed to show any error, and, thus, his claim of cumulative error must be rejected." *People v Brown*, 279 Mich App 116, 146; 755 NW2d 664 (2008).

Affirmed.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Christopher M. Murray