STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 20, 2011
v	No. 295159 Bay Circuit Court
QUINTEZ KERNARD ALLEN, Defendant-Appellant.	LC No. 08-010720-FH

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant Quintez Kernard Allen appeals as of right his jury conviction of misdemeanor domestic violence. MCL 750.81(2). The trial court sentenced Allen to serve two years on probation, to participate in anger management and spousal abuse classes, and to submit to alcohol and drug treatment and random drug testing.[1] Because we conclude that there were no errors warranting relief, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

The evidence established that Allen pounded on the victim's door in the middle of the night and demanded to be let inside. In her statement to the police, the victim said that she eventually relented and allowed him in. When he entered the victim's apartment, he overturned her kitchen table and a chair, threw her to the floor, and was "banging her head." Allen and the victim were dating at the time and, although they are no longer together, they remain friendly.

Prior to trial, the victim denied having a clear memory of the altercation. For this reason, the prosecution sought permission to admit oral and written statement that the victim made to the police under MRE 803(5) and MCL 768.27c. Allen's trial counsel objected to the admission of these statements, but the trial court permitted the investigating officer to read the victim's statements from the incident into the record and to testify about the oral statements that the victim made on the day at issue. Allen now argues that this constituted error that warrants reversal of his conviction. Specifically, he asserts that, because the victim testified that she could not remember any detail about the assault, she was in effect unavailable for cross-examination at

[1] The jury found Allen not guilty on the additional charge of interfering with electronic communications. MCL 750.540.

trial. Therefore, the trial court violated his right to confront the witnesses against him when it permitted the investigating officer to read the victim's statements into the record.

This Court reviews de novo "[w]hether the admission of the victim's statements to the police violated defendant's Sixth Amendment right of confrontation" as a question of constitutional law. *People v Bryant*, 483 Mich 132, 138; 768 NW2d 65 (2009). This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Roper*, 286 Mich App 77, 90; 777 NW2d 483 (2009).

Statements to police officers by the victims of domestic violence are generally admissible in Michigan if the statements were made under circumstances that indicate the statements trustworthiness even though the statements are otherwise hearsay. See MCL 768.27c; see also MRE 801; MRE 802. Nevertheless, hearsay statements that are admissible might still be barred under the Confrontation Clause. See *Crawford v Washington*, 541 US 36, 68; 124 S Ct 1354; 158 L Ed 2d 177 (2004). 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." *Id.* at 53-54. Statements are testimonial when "the circumstances objectively indicate that there is no . . . ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Davis v Washington*, 547 US 813, 822; 126 S Ct 2266; 165 L Ed 2d 224 (2006).

Here, the victim's statements were clearly testimonial in nature. But their admission did not violate Allen's right to confront the victim. It is well-settled that the requirements of the Confrontation Clause are met if the declarant is available for cross-examination even if the declarant claims to be unable to remember the events at issue. See *United States v Owens*, 484 US 554, 559-560; 108 S Ct 838; 98 L Ed 2d 951 (1988); *People v Watson*, 245 Mich App 572, 584; 629 NW2d 411 (2001) ("[A] defendant's right of confrontation is not denied even if the witness, on cross-examination, claims a lack of memory."); see also *Yanez v Minnesota*, 562 F3d 958, 964 (CA 8, 2009) ("In conclusion, given the Court's holdings in *Owens* and *Crawford*, L.P.'s inability to recall the details of her prior statements or the incidents that led to those statements did not render the admission of the out-of-court testimonial statements constitutionally defective."). Because the victim was present at trial and was subject to cross-examination, there was no need to inquire into her availability or to determine whether Allen had an earlier opportunity to cross-examine her.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause