

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIMBERLY SIEBERT,

Defendant-Appellant.

UNPUBLISHED

April 26, 2002

No. 229098

Wayne Circuit Court

LC No. 99-008624

Before: Cooper, P.J., and Hood and Kelly, JJ.

PER CURIAM.

Defendant was charged with second-degree murder, MCL 750.317. A jury convicted defendant of manslaughter, MCL 750.321, and she was sentenced to seven to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

In this case, defendant and her codefendant, Shanay Holmes, were involved in an altercation with the victim. The victim was stabbed and ultimately died as a result of his injuries.

I. Sufficiency of the Evidence

Defendant argues that there was insufficient evidence to convict her of manslaughter. Specifically, defendant contends that the prosecution failed to refute her claim of self-defense. We disagree. In reviewing a sufficiency of the evidence claim, this Court views the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). “[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000). Moreover, this Court will not interfere with the jury’s role in determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Defendant purports that she honestly and reasonably believed that her life was endangered. It is well established that “[t]he killing of another in self-defense is justifiable homicide if the defendant honestly and reasonably believes that his life is in imminent danger or

that there is a threat of serious bodily harm.” *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993), quoting *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). However, the degree of force an individual may use in self-defense is limited to the amount necessary to provide an adequate defense. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Indeed, “the defense is not available when a defendant is the aggressor unless he [or she] withdraws from any further encounter with the victim and communicates such withdrawal to the victim.” *Id.* at 323. After a defendant presents evidence of self-defense, it is the prosecution’s burden to disprove it beyond a reasonable doubt. *Fortson, supra* at 20.

In the instant case, there was evidence presented that defendant and the victim were arguing and fighting at defendant’s home over money and a motorcycle. During the altercation, the victim told defendant that he would leave if she returned his motorcycle. According to several witnesses, defendant went into her house and came outside with a knife. When the victim asked her if she was going to stab him, defendant replied in the affirmative and began swinging the knife at him. There was also testimony presented that as the victim was moving backwards, defendant continued to advance. When the victim began to walk away from defendant’s property, Holmes told defendant that she stabbed him, too. Although the defense presented testimony portraying the victim as the aggressor, viewing the evidence in a light most favorable to the prosecution, we find that there was sufficient evidence to prove beyond a reasonable doubt that defendant committed an unjustifiable homicide and was not merely acting in self-defense.

II. Admission of Evidence

Defendant next contends that the trial court erred in admitting Holmes’ hearsay statement, “I stabbed him, too.” Specifically, defendant claims that the statement did not meet the requirements for admission under MRE 804(b)(3), and that her right to confrontation was violated. We disagree. A trial court’s decision to admit evidence is reviewed for an abuse of discretion. *People v Knapp*, 244 Mich App 361, 377; 624 NW2d 227 (2001). “An abuse of discretion will be found only when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made.” *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001). To the extent the decision to admit evidence involves a question of law, this Court will review the issue de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Constitutional questions are also reviewed de novo on appeal. *People v Beasley*, 239 Mich App 548, 557; 609 NW2d 581 (2000)

A. MRE 804(b)(3)

Defendant claims that Holmes’ hearsay statement, “I stabbed him, too,” was inadmissible under MRE 804(b)(3) as a statement against penal interest. Defendant bases her argument on the United States Supreme Court’s decision in *Williamson v United States*, 512 US 594, 600-601; 114 S Ct 2431; 129 L Ed 2d 476 (1994), which held that non-self-inculpatory statements were unreliable and, therefore, inadmissible despite their proximity to self-inculpatory statements. However, the trial court in this case found that Holmes’ statement was admissible because it satisfied the requirements of both MRE 804(b)(3) and *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993).

MRE 804 provides exceptions to the hearsay rule if the declarant is unavailable to testify. The relevant subsection of MRE 804(b) provides:

(3) *Statement Against Interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

The part of a statement that implicates an accomplice is referred to as the "carry-over" portion. *People v Richardson*, 204 Mich App 71, 76-77; 514 NW2d 503 (1994). While not directly referred to in MRE 804(b), our Supreme Court in *Poole*, *supra* at 161, concluded that "carry over" statements are admissible:

where . . . the declarant's inculcation of an accomplice is made in the context of a narrative of events, at the declarant's initiative without any prompting or inquiry, that as a whole is clearly against the declarant's penal interest and as such is reliable, the whole statement—including portions that inculcate another—is admissible as substantive evidence at trial pursuant to MRE 804(b)(3).

The United States Supreme Court in *Williamson*, *supra* at 600-601, held that FRE 804(b)(3) does not allow admission of non-self-inculpatory statements. However, in *Beasley*, *supra* at 552-556, this Court specifically addressed whether Michigan courts are bound by the United States Supreme Court's holding in *Williamson* concerning the admissibility of non-self-inculpatory statements. The Court in *Beasley*, *supra* at 556, ultimately rejected defendant's argument that *Williamson* applies to the evidentiary question present in the instant case. Rather, this Court held that while the commentary and caselaw concerning the federal rules of evidence is sometimes persuasive, "the Michigan Supreme Court is not bound by the federal application." *Beasley*, *supra* at 556. Moreover, it is well established that "this Court is bound by Michigan Supreme Court precedent, even if such precedent has become obsolete." *Id.* Thus, defendant's argument that *Williamson*, *supra*, applies in this case is without merit.

In order for a non-self-inculpatory hearsay statement to be admissible under MRE 804(b)(3), "the codefendant making the confession must be unavailable as a witness before the confession may be used against the defendant." *Richardson*, *supra* at 74. Because Holmes was the codefendant in defendant's trial, the trial court determined that Holmes was unavailable to testify. See *Poole*, *supra* at 163; *Beasley*, *supra* at 555, n. 1.¹ We also note that *Richardson*, *supra* at 74, stated that the unavailability requirement is satisfied if the codefendant asserts her Fifth Amendment privileges. Before the prosecution presented its rebuttal witnesses in this case, Holmes informed the trial court that she would not testify. Thus, Holmes was clearly unavailable for purposes of MRE 804(b)(3).

¹ Defendant and Holmes were tried together as codefendants before the trial court but with separate juries.

Moreover, the requirements of *Poole* are present in this case. Holmes voluntarily and spontaneously made the statement to defendant shortly after the end of the fighting. Further, the statement as a whole was clearly against Holmes' penal interest. Consequently, we find that the statement was admissible under MRE 804(b)(3) as substantive evidence and that the trial court did not abuse its discretion in admitting the statement.

B. Right of Confrontation

Defendant also purports that she was denied her right to confrontation under the United States and Michigan Constitutions because the statement did not possess a sufficient indicia of reliability.

To satisfy the Confrontation Clause, US Const, Am VI; Const 1963, art 1, § 20, there must be a showing that the declarant is unavailable and that the statement falls within a firmly rooted exception to the hearsay rule or bears a reasonable "indicia of reliability." *Poole, supra* at 163. We note that Michigan has not recognized that a declaration against interest is a "firmly rooted" hearsay exception. *People v Schutte*, 240 Mich App 713, 718; 613 NW2d 370 (2000). Therefore, we must ascertain the reliability of the statement based on the totality of the circumstances. *Id.* at 165. In *Poole*, the Court discussed several factors that favor either the admissibility or inadmissibility of a statement.²

The evidence in the present case shows that Holmes made the statement voluntarily and spontaneously to defendant shortly after the fight. Indeed, the statement was not made to law enforcement to curry favor and Holmes fully implicated herself in the crime. The circumstances also indicate that Holmes was telling the truth and that she had no motive to lie. Viewing the totality of circumstances, we find that the statement was sufficiently reliable and did not violate defendant's right to confrontation. Thus, the trial court did not abuse its discretion by admitting the statement.

² *Poole, supra* at 165, presented the following circumstances to consider:

The presence of the following factors would favor admission of such a statement: whether the statement was (1) voluntarily given, (2) made contemporaneously with the events referenced, (3) made to family, friends, colleagues, or confederates—that is, to someone to whom the declarant would likely speak the truth, and (4) uttered spontaneously at the initiation of the declarant and without prompting or inquiry by the listener.

On the other hand, the presence of the following factors would favor a finding of inadmissibility: whether the statement (1) was made to law enforcement officers or at the prompting or inquiry of the listener, (2) minimizes the role or responsibility of the declarant or shifts blame to the accomplice, (3) was made to avenge the declarant or to curry favor, and (4) whether the declarant had a motive to lie or distort the truth.

III. Rebuttal Evidence

Defendant further opines that the trial court erroneously permitted the prosecution to present rebuttal evidence that should have been included in its case-in-chief. As a result, defendant claims that she was deprived of her due process right to a fair trial and her right to confrontation. We disagree. “Admission of rebuttal evidence is within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of discretion.” *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996).

The admission of rebuttal evidence is permissible to explain, contradict, or otherwise disprove evidence presented by the opposing party. *Id.* at 399. “[T]he test of whether rebuttal evidence was properly admitted is not whether the evidence could have been offered in the prosecutor’s case in chief, but, rather, whether the evidence is properly responsive to evidence introduced or a theory developed by the defendant.” *Id.*

Defendant argues that the trial court improperly allowed rebuttal witness Sergeant Henry Ellis to testify regarding defendant’s “condition and characteristics on the day in question.” Defendant further claims that the trial court erroneously allowed rebuttal witness Ruth Weathers to provide testimony concerning the medication that the victim was taking shortly before the incident. According to the record, the trial court allowed these witnesses to present rebuttal testimony because “[t]here has been a theory, questions and answers to, questioning and answers throughout, whether directly or indirectly, in the defense proofs on self-defense.”

Defendant’s case revolved around depicting the victim as the aggressor and the theory that he was stabbed in self-defense. The extent of defendant’s physical injuries and what medication the victim was taking went directly to the circumstances surrounding the altercation and defendant’s claims of self-defense. Thus, we find that this evidence was properly responsive to defendant’s self-defense theory and that the trial court did not abuse its discretion in allowing the rebuttal witnesses to testify.

IV. Sentencing

Defendant’s final contention on appeal is that her sentence violated the principle of proportionality required by *People v Milbourn*, 435 Mich 630, 650-653; 461 NW2d 1 (1990). However, the principle of proportionality is inapplicable to defendant’s sentence because the statutory guidelines apply to offenses committed on or after January 1, 1999. MCL 769.34(2); *People v Greaux*, 461 Mich 339, 342, n. 5; 604 NW2d 327 (2000).³

The guidelines range for defendant’s offense was 50 to 100 months. The trial court sentenced defendant to 84 to 180 months. Defendant does not dispute how the guidelines were

³ We note that defendant’s crime was committed on August 15, 1999.

scored or claim that the information relied on to determine her sentence was inaccurate. Because defendant's minimum sentence falls within the guidelines range, this Court must affirm the sentence. MCL 769.34(10).

We affirm.

/s/ Jessica R. Cooper
/s/ Harold Hood
/s/ Kirsten Frank Kelly