

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD WILLIAM REBMAN,

Defendant-Appellant.

UNPUBLISHED

September 20, 2007

No. 272729

Oakland Circuit Court

LC No. 2005-205669-FH

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of domestic violence, third offense, MCL 750.81(4). We affirm.

Defendant was charged with assaulting complainant, his girlfriend. At issue is the admissibility of statements made by complainant recounting the circumstances of the assault to a 911 operator and to an investigating officer who arrived shortly after the assault occurred.

Complainant did not testify during the preliminary examination. During trial, the prosecutor presented the testimony of a dispatch operator who answered a 911 call from complainant. During the call, complainant stated that defendant had assaulted her. A police officer arrived at complainant's apartment while complainant was still speaking with the 911 operator. The officer spoke with complainant, who was very upset, nervous, and shaking. Complainant told the officer that defendant had been drinking, had slapped her in the face, and had left in her car. Within five or ten minutes of the officer's arrival, complainant wrote out a statement, which was admitted into evidence over defendant's objection. The statement contained an assertion that defendant had slapped complainant in the face.

Defendant's sole argument on appeal is that the introduction of complainant's 911 call and her statement to the police violated his Sixth Amendment right to confrontation.¹ Generally, we review a trial court's decision to admit evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). We review issues involving questions of law de

¹ Defendant raised additional arguments concerning the introduction of this evidence below, but does not do so on appeal.

novo, *id.*, and also review claims of constitutional error de novo. *People v McPherson*, 263 Mich App 124, 133; 687 NW2d 370 (2004).

The Sixth Amendment of the United States Constitution guarantees the right of a criminal accused “to be confronted with the witnesses against him. . . .” See also Const 1963, art 1, § 20. In *People v Crawford*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), the United States Supreme Court overruled *Ohio v Roberts*, 448 US 56; 100 S Ct 2531; 65 L Ed 2d 597 (1980), and articulated a bright-line rule against admission of custodial statements by a nontestifying witness against a criminal defendant. The Court held that the Confrontation Clause bars “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” *Crawford, supra* at 53-54.

This rule was expanded in *Davis v Washington*, ___ US ___; 126 S Ct 2266; 165 L Ed 2d 224 (2006), which dealt with statements made to police officers, where the United States Supreme Court refined its definition of testimonial statements. The Court held that:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. [*Id.* at 2273-2274.]

Applying this principle, the *Davis* Court found that a recording of the early parts of conversation between a victim of domestic abuse and a 911 operator, in which the victim mainly described her need for assistance, was nontestimonial, and therefore not absolutely excluded by the Confrontation Clause. See *Id.* at 2271, 2276-2277. However, in *Davis*’ companion case, where the police responded to a report of a domestic disturbance, separated the parties, asked questions about what had occurred, and then had the complainant fill out and sign a “battery affidavit,” the Court held that the complainant’s statements were testimonial and thus excluded by the Confrontation Clause. *Id.* at 2272-2273, 2278. The *Davis* Court held that statements made in the absence of questioning were not necessarily nontestimonial. *Id.* at 2274 n 1. The Court declined to further decide “whether and when statements made to someone other than law enforcement personnel are ‘testimonial.’” *Id.* at 2274 n 2.

Here, defendant challenges the introduction of the statements complainant made during the 911 call when initially seeking help, and the oral and written statements she later made to the police officer. Defendant’s reliance upon *Crawford, supra*, and *Davis, supra*, is misplaced. One fundamental difference exists. Somewhat unusually, complainant was defendant’s sole witness at trial. She testified that she had lied to the police about defendant striking her. She maintained that she did so because she wanted the police to remove him from her home due to his drinking and suicide attempts. The police had told her during an earlier call that they could not interfere unless she claimed that he had assaulted her. She also stated that shortly after the incident she wrote letters to the police and assistant prosecutor apologizing for the trouble, and stating that

her initial report was not truthful. Thus, unlike the circumstances in *Crawford, supra*, and *Davis, supra*, complainant was present at trial and actually testified. “[W]e reiterate that, when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements. . . . The Clause does not bar admission of a statement so long as the declarant is present at trial to defend or explain it.” *Crawford, supra* at 59 n 9. Here, while the circumstances were somewhat unusual, defendant had an ample opportunity to question complainant at trial about her previous statement and present her explanation to the jury. We thus find that defendant’s right to confrontation was not violated.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto