STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 1, 2004
v	No. 243843 Kent Circuit Court
DEANDRE SADDERL VICK, Defendant-Appellant.	LC No. 01-002245-FC

Before: Jansen, P.J., and Markey and Gage, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316(1)(a), possession of a firearm during the commission of a felony, MCL 750.227b, carrying a concealed weapon, MCL 750.227, and being a felon in possession of a firearm, MCL 750.224f. Defendant was sentenced to life in prison for the murder conviction, and was sentenced as an habitual offender, second offense, to 2 years in prison for the felony-firearm conviction, and 2 to 7½ years in prison for the carrying a concealed weapon and felon in possession convictions. Defendant appeals as of right. We affirm.

Defendant shot Lebert Talley in broad daylight in a neighborhood known, by defendant's own admission, for shootings and drug dealing. Defendant contended that he shot the victim in self-defense, testifying that the victim threatened him and that the victim had a hand in a pocket that defendant believed held a gun. The jury apparently rejected defendant's theories.

I

Before the jury was given its preliminary instructions, the prosecutor placed on the record the fact that it had offered defendant the opportunity of a plea bargain, but defendant had rejected the offers. Defendant's trial counsel replied that she had communicated the plea offers to defendant, but that he had chosen to reject them at that time, although counsel was going to continue talking to defendant on the issue. The issue was later revisited just before closing arguments when the defense stated on the record that after trial had commenced, defendant had attempted to accept one of the plea offers, but the prosecutor informed defendant that any offers to plea bargain were no longer available. After a brief exchange on the issue, the trial court found that the prosecutor had rescinded the offer of a plea bargain before defendant attempted to accept it, and moved on to other matters.

Defendant now argues that the trial court committed error requiring reversal when it found that the offer had been revoked before it was accepted, contending that he is entitled to specific performance of the plea bargain as it was originally offered. He further argues that failure to specifically enforce the offer would violate his constitutional rights.

In the constitutional context, specific performance of "pledges of public faith" are not required, but we must strive to formulate a remedy to "*cure[ ] the defendant's detrimental reliance*" on the pledge. *People v Wyngaard*, 462 Mich 659, 665-667; 614 NW2d 143 (2000), citing *People v Gallego*, 430 Mich 443, 452-456; 424 NW2d 470 (1988) (emphasis in original). Where the defendant was not seeking specific performance of a plea agreement because he had not actually pleaded or performed on any portion of the plea agreement, the prosecutor was not bound by a plea bargain rescinded after the defendant had accepted but before the defendant had actually pleaded or in any way performed under the plea agreement. *People v Heiler*, 79 Mich App 714, 719-721; 262 NW2d 890 (1977). Here, defendant did nothing in reliance on any offers of a plea bargain made by the prosecutor. Therefore, the trial court did not err in refusing to enforce the plea offer.

II

Defendant next argues that he was denied a fair trial by repeated instances of prosecutorial misconduct. We review defendant's unpreserved claims of prosecutorial misconduct for whether plain error occurred resulting in the conviction of an innocent man or whether the prosecutor's conduct seriously affected the sanctity of the judicial proceedings. *People v Ackerman*, 257 Mich App 434, 448-449; 669 NW2d 818 (2003). While the prosecutor may not argue facts not in evidence, the prosecutor is free to argue the evidence introduced at trial and all reasonable inferences based on the evidence. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000), citing *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

Defendant states a litany of questions and arguments articulated by the prosecutor that defendant contends were actually the testimony of the prosecutor because they were based on facts not in evidence. One of defendant's main contentions on this issue is that the prosecutor's arguments that defendant had been threatening witnesses was impermissible, primarily because there was no evidence produced to connect the threats to defendant or to establish that the threats were made to influence testimony.

The prosecutor's words "must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial." *Schutte*, *supra* at 721, citing *People v Jansson*, 116 Mich App 674, 693; 323 NW2d 508 (1982). Further, a prosecutor's good-faith efforts to admit evidence responsive to issues raised by the defense and otherwise relevant to the issues raised at trial do not constitute misconduct. *Ackerman*, *supra* at 448-450. Here, defendant fails to note that all of the prosecutor's arguments were based on reasonable inferences drawn from evidence introduced at trial, and that the prosecutor's questions were all related to facts at issue in the case. Additionally, defendant does not adequately develop his contention that introduction of evidence that witnesses were being threatened violated MRE 404(b). An appellant "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Regardless, we find no error requiring reversal.

One of defendant's arguments, however, does merit brief discussion. During the course of the trial, the defense questioned a detective at length about what witnesses had been subpoenaed, and about why one witness in particular was not testifying. In response to one of these questions, the prosecutor objected, stating during her objection, that one of the witnesses to the incident, into whose absence the defendant had been inquiring, had not been called to testify because he had invoked his right against self-incrimination. Defendant is correct when he points out that the prosecutor may not call a witness that the prosecutor knows will assert his or her right against self-incrimination. *People v Giacalone*, 399 Mich 642, 645; 250 NW2d 492 (1977). However, "[o]therwise improper prosecutorial remarks generally do not require reversal if they are responsive to issues raised by defense counsel." *Schutte*, *supra* at 721. Defendant fails to demonstrate how the prosecutor's objection constituted error in light of defense counsel's questioning.

Because no errors were found with regard to defendant's claims of prosecutorial misconduct, defendant's argument that the cumulative errors deprived him of a fair trial is without merit. *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

III

Defendant next argues that his constitutional rights were violated by the prosecution's failure to produce certain witnesses for trial, and by the prosecution's suppression of what defendant contends were two key pieces of evidence necessary to his defense. As it relates to the missing witnesses, defendant failed to preserve his claim by bringing a motion for an evidentiary hearing or motion for new trial on the issue. *People v Dixon*, 217 Mich App 400, 409; 552 NW2d 663 (1996). We decline to evaluate defendant's claim without the appropriate evidentiary record. In any event, on the record before us, we find no error.

Defendant's claims that the police suppressed evidence also must fail. Defendant fails to explain how the personal notes, discarded after they were incorporated into an official report, of a detective not called to testify at trial, were actually evidence. Further, defendant claims that the police suppressed evidence by failing to record defendant's statements or willfully erasing part of an audiotape of defendant's statements to police. The loss of evidence that would be potentially useful to the formulation of a defense does not constitute a due process violation unless the destruction of the evidence was the result of bad faith on the part of the state body in custody of the evidence. *People v Leigh*, 182 Mich App 96, 98; 451 NW2d 512 (1989). Additionally, this Court will not hold that evidence has been suppressed where there is nothing but the defendant's assertion to prove that the evidence existed in the first place. See *People v Miller*, 51 Mich App 117; 214 NW2d 566 (1973). Here, defendant presented no evidence of bad faith, and because the unrebutted testimony of the interrogating officer was that the tape recorder malfunctioned, there is no evidence that the tape that defendant contends was improperly suppressed ever existed. Defendant's claims must fail.

IV.

Finally, defendant argues that this Court should extend the Michigan Constitution's due process guarantee to include a right to electronic recordation of custodial interrogations by police. This Court rejected this claim in *People v Fike*, 228 Mich App 178; 577 NW2d 903

(1998), and pursuant to MCR 7.215(I)(1), that ruling constitutes binding precedent. Defendant does not provide us with sufficient reason to revisit this Court's holding in *Fike*.

Affirmed.

/s/ Kathleen Jansen
/s/ Jane E. Markey
/s/ Hilda R. Gage