

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KARRIS WIMES,

Defendant-Appellant.

UNPUBLISHED

August 16, 1996

No. 176517

LC No. 93-014358

Before: Holbrook, Jr., P.J., and Saad and W.J. Giovan,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to serve fifteen to twenty-five years in prison for the murder conviction, consecutive to a mandatory two-year term for the felony-firearm conviction. He appeals as of right and we affirm.

Defendant's failure to object to the procedure used by the prosecutor to refresh a witness' memory precludes appellate review absent outcome determinative prejudice. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Here, the prosecutor asked an eyewitness during questioning if his police statement would refresh his recollection. The witness replied that it would, and was allowed to review his statement. We find no error in the prosecutor's method of refreshing the witness's memory under MRE 612. See *People v Harris*, 56 Mich App 517, 525; 224 NW2d 680 (1974); *Spratt v Department of Social Services*, 169 Mich App 693, 702; 426 NW2d 780 (1988).

Next, defendant's failure to object to the prosecutor's introduction of defendant's exculpatory statement limits appellate review to the extent that a substantial right of defendant's was affected. MRE 103(a)(1). Here, defendant's exculpatory statement, which indicated that on June 22, 1993, Joachim Dorris had confessed to shooting the decedent, was disproved by police testimony and records that indicated Dorris was in police custody on that date. A trier of fact may consider a defendant's false statement to the police as evidence of guilt. The statement, if believed by police, tends to lead suspicion

* Circuit judge, sitting on the Court of Appeals by assignment.

and investigation in another direction. *People v Wolford*, 189 Mich App 478, 482; 473 NW2d 767 (1991); cf. *People v Mooney*, 216 Mich App 367, 376; ___ NW2d ___ (1996). Accordingly, we find no error.

Next, defendant argues that the prosecutor improperly bolstered eyewitness Dorris' testimony by eliciting evidence regarding the negative result of his gunshot residue test. Because defendant failed to object to the admission of this evidence, our review is limited to whether a substantial right of defendant's was affected. MRE 103(a)(1). Although the admission of extrinsic evidence to bolster the credibility of a witness is generally inadmissible under MRE 608(b), we do not believe this rule stands as a bar to the admission of evidence which would contradict a material issue in the case, such as a theory proffered by the defendant. Here, the admission of the results of the gunshot residue test which indicated that Dorris did not participate in the shooting was not improper, given that the evidence was probative of an issue raised by defendant's police statement, i.e., the identity of the actual shooter. Under these circumstances, no substantial right of defendant's was implicated by the admission of this evidence.

Finally, defendant's sentence was within the guidelines and is, therefore, presumptively proportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant presented no unusual circumstances which would rebut the presumption of proportionality. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987).

Affirmed.

/s/ Henry W. Saad
/s/ Donald E. Holbrook, Jr.
/s/ William J. Giovan