

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY YOUNG,

Defendant-Appellant.

UNPUBLISHED

September 13, 2007

No. 272465

Oakland Circuit Court

LC No. 2006-207470-FH

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

MEMORANDUM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of three to fifteen years. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Police officer McDonald testified that, upon responding to a disconnected call to 911, he saw defendant moving toward the complainant holding a lamp over his head and bringing it forward as if to hit her. The court sustained defendant's objections to testimony concerning statements made by the complainant to the police after defendant was in custody. However, the court allowed the officer to testify that, before he was placed in the patrol car, the complainant was yelling at defendant "about him trying to hit her. She said, well there were a few expletives in there but essentially, you know, tried to hit me with that lamp and that was about it."

Defendant argues that the court violated his constitutional right to confrontation by admitting the police officer's testimony concerning the complainant's out-of-court statements.

The court's findings demonstrate that any error was harmless. In explaining the verdict, the court indicated that it was not relying on the officer's testimony concerning the statement:

She was—[the complainant] was agitated and angry, did make incriminating statements with regard to the Defendant. The Court will note that even if the Court were to exclude that evidence that Officer McDonald's testimony alone with regard to the incident would be sufficient to find as follows.

Where the alleged error was harmless, this Court need not address whether the admission of the evidence violated the Confrontation Clause because "it is an undisputed principle of

judicial review that questions of constitutionality should not be decided if the case may be disposed of on other grounds.” *People v Shepherd*, 472 Mich 343, 347-348 n 4; 697 NW2d 144 (2005) (citation and internal quotation marks omitted). In light of the police officer’s observation of the assault and the trial court’s findings indicating that the challenged evidence did not affect the verdict, further consideration of the alleged error is unnecessary.

Affirmed.

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