STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CELESTINO CERVANTE,

Defendant-Appellant.

UNPUBLISHED
August 4, 1998

No. 195490
Recorder's Court
LC No. 95-008280

Before: Markey, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Defendant was charged with first-degree murder for the beating death of his girlfriend, Birdell Brown. The jury convicted defendant as charged, and the trial court sentenced defendant to mandatory life in prison without parole. The trial court denied a motion for new trial filed by defendant. Defendant appeals by right his conviction of first-degree murder, MCL 750.316(1)(a); MSA 28.548(1)(a). We affirm.

I

Defendant was pulled over by a Redford Township police officer after defendant made an improper left turn at the intersection of Telegraph and Five Mile Road in Redford Township. The officer entered defendant's license information into the LEIN system, discovered that defendant's license was suspended, arrested defendant for the misdemeanor offense of driving on a suspended license, and had defendant sit unhandcuffed in the back of the police car. Following Redford Township Police Department policy, the police officer called the department to have defendant's car impounded because the car created a traffic hazard and there was no one else to whom he could release the car, and the officer proceeded to inventory the contents of defendant's car. Upon opening the trunk of the car, the arresting officer and another officer who had arrived at the scene discovered a nude body of a female with a plastic bag over her head lying face down on a blanket. An autopsy of the body revealed that the victim had abrasions on her wrists and that her death was due to multiple blunt injuries of the head. The female was subsequently identified as Birdell Brown, with whom defendant lived in his residence in Detroit. The police officers handcuffed defendant, advised him of his *Miranda* rights,

informed him that he was being arrested for suspicion of homicide, and took him to the Redford Township police station for booking. Redford Township police officers Mehall and Wilson interrogated defendant at the police station, but defendant's statement to them was suppressed prior to trial in this case because neither of the officers speak Spanish and at most have a limited understanding of the language. Defendant is a Spanish-speaking, Cuban immigrant who speaks broken English.

A search warrant was executed at defendant's residence with officers from the Detroit Police Department. The main and upper floors of the house were generally undisturbed, but police officers discovered a large pool of blood near a floor drain in the basement, with a smeared area of blood that appeared as if something had been dragged through it. The officers also discovered in the basement a partial electrical cord, other cords and wire, several pairs of gloves, and a bloody bat.

The investigation was turned over to the Detroit Police Department and defendant was taken to Detroit Police Headquarters. Officer Manuel Gutierrez, who speaks fluent Spanish, was called in to act as an interpreter during Sergeant William Petersen's interrogation of defendant. After defendant repeated his story several times to the officers, defendant declined to put his statement in writing and asked for an attorney, so the interrogation ended. Immediately after the interrogation, the officers wrote summaries of defendant's statement to them. According to the officers, defendant told them that the previous day he had taken his and the victim's two young children to a friend's house and when he returned, four black males armed with Uzi machine guns were in the living room with Birdell. Defendant told the officers that after the black men asked him for two kilos of cocaine and he denied knowing where the drugs were, one of the black men hit the victim in the head with a baseball bat. The officers testified that defendant told them that the black men then ordered him to cover the victim's head with a plastic bag, to hit her over the head even though she already appeared motionless and dead, to place her body in the trunk of the car, and to drive away. It was shortly thereafter that defendant was stopped for the traffic violation that lead to his arrest.

II

None of the issues raised by counsel or by defendant's supplemental brief merit relief.

A

First, we agree with the trial court that defense counsel "opened the door" to allow the prosecutor, on redirect, to make a limited inquiry of Sergeant Petersen as to the source of statements he attributed to defendant and which resulted in Petersen's reference to statements by Lieutenant Mehall that had been suppressed. *People v Figgures*, 451 Mich 390, 398-400; 547 NW2d 673 (1996). Defendant was not denied his right of confrontation of witnesses where defendant invited the testimony and he was afforded an opportunity to recross-examine Sgt. Petersen on this subject. See generally, *People v Frazier (After Remand)*, 446 Mich 539, 543-544; 521 NW2d 291 (1994); *People v McCurdy*, 185 Mich App 503, 507; 462 NW2d 775 (1990); *People v Whetstone*, 119 Mich App 546, 554; 326 NW2d 552 (1982); 81 Am Jur 29, Witnesses, § 803, p 656.

B

Second, because the impoundment and inventory search of defendant's automobile, including the trunk, were conducted pursuant to reasonable, standardized police department procedures, the fact and the scope of the search were valid and passed constitutional muster, and the evidence resulting therefrom was admissible. *South Dakota v Opperman,* 428 US 364; 96 S Ct 3092; 49 L Ed 2d 1000 (1976); *People v Toohey,* 438 Mich 265; 475 NW2d 16 (1991); *People v Krezen,* 427 Mich 681; 397 NW2d 803 (1986). The trial court did not clearly err in denying defendant's motion to suppress the evidence on the basis of an illegal search and seizure.

C

Third, the interim bond statute, MCL 780.581; MSA 28.872(1), did not deprive the arresting officer of the right to conduct an inventory search of defendant's automobile. *People v Chapman,* 425 Mich 245; 387 NW2d 835 (1986); *People v Poole,* 199 Mich App 261; 501 NW2d 265 (1993). There is nothing in the statute that requires that defendant be allowed to post bail at the scene. *Poole, supra* at 264. Further, under the statute, the officer had no duty to immediately inform defendant of the right to post bail, and the fact that defendant was not advised of his right to post bail or that at some point defendant may have qualified for interim bail did not preclude the execution of the inventory search of defendant's automobile. *Id.; People v Houstina,* 216 Mich App 70, 78; 549 NW2d 11 (1996); *People v Crawford,* 202 Mich App 537, 538-539; 509 NW2d 519 (1993); *People v Weston,* 161 Mich App 311, 313-315; 409 NW2d 819 (1987). There was no violation of the interim bond statute, and defendant was therefore not entitled to suppression of the evidence on this basis.

D

Fourth, defendant was not denied a fair trial by the trial court's comments to the jury to "keep your eyes open." The comments could not reasonably be construed as amounting to a finding of guilt from the bench and did not pierce the veil of judicial impartiality or unduly influence the jury against defendant, especially where the comments were made during the prosecution's examination of a witness. The comments were well within the discretion afforded to the court to control the conduct of the trial and appear to have been made to ensure that defendant was *not* denied a fair trial by non-attentive jurors. Defendant did not object to the remarks and no manifest injustice resulted therefrom. *See People v Paquette,* 214 Mich App 336, 340; 543 NW2d 342 (1995).

E

Fifth, defendant was not denied a fair trial by the trial court's fine against defense counsel for contempt. Where defense counsel repeatedly refused to obey the trial court's admonishments, even after being warned that a contempt fine would be imposed, the trial court was both authorized and justified in issuing the contempt fine. MCL 600.1701(c)(g); MSA 27A.1701(c)(g), MCL 600.1711; MSA 27A.1711, *In re Albert,* 383 Mich 722; 179 NW2d 20 (1970); *People v Ahumada,* 222 Mich App 612, 618; 564 NW2d 188 (1997).

F

Sixth, defendant was not denied discovery or a fair trial by the admission of the summaries and testimony of police officers Petersen and Gutierrez where purported rough notes by them of the interrogation of defendant were not produced. *Arizona v Youngblood*, 488 US 51, 57; 109 S Ct 333; 102 L Ed 2d 281 (1988), reh den 488 US 1051 (1989); *People v Leo*, 188 Mich App 417, 427; 470 NW2d 423 (1991). Even assuming that the rough notes did exist at one time, defendant has failed to show that the rough notes were exculpatory in nature or were inconsistent from the police officers' summaries, and defendant has failed to show bad faith on the part of the officers in destroying or failing to produce any rough notes that may have been made. Because he has made no such showing, defendant has not established that he was denied a fair trial. *Id.*

G

Seventh, defendant's claim that the prosecutor wrongfully withheld witness Flora Jean Lonberger's prior written statement is without basis. The record reflects that on his cross-examination of Lonberger, defense counsel presented her with the prior written statement signed by her, she identified it as such, and then defense counsel proceeded to impeach her with the statement.

H

Eighth, defendant was not denied a fair trial by the prosecutor's closing argument. Defendant's claim that the prosecutor in closing argument referred to suppressed evidence is without basis. However, even assuming arguendo that the prosecutor did refer to Lt. Mehall's interrogation notes, it would not have been improper for the prosecutor to comment on this evidence where the trial court had ruled that defendant had "opened the door" to admission of the evidence. We also conclude that in stating that defendant's story was "ludicrous" and lacked corroboration, the prosecutor properly commented on the lack of credibility of defendant's statements to police, did not abridge defendant's right not to testify, and did not shift the burden of proof to defendant. *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995).

I

Finally, defendant's claim that the court refused the jury's request to explain first-degree murder and second-degree murder is patently false. The record reflects that the court appropriately instructed and then re-instructed the jury regarding these offenses in response to a note from the jury, and the jury then indicated on the record that any question that it had regarding these instructions had been clarified by the trial court.

Affirmed.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Janet T. Neff