

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEL DARNELL FARROW,

Defendant-Appellant.

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UNPUBLISHED

December 21, 2010

No. 293960

Ingham Circuit Court

LC No. 08-001068-FC

Before: MURPHY, C.J., and METER and GLEICHER, JJ.

PER CURIAM.

A jury convicted defendant of kidnapping, MCL 750.349, and felonious assault, MCL 750.82. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to concurrent terms of 90 months' to 240 months' imprisonment for kidnapping, and 18 months' to 72 months' imprisonment for felonious assault. Defendant appeals as of right. We affirm.

Defendant's convictions stem from the sale of a used television set. The victim testified that while walking to Lansing job application sites, he encountered an acquaintance he knew as "Detroit." Detroit, who was carrying a medium-sized, flat-screen television, advised the victim that he intended to pawn it. The victim asked Detroit for gas money. Detroit agreed to give the victim gas money if the victim helped transport the television to a pawn shop. As the victim and Detroit carried the television, a Dodge Durango pulled alongside them. The driver, Vie Rolland, proposed to buy the television for \$200. Detroit accepted this offer, and Rolland gave the victim \$200. The victim handed Detroit the proceeds of the sale, and in exchange Detroit presented the victim with a bag containing a DVD player. After Detroit and the victim parted ways, the victim set out toward the pawn shop, intending to pawn the DVD player.

About 10 minutes later, Rolland drove alongside the victim and declared that the television "was broken and he wanted his money back." The victim explained that he did not have the \$200, but got into the Durango to help Rolland locate Detroit. After efforts to find Detroit proved unsuccessful, the victim asked to get out of the truck. The victim recounted that Rolland "got more angry, and he said I was going to be spending—I was going to be in his basement for a while." Rolland drove the victim to an apartment complex, pulled him from the vehicle, and led the victim into the apartment's kitchen. Rolland then grabbed a large knife and held it to the victim's neck. A third man struck the victim in the face. Rolland held a knife to the victim's back and escorted him to the basement, where the men tied the victim's hands to a

pole. After spending approximately an hour in the basement, the victim offered to call his parents and ask them to bring money.

Using a cell phone supplied by Rolland, the victim made several calls to his mother. The calls went unanswered, and the victim left a message. A short time later, defendant appeared in the basement, pulled a razor blade from his pocket, and threatened to cut the victim's neck "from end to end." The victim's mother returned the calls and the victim told her "that I needed help, and it was something serious, and I needed money." The victim's mother hung up, and his stepfather immediately called back. After several additional phone calls, the victim's parents eventually arranged to transfer money to a Western Union location across the street from the apartment complex. When Rolland took the victim to the Western Union office, the police arrested Rolland. The victim led the police to the apartment, where they arrested defendant after the victim identified him as one of the perpetrators. Police searched the apartment and found a rope and a flat-screen television in a nearby dumpster.

At trial, the prosecutor introduced Alltel cellular telephone records belonging to the victim's mother and stepfather, Carol and Robert Stewart. Robert Stewart testified that he printed the records from the Alltel website and that the records reflected calls from an unknown number between 2:26 p.m. and 5:36 p.m. on the day of the incident. Robert recalled that the victim spoke to him during one of the calls and sounded shaken. Carol Stewart recounted that the last call came from the unknown number at 5:56 p.m.

Defendant challenges on appeal only the admission of the Stewarts' cellular telephone records. Defendant maintains that the prosecutor did not lay a proper foundation for the records' admission, and that the documents did not fall within the business-records exception to the hearsay rule. This Court reviews for an abuse of discretion the trial court's ruling whether to admit evidence, but considers de novo the legal question "whether evidence is admissible under a particular rule of evidence." *People v Moorer*, 262 Mich App 64, 67; 683 NW2d 736 (2004). A preserved evidentiary error does not warrant reversal unless "after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999) (internal quotation omitted).

At trial, the prosecutor proffered the records into evidence under the business records exception to the hearsay rule. MRE 803(6) sets forth an exception to the hearsay rule for records kept in the ordinary course of business.

For a proper foundation to be established for the admission of [a] document as a business record, a qualified witness must establish that the record was kept in the course of a regularly conducted business activity and that it was the regular practice of such business activity to make that record ... Knowledge of the business involved and its regular practices are necessary. [*People v Vargo*, 139 Mich App 573, 580; 362 NW2d 840 (1984), citing MRE 803(6).]

Here, the prosecutor did not introduce the testimony of a custodian or other qualified witness to lay a proper foundation for the records; therefore, the records were not admissible under MRE 803(6) and the trial court abused its discretion in ruling otherwise. However, "[a]n

erroneous admission of hearsay evidence can be rendered harmless error where corroborated by other competent testimony.” *People v Hill*, 257 Mich App 126, 140; 667 NW2d 78 (2003). Robert and Carol Stewart testified extensively with regard to the information contained in the telephone records, rendering the records themselves cumulative evidence. Moreover, abundant competent evidence linked defendant to the events in Rolland’s basement. The victim unhesitatingly identified defendant as one of the basement assailants. Police found defendant at the scene standing outside the back door of the apartment when they conducted their sweep. Given this evidence, it does not affirmatively appear more probable than not that a different outcome would have resulted absent the erroneous admission of the telephone records. *Lukity*, 460 Mich at 495-496.

Affirmed.

/s/ William B. Murphy  
/s/ Patrick M. Meter  
/s/ Elizabeth L. Gleicher