STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL CHARLES BEBEAU,

Defendant-Appellant.

UNPUBLISHED
June 30, 1998

No. 198136
Bay Circuit Court
LC No. 95-001217 FC

Before: Griffin, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of felonious assault, MCL 750.82; MSA 28.277, one count of first-degree home invasion, MCL 750.110a(2); MSA 8.305(a)(2), and three counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to 2 to 4 years' imprisonment for the felonious assault convictions, 4 1/2 to 20 years' imprisonment for the first-degree home invasion conviction, and a mandatory 2-year term for each felony-firearm conviction. The felonious assault and home invasion sentences are to run concurrent with one another, but consecutive to the sentences for felony-firearm, which are also concurrent with one another. Defendant now appeals as of right. We affirm.

I

Defendant first claims that his due process right to a fair trial was violated because the prosecutor did not provide him with a complete police report, the results of the "rod and string" test, or pictures of the crime scene.[1] Defendant did not raise this issue before the trial court, and thus failed to preserve it for appellate review. *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995). Regardless, we note that the prosecutor's failure to provide the complete police report was not an "inexcusable obstruction to the pursuit of justice," as in *In re Bay Prosecutor*, 109 Mich App 476, 485; 311 NW2d 399 (1981), because the record shows that the prosecutor's office itself was unaware that the police report was incomplete. As for the rod and string test, the record shows that while the test was not disclosed to defendant before trial, defense counsel extensively cross-examined the police officers about the test. Finally, there is nothing to indicate that the police acted in bad faith in losing the

crime scene pictures. See *Arizona v Youngblood*, 488 US 51, 57; 109 S Ct 333; 102 L Ed 2d 281 (1988). Therefore, reversal is not warranted.

II

Next, defendant claims that the trial court abused its discretion by allowing police officers to give opinion testimony regarding the results of the rod and string test and the comparison of tire tracks. The error, if any, in allowing a state police trooper, who was not a forensics expert, to testify as to the results of the rod and string test was harmless in light of the overwhelming evidence establishing defendant's guilt. MRE 103(a); *People v Mateo*, 453 Mich 203, 207; 551 NW2d 891 (1996); *People v Travis*, 443 Mich 668, 686; 505 NW2d 563 (1993). Further, the trial court did not abuse its discretion when it allowed a police officer to testify as a lay witness under MRE 701 regarding his observations of the tire track impressions. *People v Oliver*, 170 Mich App 38, 49-50; 427 NW2d 898 (1988), mod on other grounds, 433 Mich 862 (1989).

III

Defendant also argues that the trial court abused its discretion when it required him to disclose a proposed judgment of divorce to be used in impeaching a witness pursuant to a discovery order. Contrary to the trial court's interpretation, MCR 6.201(A)(5) does not require a party to disclose documents to be used at trial for impeachment purposes, unless the document consists of a criminal record. However, in view of the overwhelming evidence establishing defendant's guilt, the error was harmless.

IV

Next, contrary to defendant's claim, the trial court properly denied defendant's motion to suppress his statement to the police because the statement was voluntarily given.

Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Garwood*, 205 Mich App 553, 555-556; 517 NW2d 843 (1994). When reviewing the trial court's findings, this Court must examine the entire record and make an independent determination on the issue of voluntariness of the confession. This Court reviews the trial court's determination for clear error, giving deference to the trial court's findings, particularly where the credibility of the witnesses is a major factor. *People v Cipriano*, 431 Mich 315, 339; 429 NW2d 781 (1988); see also *People v Cheatham*, 453 Mich 1, 29-30, 44; 551 NW2d 355 (1996). If, after such a review, this Court does not possess a definite and firm conviction that the trial court made a mistake, this Court will affirm the court's ruling. *People v Robinson*, 386 Mich 551, 557; 194 NW2d 709 (1972); *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992).

In this case, the trial court did not clearly err in finding that defendant, not Trooper Mathews, initiated the interview at the county jail on May 28, 1995, that defendant was given his *Miranda* rights

before the interview at the jail, that defendant was not offered any promise of leniency, and that defendant's statement was voluntarily given.

V

Although defendant claims that the prosecutor withheld exculpatory evidence of the crime scene photographs of the microwave oven, he failed to preserve this issue by raising the matter in the trial court. *Connor, supra*. In any event, as previously noted, there was nothing to indicate that the police acted in bad faith in losing these photographs. *Arizona v Youngblood, supra*.

VI

There is also no merit to defendant's contention that the trial court denied the jury's request to read back portions of the trial testimony. See *People v Howe*, 392 Mich 670, 675-677; 221 NW2d 350 (1974); *People v Wytcherly*, 172 Mich App 213, 218; 431 NW2d 463 (1988). A review of the record clearly shows that the trial court neither granted nor denied the request, but left it up to the jurors to decide whether they wanted to hear the testimony. In the end, the jurors themselves decided that it was not necessary to hear the testimony.

VII

Defendant's failure to object when the trial court did not give CJI2d 11.24 waives review of this issue because relief is not necessary to avoid manifest injustice. MCL 768.29; MSA 28.1052, *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995).

VIII

Defendant's sentence of 4 1/2 to 20 years' imprisonment for first-degree home invasion does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

IX

Although defendant claims that one of the witnesses violated the trial court's sequestration order, he failed to preserve the issue by not raising the matter in the trial court. *People v Coon*, 200 Mich App 244, 247; 503 NW2d 746 (1993).

X

Finally, based on the existing record, there is nothing to show that defendant was denied the effective assistance of counsel. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

Affirmed.

/s/ Richard Allen Griffin
/s/ Roman S. Gribbs
/s/ Michael J. Talbot

[1] Although defendant seeks to frame this issue in constitutional terms as a denial of his due process right to a fair trial, in *People v Taylor*, 159 Mich App 468; 406 NW2d 859 (1987), this Court persuasively rejected the equation of noncompliance with a discovery order with the unconstitutional denial of due process.