STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RICKY GLENN JONES,

Defendant-Appellant.

UNPUBLISHED
July 15, 1997

No. 195003
Kalamazoo Circuit Court
LC No. E95-0516-FC

Before: Young, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(e); MSA 28.788 (1)(e), and extortion, MCL 750.213; MSA 28.410. Defendant was sentenced to concurrent prison terms of twenty to forty years for the CSC conviction, and ten to twenty years for the extortion conviction. We affirm.

Defendant first argues that he was deprived of his right to a fair trial by the prosecutor's failure to produce a res gestae witness at trial. We find that defendant is not entitled to relief on this issue. A prosecutor's duty with respect to res gestae witnesses is only to list such witnesses known at the time of the filing of the information and those that become known before trial. There is no longer any duty to endorse or produce such witnesses. MCL 767.40a; MSA 28.980(1); *People v Paquette*, 214 Mich App 336, 343; 543 NW2d 342 (1995).

Defendant also argues that he is entitled to a new trial because his trial counsel failed to request an instruction on the prosecution's failure to produce the witness. However, such an instruction would have been inappropriate because the prosecutor did not have any duty to produce the witness. See *id*. Defense counsel was not required to raise a meritless motion. See *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991). In addition, it is clear from the trial transcript that defense counsel made the strategic decision to emphasize the absence of the witness and suggest that the witness had actually been the perpetrator of the sexual assault on the complainant. See *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995).

Defendant further contends that the trial court erred in failing to sua sponte instruct the jury on the prosecution's failure to produce the witness. Because defendant did not request this instruction at trial and did not object to the trial court's instructions to the jury, we review this issue only to determine if manifest injustice resulted. *People v Maleski*, 220 Mich App 518, 521; 560 NW2d 71 (1996). We find no manifest injustice.

Finally, defendant argues that he is entitled to a new trial because the trial court erroneously determined his confession to the police to be voluntary and allowed its admission at trial. More specifically, defendant contends that when reviewing the totality of the circumstances, it is clear that he did not understand his rights as they were read to him, that he was improperly threatened with a lengthy prison sentence if he did not cooperate, and that, apart from his dyslexia, he was drowsy from having just been awakened from sleep.

Whether the defendant's statements were knowing, intelligent, and voluntary is a question of law which the lower court must determine under the totality of the circumstances. *People v Cheatham*, 453 Mich 1, 27, 44; 551 NW2d 355 (1996). When reviewing a trial court's determination of voluntariness, this Court must examine the entire record and make an independent determination. *People v Robinson*, 386 Mich 551, 557; 194 NW2d 709 (1972). Deference, however, is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's findings will not be reversed unless they are clearly erroneous. *People v Bordeau*, 206 Mich App 89, 92; 520 NW2d 374 (1994). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *People v Kvam*, 160 Mich App 189, 196; 408 NW2d 71 (1987).

We find that the record does not support defendant's argument. Defendant displayed a general understanding of what was being asked of him in court and responded appropriately. Defendant was able to read and understand the written statement he signed, as evidenced by his ability to recognize an error in the statement and request that the arresting officer correct it. Furthermore, although defendant denied making the statement in part, an issue which the trial court properly left for the jury to decide,[1] defendant never denied being able to understand the officer, nor did he make an affirmative claim that he was too drowsy to effectively respond to the situation. Instead, defendant admitted that he wanted to talk to the police, he indicated that he had been arrested previously and that the *Miranda*[2] warnings were "nothing new" to him, and stated that he understood what the arresting officer was saying and knew that he had the right to have an attorney present. We conclude that the prosecution met its burden of showing that defendant knowingly, intelligently, and voluntarily waived his Fifth Amendment rights.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh

[1] See *People v Neal*, 182 Mich App 368, 371; 451 NW2d 639 (1990).

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).