

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER ALLEN NORWOOD,

Defendant-Appellant.

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UNPUBLISHED

June 27, 2000

No. 217566

Berrien Circuit Court

LC No. 98-402878-FC

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, and he was thereafter sentenced to the mandatory term of life imprisonment without the possibility of parole. Defendant appeals as of right and we affirm.

This case arises out of the stabbing death of Catherine Penn, defendant's former girlfriend, by defendant on July 1, 1998, in Benton Township. Defendant did not deny stabbing the victim; he claimed that he did not act with premeditation and deliberation. Defendant claimed that he had been getting high all day on crack cocaine and alcohol.

On appeal, defendant raises only one issue. He argues that the trial court abused its discretion in allowing testimony from two witnesses, the victim's mother and a police officer, that the victim had told them of a prior alleged threat to kill the victim made by defendant. The trial court admitted the testimony under MRE 803(24), the so-called "catch-all" hearsay exception. Defendant argues that the trial court erred in admitting the testimony because it did not have circumstantial guarantees of trustworthiness and violated defendant's constitutional right of confrontation, US Const, Am VI; Const 1963, art 1, § 20. Generally, the decision whether to admit evidence is within the trial court's discretion and will be reversed only for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Before trial, the prosecutor moved for the admission of Geraldine Penn's and Police Officer Lisa Smith's testimony that the victim told them that defendant had threatened to kill her about three weeks before the stabbing. The trial court granted the prosecutor's motion and admitted the testimony

under MRE 803(24). At trial, Mrs. Penn testified that the relationship between the victim and defendant was not good, and that the victim had moved in with her parents a few weeks before the stabbing because of relationship problems. Mrs. Penn further testified that in June 1998, the victim obtained a restraining order against defendant because defendant had threatened the victim at a store. According to Mrs. Penn, the victim told her that defendant had threatened to kill her in three days. Similarly, officer Smith testified that on June 10, 1998, she met with the victim to discuss a complaint concerning defendant. According to officer Smith, the victim told her that defendant had followed her to a grocery store and “asked her to come here.” When the victim refused, defendant stated, “Bitch, I’m going to kill you. You got three days till I cut your throat.”

Although the trial court did not engage in the proper analysis of this issue, we believe that the error was harmless. The trial court found, as required by MRE 803(24), that the statement was offered as evidence of a material fact (defendant’s intent), that the statement was more probative on the point for which it was offered than any other evidence that the proponent could procure through reasonable efforts, and that the general purposes of the rules of evidence and interests of justice would be best served by the admission of the testimony into evidence. However, the trial court failed to determine, also as required by MRE 803(24), that the statement had a circumstantial guarantee of trustworthiness. On review of the record, we conclude that statements made by the victim about the prior threat had circumstantial guarantees of trustworthiness.

In the present case, the victim informed the police officer immediately after the threat was made because the police officer met the victim at the grocery store where defendant had made the threat. This indicates that the victim did not contrive or misrepresent the threat. Further, the statement given to the police officer was very specific. Additionally, the victim repeated the threat to her mother, and both the victim and Mrs. Penn went to obtain a restraining order because of the threat, again indicating that the victim did not contrive the threat. In considering the additional testimony that the relationship between the victim and defendant was not stable, we find that the totality of the circumstances surrounding the victim’s making of the statements had a guarantee of trustworthiness. See, e.g., *People v Welch*, 226 Mich App 461, 467-468; 574 NW2d 682 (1997). Consequently, the trial court’s failure to decide this issue is harmless inasmuch as we conclude that the evidence was properly admitted.

With regard to the Confrontation Clause question, we initially note, contrary to the prosecutor’s argument, that the issue is properly preserved. Defendant objected to the admission of the testimony on hearsay grounds and objected because the victim was unavailable to cross-examine. “Even when evidence of an unavailable witness is admissible under the Michigan Rules of Evidence, it is still necessary to determine whether use of the testimony would violate a defendant’s constitutional right to confront prosecution witnesses.” *People v Meredith*, 459 Mich 62, 67; 586 NW2d 538 (1998). The Confrontation Clause normally requires that the hearsay declarant be unavailable to testify and the statement must bear adequate indicia of reliability. *People v Poole*, 444 Mich 151, 162; 506 NW2d 505 (1993). The victim was an obviously unavailable witness; the question is whether the statements made to her mother and the police officer bear adequate indicia of reliability.

Here, the statements were voluntarily given by the victim, they were not prompted, the first statement to the police officer was made very close in time to the threat made by defendant, and the

statements were made to a police officer and the victim's mother (people to whom the victim would more likely tell the truth). Further, the victim did request a restraining order after the threat was made. Thus, in considering the circumstances surrounding the statements given to the police officer and Mrs. Penn, we conclude that the statements contained adequate indicia of reliability. See *id.*, p 165.

Accordingly, the trial court did not abuse its discretion in admitting the victim's hearsay statements made to the police officer and Mrs. Penn.

Affirmed.

/s/ Richard A. Bandstra

/s/ Kathleen Jansen

/s/ William C. Whitbeck