

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM JAMES HASTINGS,

Defendant-Appellant.

UNPUBLISHED

November 16, 2006

No. 262698

Jackson Circuit Court

LC No. 04-000690-FC

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree murder, MCL 750.316. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to life imprisonment. We affirm.

This case arose out of the killing of Vicki Cook, whose body was discovered in a state of advanced decomposition in an undeveloped marshland area on August 2, 2002. The date of her death was estimated to have been July 27, 2002. In late July 2002, defendant and an associate picked Cook up as a prostitute for sex in exchange for drugs and, in fact, smoked crack cocaine with her at another friend's house. Cocaine was found in Cook's body. Defendant and Cook left together, at which time Cook was wearing clothes, including a denim long-sleeved shirt depicting a Looney Tunes character, that belonged to Teresa Merrifield, defendant's girlfriend. Among other things, defendant testified that he told Merrifield that he had killed Cook. Merrifield also testified at trial that defendant had told her that he killed Cook.

Defendant's first issue is whether the prosecutor committed misconduct denying him a fair trial by permitting Merrifield to commit perjury during her testimony. Specifically, Merrifield testified that she had not made any deals with the prosecution in exchange for her testimony, although she admitted that she had a felony drug case pending in another court. The prosecutor told the trial court that Merrifield was cooperating with a drug task force, but stated that she had not been offered any deals. In fact, however, Merrifield had been given a deal in her own pending case under which she was permitted to plead guilty to a misdemeanor in exchange for her testimony against defendant.

We review claims of prosecutorial misconduct case by case, examining the conduct in context to determine whether the defendant received a fair and impartial trial. *People v Rodriguez*, 251 Mich App 10, 29-30; 650 NW2d 96 (2002). *Id.*, 29-30. Prosecutors have a

constitutional obligation to report to the defendant and to the trial court whenever government witnesses lie under oath. *People v Lester*, 232 Mich App 262, 276; 591 NW2d 267 (1998). “Michigan courts have also recognized that the prosecutor may not knowingly use false testimony to obtain a conviction, . . . and that a prosecutor has a duty to correct false evidence.” *Id.*, 277 (citations omitted).

On the narrow facts of this case, we decline to reverse on the basis of Merrifield’s perjury. First, the only significant testimony she presented was that defendant had told her that he killed Cook, which defendant himself testified he had told Merrifield. Second, defendant’s trial attorney testified that he probably would not have cross-examined Merrifield on the matter even if he had known about the deal. But most significantly to us, the trial court, after having had the benefit of an evidentiary hearing regarding defendant’s motion for a new trial, specifically found credible the prosecution’s claim that they had no actual knowledge of Merrifield’s deal at the time of trial due to a coincidence and a paperwork mix-up. Presuming harmlessness, as we do in this case, we reiterate that perjury is unacceptable and incompatible with the prosecutor’s duty to seek justice. However, in this case we place great reliance on our deference to the trial court’s superior position to evaluate evidence and credibility.

Defendant next argues that the prosecutor committed misconduct and prejudiced him by failing to provide relevant information to the defense regarding two potential witnesses prior to trial. Defendant objected to the prosecutor’s motion to amend the witness list before trial, and the trial court agreed with defendant’s objection. The two witnesses did not actually testify. Therefore, defendant cannot have been prejudiced.

Defendant next argues that the prosecutor committed misconduct by improperly utilizing a theme that defendant was characteristically violent toward women. Because defendant did not object in the trial court, we review for plain error affecting defendant’s substantial rights. *People v McLaughlin*, 258 Mich App 635, 645; 672 NW2d 860 (2003). We will not reverse unless plain error affected the outcome of the proceedings below and that error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). “A prosecutor may comment upon and suggest reasonable inferences from the evidence.” *People v Quinn*, 194 Mich App 250, 253; 486 NW2d 139 (1992). However, the prosecutor may not comment on a defendant’s character if character is not at issue, and the prosecutor may not urge the jury to use MRE 404(b) evidence as substantive evidence of guilt. *Id.* The evidence here was not limited to violence toward women, and it was introduced for the purpose of showing why two witnesses took defendant’s threats seriously and initially refused to provide the police with their testimony. This was not an improper comment on defendant’s character, and we perceive no other plain error.

Defendant’s last assertion of prosecutorial misconduct is that the prosecutor suggested during closing argument that she had some special knowledge or belief that the jury could rely upon. Defendant did not object below, so our review is again for plain error. A prosecutor may not invoke the prestige of her office or suggest that she has some special knowledge regarding the guilt of defendant. *People v Matuszak*, 263 Mich App 42, 54; 687 NW2d 342 (2004). A prosecutor may not “express a personal belief in the guilt of the defendant.” *People v Farrar*, 36 Mich App 294, 299; 193 NW2d 363 (1971). Here, the prosecutor stated, “Was [defendant] charged right after we found the frog and the piece of weed? No. Wouldn’t do that to you. Was

he charged right after [a witness] came forward? Would we do that to you? No.” Those remarks were part of a request to the jury to look at all the evidence. The prosecutor followed up by saying, “It’s like pieces of a puzzle. And when it comes together and the puzzle starts to fall into place, whose face is the only picture you see? Your Defendant, Billy Hastings.” Viewing the remarks in context, we conclude that nothing was improper in the argument.

Defendant next argues that the trial court erred in denying his motion for a new trial on the basis of newly discovered evidence, in this case the post-verdict confession of a third party, Thomas Mowrer, to the commission of this crime. We review a trial court’s decision on a motion for new trial for an abuse of discretion, and we review the trial court’s factual findings for clear error. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). Defendant must show that the evidence itself is newly discovered, that the evidence was not cumulative, that the evidence could not by use of reasonable diligence have been obtained earlier, and that the evidence would probably produce a different result on retrial. *Id.*, 692. However, “[a] false confession (i.e., one that does not coincide with established facts) will not warrant a new trial, and it is within the trial court’s discretion to determine the credibility of the confessor.” *Id.*

We find no error in the trial court’s conclusion that Thomas Mowrer’s confession was a false confession. The trial court found Mowrer’s motive to make a false confession perplexing. Mowrer’s statement was inexplicably vague; for example, he could not even say whether the crime occurred during the winter or the summer, and he did not know precisely where it took place. Moreover, the confession contradicted established facts of the case, including the known manner of Cook’s death, manual strangulation. Mowrer failed to mention Cook’s pronounced limp and limited use of one of her arms, and he described her as having brown hair, when in fact she had blonde hair. Mowrer described a bloodstained log and a picnic table at the scene of the crime, but neither was found. Mowrer claimed to have taken the victim’s clothing, but the victim’s sock and distinctive Looney Tunes shirt were left at the scene. Mowrer claimed that he had told over 30 friends about the murder, but none of those friends have come forward. The trial court also found that, although everyone responds differently, Mowrer’s demeanor on the videotape of one of his statements was considered by several experienced police officers to be inconsistent with the emotional reaction and body language of confessions to serious crimes. We find no clear error in the trial court’s conclusion that, despite Mowrer’s apparent lack of motive to confess falsely, Mowrer’s confession was simply too inconsistent to be credible and therefore was insufficiently trustworthy.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Alton T. Davis