STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED October 24, 2017
v	No. 337822 Jackson Circuit Court
CRAIG WILLIAM ZIECINA, Defendant-Appellee.	LC No. 15-003703-FH

Before: Hoekstra, P.J., and Meter and K. F. Kelly, JJ.

PER CURIAM.

The prosecution appeals by leave granted the trial court's order granting defendant's motion to suppress statements he made to his employer, the Michigan State Police (MSP). We affirm.

This case arose out of the alleged theft of personal property during the execution of two search warrants on two residences on December 23 and 24, 2014, in Leoni Township, Michigan. The search warrants were executed by members of the Jackson Narcotics Enforcement Team and the Home Security Team (HST). Defendant was a member of the HST.

During the investigation related to the theft, defendant received the following notice:

> This correspondence is to inform you that you will be interviewed, as a principal, concerning allegations of criminal misconduct. This investigation could result in criminal and/or disciplinary action against you. Any self-incriminating statements you may make pertaining to these allegations may be used against you in both criminal and/or administrative proceedings. You have the right to legal/ association representation during the interview, and it is your responsibility to secure this representation.

Defendant provided a written statement in lieu of attending an in-person interview with the investigating officer. Defendant later asked to meet with the investigating officer. In this interview, he made statements that contradicted his previous written statement. As a result, defendant was charged with lying to a peace officer during a criminal investigation, MCL 750.479c(2)(c), and willful neglect of duty, MCL 750.478.

Defendant moved to suppress any written or oral statements he made to the investigating officer, arguing that those statements were involuntary under the Disclosures by Law Enforcement Officers Act (DLEOA), MCL 15.391 *et seq.* The trial court granted defendant's motion, finding that the language in the notice would have caused a reasonable person to feel compelled to make a statement to their employer out of the fear of repercussions. We granted the prosecution's motion for leave to appeal in this Court.

The prosecution argues that the trial court erred in determining that defendant's written statement was involuntary under the DLEOA.

" 'This Court's review of a lower court's factual findings in a suppression hearing is limited to clear error, and those findings will be affirmed unless we are left with a definite and firm conviction that a mistake was made.' " *People v Simmons*, 316 Mich App 322, 325; 894 NW2d 86 (2016), quoting *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). "The trial court's ultimate ruling on a motion to suppress is reviewed de novo." *Simmons*, 316 Mich at 325. In general, whether a statement was made voluntarily is determined by examining the totality of the circumstances surrounding the making of the statement. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). In large part, this case involves statutory interpretation, which we review de novo. *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004). "If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written." *Id.*

MCL 15.393 provides that "[a]n involuntary statement made by a law enforcement officer, and any information derived from that involuntary statement, shall not be used against the law enforcement officer in a criminal proceeding." An "involuntary statement" is defined as "information provided by a law enforcement officer, if compelled under threat of dismissal from employment or any other employment sanction, by the law enforcement agency that employs the law enforcement officer." MCL 15.391.

This Court has explained:

> In [*Garrity v New Jersey*, 385 US 493; 87 S Ct 616; 17 L Ed 2d 562 (1976)], the United States Supreme Court held that self-incriminatory statements from a law-enforcement officer procured under the threat of discharge could not be used in subsequent criminal proceedings against the declarant. Essentially, a *Garrity* hearing allows "the interviewee to answer questions with the knowledge that any statements elicited therein will not be used against him in criminal proceedings." [*People v Brown*, 279 Mich App 116, 142; 755 NW2d 664 (2008), quoting *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 115 n 2; 607 NW2d 742 (1999).]

The United States Supreme Court stated in *Garrity*, 385 US at 497, that "[t]he choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent."

In *People v Harris*, 499 Mich 332, 337; 885 NW2d 832 (2016), the issue was whether the "defendants' false statements made while serving as law enforcement officers during an internal affairs investigation can be used against them in criminal proceedings." In that case, the defendants were given documents that stated that if they refused to answer questions at the *Garrity* hearing, they would be subject to departmental charges, which could result in dismissal from the police department. *Id*. at 339. The defendants were also notified that their statements would not be used against them in any criminal proceedings. *Id*. All three defendants made false statements at the hearing. *Id*. at 340. After reviewing a video recording that contradicted the defendants' testimony, the prosecution filed charges against each defendant for obstruction of justice, MCL 750.505, "based on the allegations that the officers lied during the initial investigation." *Id*. The Michigan Supreme Court concluded that the plain language of the DLEOA indicated that the statute protected both true and false statements. *Id*. at 344-345. The Court concluded that "[t]o hold otherwise would defeat the Legislature's stated intent to preclude the use of 'any information[.]' " *Id*. at 337, quoting MCL 15.393. The Court held that the plain language of the DLEOA required the dismissal of the charges against the defendants. *Harris*, 499 Mich at 338.

> Once again, the notice provided to defendant in the present case stated:
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> > This correspondence is to inform you that you *will* be interviewed, *as a principal*, concerning allegations of criminal misconduct. This investigation could result in criminal and/or disciplinary action against you. Any self-incriminating statements you may make pertaining to these allegations may be used against you in both criminal and/or administrative proceedings. You have the right to legal/association representation during the interview, and it is your responsibility to secure this representation. [Emphasis added.]

And again, the DLEOA defines an "involuntary statement" as "information provided by a law enforcement officer, if compelled under threat of dismissal from employment *or any other employment sanction*, by the law enforcement agency that employs the law enforcement officer." MCL 15.391. (Emphasis added.)

Defendant was not asked to participate in an interview; he was told, "you will be interviewed[.][1] Even viewed objectively—looking past defendant's subjective perception of a threat to his employment—this notice, *from one's employer*,[2] would cause a reasonable person to believe that he or she must actively participate in an interview in order to avoid adverse

[1] The prosecution contends that the notice was merely "letting [d]efendant know up front that this is a criminal investigation, as opposed to an administrative investigation," and that defendant could not be compelled to speak during a criminal investigation. But the notice itself indicates that defendant was facing potential "criminal *and/or disciplinary* action." (Emphasis added.) In addition, defendant's union appointed a labor lawyer to represent him.

[2] In essence, the notice served as an employment directive.

employment consequences.[3] This is bolstered by the email from defendant's labor attorney,[4] who stated that he was recommending that defendant make a written statement. While a threat was not explicitly spelled out, it is implied from the language of the notice, and nothing in the DLEOA requires that the "threat of . . . [an] employment sanction" be explicit. We acknowledge that in cases interpreting *Garrity*, courts have rejected the use of implied threats in suppressing statements. See, e.g., *People v Coutu*, 235 Mich App 695, 701; 599 NW2d 556 (1999) (discussing *Garrity's* progeny). However, the *Harris* Court specifically noted that the DLEOA provides greater protections to law enforcement officers than those afforded under the United States Constitution. *Harris*, 499 Mich at 337-338. As also noted in *Harris*, *id*. at 358, "[t]he plain language of the DLEOA protects all statements given by officers under compulsion. This choice may seem odd, or reflective of questionable or even bad public policy, but it was the Legislature's choice to make. We are not empowered to displace what the law actually provides with a judicial preference for what we believe it should provide." The circumstances indicate that defendant's January 7, 2015, written statement was given by defendant under compulsion.[5] That defendant later attended an interview in which he was told that he did not have to answer questions is irrelevant, because the later, oral statement was a modification[6] of the January 7 compelled statement; the trial court correctly held that it, too, must be suppressed.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly

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[3] The trial court put it as follows: "[A]ny reasonable person would have felt compelled to make a statement to their employer [out of] fear of losing their job and or a criminal conviction."

[4] The prosecution contends that there is no evidence before this Court that defendant's attorney is a labor attorney, but this information is readily available in the public domain.

[5] We might have ruled differently if the notice had stated that a declination to speak, in and of itself, would not affect defendant's employment.

[6] The prosecution itself characterizes the later, oral statement as an "oral modification" of the original, written statement.