

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STINARE A. JONES,

Defendant-Appellant.

UNPUBLISHED

June 10, 2004

No. 246617

Wayne Circuit Court

LC No. 01-008775-03

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

MEMORANDUM.

Following a nonjury trial, defendant was convicted of armed robbery, MCL 750.529, carjacking, MCL 750.529a, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, second offense, MCL 769.10, to concurrent prison terms of thirteen to forty years for the robbery and carjacking convictions, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals by right his convictions. We reverse.

Pursuant to MRE 804(b)(3), the trial court admitted into evidence over defendant's objection the hearsay statements of two codefendants, Omari Jackson and Joseph Jackson, who implicated defendant in the crimes during police questioning. Defendant contends that the admission of the Jacksons' statements violated his right of confrontation. The trial court's decision to admit evidence is generally reviewed for an abuse of discretion. *People v McLaughlin*, 258 Mich App 635, 649; 672 NW2d 860 (2003). "However, an issue concerning the proper construction of a rule of evidence presents a question of law that is reviewed de novo on appeal." *Id.* at 650.

Although statements of an unavailable declarant against that declarant's penal interest are not excluded by the hearsay rule, MRE 804(b)(3), when they are offered as evidence against a criminal defendant, they implicate the constitutional right of confrontation. US Const, Am VI; Const 1963, art 1, § 20. Until recently, the rule has been that a witness' hearsay statement is admissible if the witness is unavailable and the statement bears sufficient indicia of reliability or the statement falls within a firmly rooted hearsay exception. *People v Washington*, 468 Mich 667, 671-672; 664 NW2d 203 (2003). But, it is now clear that statements given during police interrogation are inadmissible unless the defendant is afforded the right of confrontation. *Crawford v Washington*, 541 US __; 124 S Ct 1354, 1373-1374; __ L Ed 2d __ (2004).

Because defendant was denied an opportunity to cross-examine the Jacksons regarding their statements, the admission of those statements violated defendant's right of confrontation. Therefore, the trial court erred in admitting the statements into evidence.

We reverse.

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