

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL E. BELL,

Defendant-Appellant.

UNPUBLISHED

October 6, 2000

No. 209269

Recorder's Court

LC No. 95-004885

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL E. BELL,

Defendant-Appellant.

No. 209270

Recorder's Court

LC No. 97-001258

Before: Cavanagh, P.J., and Saad and Meter, JJ.

CAVANAGH, P.J. (*concurring*).

Because we are bound by our Supreme Court's opinion in *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993), I concur with the result reached by the majority. I write separately, however, to reaffirm my serious reservations regarding our Supreme Court's conclusion that non-self-inculpatory statements are admissible under MRE 804(b)(3), and to once again urge the Court to reconsider this issue and adopt the United States Supreme Court's interpretation of the corresponding federal rule set forth in *Williamson v United States*, 512 US 594; 114 S Ct 2431; 129 L Ed 2d 476 (1994). See *People v Beasley*, 239 Mich App 548, 559-562; 609 NW2d 581 (2000) (Cavanagh, J, concurring).

When a hearsay declarant is not present at trial for cross-examination, the Confrontation Clause normally requires a showing that he is unavailable. Furthermore, the unavailable declarant's statement is admissible only if it bears adequate "indicia of reliability." *Ohio v Roberts*, 448 US 56, 66; 100 S Ct

2531, 2539; 65 L Ed 2d 597 (1980). MRE 804(b)(3) provides that if a declarant is unavailable at trial, a statement that is against the declarant's pecuniary interest is not excluded by the hearsay rule. The underlying rationale of this exception is that a reasonable person will not incriminate himself by admitting a damaging fact unless he believes that fact to be true. *People v Barrera*, 451 Mich 261, 271-272; 547 NW2d 280 (1996). A reasonable person will not be likely to make a self-inculpatory statement if it is not true; however, when a non-self-inculpatory statement is made, even if it is made in close proximity to a self-inculpatory statement, there is no information as to the reliability of the statement. Accordingly, such non-self-inculpatory statements should be treated no differently from other hearsay statements that are generally excluded.

/s/ Mark J. Cavanagh