

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARLAN INGLE,

Defendant-Appellant.

---

UNPUBLISHED  
January 10, 1997

No. 197676  
Wayne County  
LC No. 93 003172

ON REMAND

Before: Corrigan, P.J., and Hoekstra and MacKenzie.

PER CURIAM.

After this Court affirmed defendant's conviction in *People v Ingle*, unpublished opinion per curiam of the Court of Appeals, issued October 24, 1995 (Docket No. 167130), the Supreme Court remanded the case for reconsideration in light of *People v Barrera* and *People v Musall*, 451 Mich 261; 547 NW2d 280 (1996). Consistent with our initial disposition, we affirm.

This case involves the armed robbery of a party store and the trial court's refusal to admit the statement of defendant's accomplice. Under *Barrera*, our Supreme Court recognized that four subissues arise in evaluating a trial court's decision to exclude a statement against penal interest offered under MRE 804(b)(3) to exculpate a defendant. Those subissues are: (1) whether the declarant was unavailable, (2) whether the statement was against the declarant's penal interest, (3) whether a reasonable person in the declarant's position would have believed the statement to be true, and (4) whether corroborating circumstances clearly indicated the trustworthiness of the statement.

The declarant-accomplice, Mark Johnson, was not available to testify at defendant's trial.<sup>1</sup> Before the trial, Johnson had made this statement to a police officer: "[The robbery] wasn't planned. I just did it. I made [defendant] do it, I put a gun to his head and told him that if he didn't [do it] that I'd kill him."

The *Barrera* Court concluded that a statement tended to subject the declarant to criminal liability if “the statement would be probative of an element of a crime in a trial against the declarant,” and “a reasonable person in the declarant’s position would have realized the statement’s incriminating element.” *Id.* at 272. Johnson’s statement would be probative at his trial. Also, a reasonable person in Johnson’s position would have understood that the statement incriminated him.

Under *Barrera*, the standard of review of the facts surrounding the statement’s trustworthiness is a clearly erroneous standard.<sup>2</sup> The *Barrera* Court stated that, because the declarant’s credibility affects the statement’s trustworthiness, a court may exclude a statement when the declarant’s veracity is “seriously doubtful or entirely lacking.” *Id.* at 272-273. The Court held that the trial court also should consider: (1) the statement’s contents, (2) the surrounding circumstances when the declarant made the statement, and (3) all other relevant facts. *Id.* at 275-276.

When the declarant made the statement to authorities while the declarant was in custody, the court should consider: (1) the relationship between the declarant and the defendant, (2) whether the declarant made the statement after being given *Miranda* rights, and (3) whether evidence exists that the statement was made to curry favor with the authorities. *Id.* at 275. The relationship between Johnson and defendant does not appear to be one that would motivate Johnson to “take the rap” for defendant; Johnson made the statement after he was given *Miranda* rights; and no evidence suggests that Johnson made the statement to curry favor with the police or to reach a deal with the prosecutor. See *id.* at 289-290.

The Court then discussed the extent of corroboration required and added, “if the only corroborating circumstance was the individual defendant’s statement, standing alone, we might have a different situation.” *Id.* at 278. The *Barrera* Court cited *United States v Rodriguez*, 706 F2d 31 (CA 2, 1983), in this context. When interpreting the federal rule of evidence, the *Rodriguez* Court held that the statement at issue did not meet the corroboration requirement because only the appellant’s own assertions corroborated the hearsay. *Id.* at 40. The Court observed that the corroboration requirement was designed to “circumvent[] fabrication.” Exculpatory statements are viewed as “more suspect” than other varieties of statements against interest. *Id.* The Court cited the House Judiciary Committee’s statement that “simple corroboration was . . . deemed ineffective to accomplish [the purpose of ensuring trustworthiness] since the accused’s own testimony might suffice while not necessarily increasing the reliability of the hearsay statement.” *Id.* (citation omitted). Accordingly, the *Rodriguez* Court required more reliable corroboration than the appellant’s own statements. *Id.*

In his brief on appeal, defendant conceded that his own testimony was the only corroboration of Johnson’s statement on the crucial issue: “[o]ther than the accomplice’s confession, [defendant’s] testimony was the only evidence supporting the duress defense.” Nonetheless, defendant strenuously argues that the eyewitnesses’ accounts corroborated Johnson’s version of the robbery. Defendant offers these facts as corroboration, as both Johnson and the eyewitnesses agreed on them: (1) that Johnson and defendant were in the store together, (2) that Johnson had a gun, (3) that the robbery

victim was called “Jim,” and (4) that defendant did not appear to be armed. These facts, however, do not corroborate Johnson’s statement that he forced defendant to participate.

The only evidence that actually corroborated Johnson’s exculpatory statement was defendant’s own account of the robbery. Defendant glosses over those facts that contradict his assertion that he acted under duress – that he told Johnson to shoot the witnesses if they moved, that he poked a witness as if he had a gun, that he threatened the witness, that the police later saw him throw a gun into a wastebasket, and that police found bullets in his possession. Under *Barrera* and *Rodriguez*, defendant’s statement does not, by itself, suffice as corroboration for Johnson’s exculpatory statement. Moreover, defendant’s “corroboration” does not withstand the statements from the witnesses and the police that weigh against defendant’s theory of duress.

Under *Barrera*, the balancing test required for deciding whether to admit exculpatory evidence is as follows:

[T]he more crucial the statement is to the defendant’s theory of defense, the less corroboration a court may constitutionally require for its admission. In contrast, the more remote or tangential a statement is to the defense theory, the more likely other factors can be interjected to weigh against admission of the statement. [*Barrera*, 451 Mich at 279-280 (citations omitted).]

Although the *Barrera* Court required “less corroboration” when the statement was crucial to the theory of defense, that is not to say that the Court required *no* corroboration other than defendant’s own statement. Therefore, although Johnson’s statement was crucial to defendant’s duress defense, no independent evidence corroborated the statement, which weighs against its admission.

Finally, this case is distinguishable from the facts in *Barrera*. In this case, only defendant’s testimony corroborated Johnson’s statement. In *Barrera*, all four defendants contended that one defendant alone stabbed the victim. Here, Johnson’s statement does not reflect his reason for committing the robbery or for forcing defendant to participate. In *Barrera*, the declarant’s statement provided his motive for stabbing the victim, a motive that the other defendants did not share. The motive also reinforced the defendants’ contention that the killing was spontaneous. In this case, Johnson did not present a reason to reinforce defendant’s contention that defendant acted under duress. Because this case differs factually from *Barrera* and because defendant offers no substantive corroborating facts aside from his own testimony, we affirm the trial court’s decision to exclude the accomplice’s statement.

Affirmed.

/s/ Maura D. Corrigan  
/s/ Joel P. Hoekstra  
/s/ Barbara B. MacKenzie

<sup>1</sup> Johnson was present before defendant's trial commenced, but left the courthouse before he was to testify.

<sup>2</sup> The Court listed several standards of review. Whether the statement was against the declarant's penal interest is reviewed de novo. Whether the trial court should have admitted the evidence is reviewed for an abuse of discretion. The trial court's findings of fact are reviewed for clear error. *Barrera, supra* at 268-269.