STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 17, 2008
v	No. 277021 Wayne Circuit Court
WILLIAM LAMAR LEATHERWOOD, Defendant-Appellant.	LC No. 06-010067-01

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of first-degree premeditated murder, MCL 750.316(1)(a), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant first argues that the police and the prosecution denied him his right to due process and a fair trial by failing to fully and adequately investigate the case. He notes that the prosecution failed to present test results concerning spent bullets and body fluid, and that the police failed to investigate leads concerning other suspects who may have had a motive to kill the victim. Because defendant did not raise this issue below, it is unpreserved and defendant must show a plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 764-767; 597 NW2d 130 (1999).

Contrary to what defendant argues, neither the police nor the prosecution were obligated to investigate on behalf of a defendant. See *People v Burwick*, 450 Mich 281, 289 n 10; 537 NW2d 813 (1995) ("[n]either the prosecution nor the defense has an affirmative duty to search for evidence to aid the other's case"); see, also, *People v Sawyer*, 222 Mich App 1, 6; 564 NW2d 62 (1997), and *People v Coy*, 258 Mich App 1, 21; 669 NW2d 831 (2003) ("[a]bsent a showing of suppression of evidence, intentional misconduct, or bad faith, the prosecutor and the police are not required to test evidence to accord a defendant due process"). The cases cited by defendant are inapposite. Unlike in *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), defendant has not alleged that the prosecutor possessed or sought to suppress evidence that was favorable to the defense. The prosecutor's obligation to present the entire "res gestae" as indicated in *Hurd v People*, 25 Mich 405, 415 (1872), is no longer in effect. *People v Koonce*, 466 Mich 515, 518, 520-521; 648 NW2d 153 (2002). Further, contrary to what defendant asserts, *People v Jordan*, 23 Mich App 375; 178 NW2d 659 (1970), does not address whether the prosecution or the police have a duty to investigate. Rather, the decision addresses the

foundation for the admission of evidence—laboratory testing was required to establish the necessary foundation for the admission of a handkerchief with stains of uncertain origin that resembled one described by the complainant as having been used to clean up semen following an alleged sexual assault. For these reasons, defendant has failed to establish any error, plain or otherwise.

Defendant also argues that the trial court erred when it considered the contents of his custodial statement when evaluating the admissibility of the statement at a *Walker*[1] hearing. We disagree.

In an appeal of a ruling denying a motion to suppress, this Court generally reviews the trial court's ultimate decision de novo, but will not disturb the trial court's factual findings unless they are clearly erroneous. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). Here, however, the issue presented concerns the circumstances in which the contents of a custodial statement may be considered by the trial court when evaluating the voluntariness of the statement. This argument presents a question of law, which we review de novo. *People v Keller*, 479 Mich 467, 473; 739 NW2d 505 (2007).

In ruling on the admissibility of a statement, a trial court should not allow the truth or falsity of the statement to influence its determination of voluntariness, because the use of a coerced confession, even if true, is forbidden on the basis that the method used to extract it offends constitutional principles. *Lego v Twomey*, 404 US 477, 485; 92 S Ct 619; 30 L Ed 2d 618 (1972); see, also, *People v Drew*, 26 Mich App 337, 339; 182 NW2d 566 (1970).

Although the truthfulness of a statement is not relevant to the determination of voluntariness, consideration of the contents of the statement is permissible for other purposes, such as credibility. For example, in *Gilreath v Mitchell*, 705 F2d 109 (CA 4, 1983), the court held that the trial court properly considered the presence of details known only to the accused in evaluating his claim that at the time he gave the statement, he was in a psychotic state that allowed him to only "parrot back" a story created by someone else. In *United States v Kreczmer*, 636 F2d 108 (CA 5, 1981), the court approved a magistrate's consideration of the detailed nature of a statement in rejecting the defendant's claim that the statement was involuntary because he was intoxicated and incapable of thinking rationally. In *United States v Freeman*, 816 F2d 558, 562 (CA 10, 1987), the court noted that the finding of voluntariness of the defendant's statements was "reinforced" by the statement's inclusion of facts known only to him. The court observed that "[s]uch admissions could not have been the product of pointed, leading or suggestive questioning by agents since the agents did not know the details." *Id.*

In the present case, although the trial court considered the contents of defendant's statement, an evaluation of the truthfulness of the assertions did not play a role in the court's analysis of voluntariness. Rather, the trial court considered the detailed nature of the statement to conclude that it was not compatible with defendant's claims that it was the product of coercion or a lack of understanding of his rights, and to evaluate the credibility of defendant's assertion

[1] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

that he did not provide all of the information contained in the statement. Because the trial court's ruling does not reflect that its determination of voluntariness was influenced by an assessment of the statement's truthfulness, we reject this claim of error.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen