

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRENCE TAVARES WOODS,

Defendant-Appellant.

UNPUBLISHED

January 28, 2003

No. 231388

Genesee Circuit Court

LC No. 99-004411-FH

Before: White, P.J., and Kelly and R. S. Gribbs*, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree home invasion, MCL 750.110a(2), unlawfully driving away an automobile (UDAA), MCL 750.413, and receiving and concealing stolen property under \$20,000, MCL 750.535(3)(a). He was sentenced to concurrent terms of six to twenty years for the home invasion conviction and twenty-three to sixty months for the UDAA and receiving and concealing convictions. He appeals as of right, and we affirm.

In a reply brief, defendant concedes that his first issue on appeal, challenging his receiving and concealing stolen property conviction on sufficiency and double-jeopardy grounds, is moot in light of the trial court's entry of an order vacating defendant's conviction and sentence for that charge.

Defendant next argues that he is entitled to a retrial on the remaining charges because the trial court erroneously prevented defendant from exercising his constitutional right to present a defense by barring testimony regarding whether Sgt. Fray, the Flint police officer who questioned defendant and took defendant's statement, properly gave defendant his *Miranda*¹ warnings before interviewing him. We find no reversible error.

At trial, Sgt. Fray testified that when he questioned defendant about his whereabouts on April 5 and 6, 1999, defendant at first said that he was not present when the break-in took place, that the first time he saw the silver Cadillac that was stolen during the break-in was when some of his friends drove it to his home, and that he believed his friends had gotten the car in exchange

¹ *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966).

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

for drugs. According to Sgt. Fray, when he confronted defendant with evidence that defendant had been involved in the crime, defendant then changed his story and stated that he had driven his friends to the location of the break-in, that he had sat in his girlfriend's car eating while his friends broke into the home, that, after returning his girlfriend's car to her, defendant then joined his friends in the Cadillac, and that sometime later his friends drove him home in the Cadillac. Sgt. Fray further testified that during this interview defendant never suggested that he thought his friends were at the scene of the break-in for any reason other than to commit a crime, and that defendant never indicated that he tried to leave the scene of the crime when he realized what was taking place.

Defendant, in contrast, testified that, although he dropped off his friends at the scene of the break-in, he believed at the time that it was the home of someone his friends knew and that they had asked him to drop them off there to smoke some marijuana. Defendant further testified that he waited in his girlfriend's car while his friends went into the home, that when he realized that his friends were committing a crime he left immediately, and that he believed the silver Cadillac that his friends later showed up in had been obtained by his friends in exchange for drugs. Defendant testified that while at first he had lied to Sgt. Fray, when further confronted by Sgt. Fray, he told him the same version of the events he had just testified to at trial.

At trial, defendant sought to question Sgt. Fray regarding whether he had used a *Miranda* rights form and, if not, why not, and also sought to testify that Sgt. Fray had not given him his *Miranda* warnings before beginning to question him. Defendant wished to use this proposed evidence to collaterally attack Sgt. Fray's credibility as a witness, and to bolster defendant's own credibility by explaining why defendant initially lied to Sgt. Fray. Defendant sought to show that he first gave a false version of events to Fray because he did not take the interview situation seriously because he had not been given his *Miranda* rights, and that he did not realize how serious the situation was until he had already given the initial false version of events and been confronted by Fray regarding his lies. According to defendant, it was only when Fray confronted him with the information the police had regarding the break-in that he realized the gravity of the situation and thus gave a truthful version of what happened. The trial court barred defendant from introducing this evidence.

While the record is not entirely clear on this point, the trial court appears to have reasoned that defendant was attempting to challenge the validity or voluntariness of his statement, which he should have done pretrial by way of a motion presented to the court. However, defendant was not seeking to revisit the question of the validity or voluntariness of his confession. As noted, he was seeking to explain why he first lied to Fray.

Nevertheless, we conclude that reversal is not required. The trial court's ruling barring testimony regarding whether Sgt. Fray gave defendant his *Miranda* warnings did not prevent defendant from presenting a defense. While defendant was barred from introducing testimony regarding the specific question whether Sgt. Fray gave defendant *Miranda* warnings before questioning him, defendant was nonetheless permitted to introduce, and did introduce, substantial testimony regarding the circumstances under which defendant gave his statements to Sgt. Fray, as well as evidence pertaining to the question of credibility. Defendant was permitted to testify that he was untruthful with Sgt. Fray at first because he did not believe Sgt. Fray was serious. Defendant was also allowed to testify that his real statement to Sgt. Fray, i.e., his second one, matched his own testimony at trial, and not that to which Sgt. Fray testified, thus suggesting

that Sgt. Fray had embellished or made up the statement about which he testified at trial. Defendant was further permitted to testify that Sgt. Fray had never given him an opportunity to review his statement or the handwritten notes that Sgt. Fray took during the interview. In addition, defendant was permitted to question Sgt. Fray regarding his failure to tape record or video tape the interview, as well as to question Sgt. Fray regarding why defendant was never given a typed copy of his statement to read and sign. Defendant was also permitted to introduce evidence to the jury regarding a specific instance where Sgt. Fray made an error in the handwritten notes that constituted the only record of defendant's statement, thus calling into question the accuracy of Sgt. Fray's version of defendant's statement.

Viewing the evidence on the record as a whole, the trial court's refusal to allow defendant to introduce testimony regarding whether Sgt. Fray properly gave him *Miranda* warnings before questioning him did not constitute a blanket exclusion by the court of all evidence surrounding the circumstances of defendant's statement such as would have deprived defendant of a fair trial. Given the testimony that was admitted, it is unlikely that the exclusion of testimony regarding the *Miranda* warnings affected the outcome of the trial. Thus, defendant is not entitled to a new trial.

Defendant's final argument is that he is entitled to resentencing because the trial court misscored PRV 7, concerning subsequent or concurrent convictions. Because the scoring error did not affect the resulting guidelines range, we decline to remand for resentencing.

Affirmed.

/s/ Helene N. White
/s/ Kirsten Frank Kelly
/s/ Roman S. Gribbs