

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTOINE MARIO MCKINNEY,

Defendant-Appellant.

UNPUBLISHED

August 17, 2004

No. 228530

Wayne Circuit Court

LC No. 99-010892

ON REMAND

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

PER CURIAM.

Defendant originally appealed as of right from his convictions following a bench trial of second-degree murder, MCL 750.317, assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. This Court affirmed his convictions,¹ rejecting his argument that two inculpatory statements he made while in police custody should have been suppressed at trial because he made the statements after being detained by the police, without a warrant, for more than forty-eight hours. See *People v McKinney*, 251 Mich App 205; 650 NW2d 353 (2002). The Supreme Court, agreeing in part with the dissent written by Judge Jansen, vacated our opinion and remanded the case to us based on an issue not raised by defendant either below or an appeal to this Court. See *People v McKinney*, 468 Mich 928; 663 NW2d 469 (2003). Specifically, the Supreme Court directed us to “remand this case to the Wayne Circuit Court for further fact finding regarding the issue whether defendant’s statements should have been suppressed as the product of an illegal arrest.” *Id.* The proceedings on remand having been concluded, we once again affirm.

James Fisher, an investigator with the Detroit Police Department, testified that after the body of Zawadie Walker was found around 4:00 a.m. on October 4, 1999, he interviewed a person, Richard Ward, who told him that defendant had a verbal and physical altercation with Walker the night before Walker’s body was found. The prosecutor introduced into evidence the statement given by Ward on October 4. In this statement, Ward claimed that defendant either

¹ Judge Jansen dissented and would have reversed the convictions and remanded the case for a new trial.

shot Walker or “had him shot.” Ward further stated that he had seen the fight between defendant and Walker and heard defendant say to Walker that he “would be dead.”

Fisher testified that, after interviewing Ward, he visited defendant’s home and told the person who answered the door that he wanted to speak with defendant. Defendant appeared at the police station around 9:00 p.m. on October 4 and acknowledged that he had fought with Walker the night of October 3, but he denied killing Walker or shooting the second victim, stating instead that Kareem Respress likely committed the crimes.² Fisher stated that defendant was not free to leave during this initial interview at the police station.

Fisher interviewed Respress, who denied committing the crimes. When asked if defendant was under arrest for investigative purposes at the time of the Respress interview, Fisher stated:

He was a suspect in the case. And I believe that that would be a fair statement to further the investigation [sic], and to check out the statements that he was giving us, wanting him to make consistent statements, and checking out those statements that he was giving us; the information that he gave we had to check on that information to make sure it was true or it was not true.

Fisher testified that after he confronted defendant with Respress’s denial, defendant gave the name of another suspect, who, like Respress, denied committing the crimes. Fisher stated that defendant, around 9:00 p.m. on October 5, then changed his story, stating that he and another person, BB, had approached Walker and the other victim as they sat in their vehicle and that BB had shot them. Subsequently, on October 7, defendant gave a third statement in which he admitted to committing the shootings.³

Fisher stated that he had enough information to seek a warrant against defendant from the prosecutor’s office “for accessory, i[f] nothing else,” at the time of defendant’s statement on October 5, but that he waited to seek a warrant until he obtained more information.

Defendant confirmed that he was not allowed to leave police custody from October 4 forward. He stated that the police would not let him see his family until after he was formally charged.

The trial court, in ruling that no illegal arrest occurred,⁴ emphasized, among other things, that Ward had identified defendant as the perpetrator around 6:15 p.m. on October 4. The court then stated:

² We note that this statement was not at issue in defendant’s first appeal. Instead, defendant focused on two statements he gave while in police custody on October 7, 1999.

³ It was this statement and a subsequent statement that defendant sought to suppress.

⁴ We review the trial court’s decision de novo. See *People v Garvin*, 235 Mich App 90, 102; 597 NW2d 194 (1999).

After listening to the witnesses who testified in this particular case, as far as this Court can glean, this particular defendant actually sent these particular police officers on wild goose chases. This defendant sent these police officers up blind alleys. All the alleys, all the leads in this particular case led back to defendant as the one that actually was the shooter in this [case].

I think any and all delays, if there were any, in this particular case, were attributable to the defendant himself.⁵

I think right from the get-go, within the twenty-four hour period, there was more than enough probable cause to detain and/or arrest this particular defendant while the police followed through on any of the statements that the defendant gave to the police.

So in looking at the police conduct in this [case], I do believe that the arrest was in fact proper and that there was probable cause to detain this particular defendant.

As noted in *People v MacLeod*, 254 Mich App 222, 227-228; 656 NW2d 844 (2002), “[a] custodial arrest is permitted if an arresting officer possesses enough information demonstrating probable cause to believe that an offense has occurred and that the defendant committed it.” Moreover,

[p]robable cause to arrest exists where the facts and circumstances within an officer’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. [*People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996).]

Here, there clearly was probable cause to arrest defendant by the time he made his initial statement in which he admitted having fought with the victim before the victim died. Indeed, not only had defendant, in the course of this first statement, admitted to fighting with the victim the night before his body was found, but Ward had stated that defendant either killed the victim or arranged for the killing. This information was sufficient to “warrant a man of reasonable caution in the belief that [the] offense ha[d] been . . . committed” by defendant. *Id.* While it is true that Fisher implied, during his testimony, that defendant had been arrested for investigative purposes, which is impermissible, see *Brown v Illinois*, 422 US 590, 602, 605; 95 S Ct 2254; 45 L Ed 2d 416 (1975), we note that Fisher’s testimony in this regard was not definitive. While Fisher obviously was interested in furthering the investigation, Fisher did not state with certainty that probable cause to arrest defendant was lacking at the time defendant was first retained.

⁵ We note that we are not charged with examining “delay” in this remand but instead have been instructed to determine if defendant was arrested illegally. If defendant’s initial arrest was illegal, then his statements while in custody were inadmissible, unless they were acts of free will sufficient to remove the taint of the unlawful arrest. See *Kaupp v Texas*, 538 US 626, 632; 123 S Ct 1843; 155 L Ed 2d 814 (2003).

Moreover, while Fisher stated that he did not feel comfortable with requesting a warrant from the prosecutor's office at the time of defendant's initial retention, this too does not mean that probable cause was lacking. As noted in this Court's original opinion,

. . . at a point after defendant was arrested, Fisher did not believe he had enough information to request formally a warrant. We do not believe, however, that this statement should be equated with a conclusive admission that probable cause was lacking. Indeed, Fisher may have concluded that while he did have probable cause to arrest defendant, he preferred to conduct an additional investigation before formally presenting his evidence to the magistrate. [*McKinney, supra*, 251 Mich App 213.]

We agree with the trial court that defendant's arrest was proper. Probable cause *did* exist at the time of defendant's initial retention, in light of the clear and pertinent facts. Because probable cause to arrest defendant existed, the two statements in question were not tainted by illegality and were admissible.

Affirmed.

/s/ Brian K. Zahra

/s/ Patrick M. Meter