

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK MILLER,

Defendant-Appellant.

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UNPUBLISHED

June 3, 2004

No. 245096

Wayne Circuit Court

LC No. 02-006927

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

PER CURIAM.

Defendant appeals as of right his convictions of second-degree murder, MCL 750.317, and assault with intent to do great bodily harm less than murder, MCL 750.84, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with the killing of Phyllis Barron and the beating of Cornelius Barron, respectively. Cornelius Barron testified that he and his sister Phyllis went to defendant's home and that he and defendant began fighting. Lakeysha Taylor, defendant's former girlfriend, testified that she observed defendant beat both victims. Over defendant's objection, Taylor testified that when Nate (last name unknown), a witness to the incident, came inside the home he remarked that he did not "understand why Fred did that." Defendant denied that he struck either victim and maintained that as he left his home he heard the victims arguing with drug dealers.

The trial court found defendant guilty of second-degree murder in the death of Phyllis Barron and of assault with intent to do great bodily harm less than murder in the beating of Cornelius Barron. The trial court accepted as credible the testimony given by Barron and Taylor, and it rejected defendant's testimony.

We review a trial court's determination of an evidentiary issue for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). A trial court's decision on a close evidentiary question ordinarily cannot constitute an abuse of discretion. *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998).

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is admissible as an exception to the hearsay rule. MRE 803(1). To be admissible as a present sense impression a statement must

have provided an explanation or description of the perceived event, the declarant must have personally perceived the event, and the explanation or description must have been made substantially contemporaneously with the event. *People v Hendrickson*, 459 Mich 229, 236; 586 NW2d 906 (1998). To establish a foundation for the admission of a statement under the present sense impression exception, the statement must be corroborated by other evidence. *Id.*, 237-237. A four-minute interval between the perceived event and the statement satisfies the requirement that the statement must have been made substantially contemporaneously with the event. *Id.*, 236.

Defendant argues that the trial court abused its discretion by admitting Taylor's testimony regarding Nate's statement as a present sense impression exception. We disagree and affirm defendant's convictions. Nate's statement that defendant "did that" was a statement regarding defendant's alleged acts. The evidence showed that Nate personally perceived the event. Taylor's testimony suggests that Nate entered the house just after she saw defendant striking Phyllis Barron. Taylor's testimony regarding defendant's activities corroborated Nate's statement. Admission of the statement did not constitute an abuse of discretion. MRE 803(1); *Hendrickson, supra*, 236.

Even if we were to determine that the admission of the statement constituted error, we would conclude that the error was harmless. The trial court based its verdict on Taylor's testimony regarding her own observations and on Cornelius Barron's testimony. Defendant has not carried his burden of establishing that, but for the error, it is more probable than not that the result of the proceedings would have been different. *People v Lukity*, 460 Mich 484, 493-496; 596 NW2d 607 (1999); MCL 769.26.

Affirmed.

/s/ Jane E. Markey  
/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter