STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SANTIAGO PEREZ,

Defendant-Appellant.

UNPUBLISHED
July 29, 2004

No. 247309
Shiawassee Circuit Court
LC No. 02-008337-FC

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment for the first-degree murder conviction and to a two-year consecutive prison term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by denying his motion to suppress his confession because the confession was the fruit of an illegal arrest not supported by probable cause. We disagree.

Following an evidentiary hearing, the trial court denied the motion, finding that the arresting officer acted reasonably under the circumstances. In making its determination, the trial court noted that: (1) the officer's traffic stop was lawful; (2) the first LEIN check revealed that defendant was a missing/endangered person last seen with a homicide subject, which could have different interpretations; (3) defendant was initially able to provide basic information to the officer in English, however, after the officer inquired about the LEIN information, the atmosphere changed and defendant began speaking Spanish; and, (4) the second LEIN check revealed that defendant was now a homicide suspect. The trial court noted that the officer, armed with the above information, was reasonable in detaining defendant until further information could be obtained and clarified, and that the officer had probable cause to arrest defendant upon confirmation of the information.

A trial court's findings of fact regarding a motion to suppress evidence are reviewed for clear error. *People v Williams*, 240 Mich App 316, 319; 614 NW2d 647 (2000), citing *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). However, the trial court's ultimate decision regarding a motion to suppress is reviewed de novo. *Williams*, *supra* at 319.

An officer may arrest an individual without a warrant "if a felony has been committed and the officer has probable cause to believe that the individual committed the felony." *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998); see also MCL 764.15(1)(c). Probable cause will be found when the facts and circumstances within an officer's knowledge are sufficient to warrant a reasonable person to believe that an offense had been or is being committed. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). An officer is entitled to rely on information obtained from a LEIN check as a basis for making an arrest. *People v Freeman*, 240 Mich App 235, 236-237; 612 NW2d 824 (2000).

Here, the arresting officer properly relied on the information obtained from the LEIN check as a basis for making the arrest. *Freeman, supra* at 236-237. Further, defendant's sudden change of language from English to Spanish after being questioned regarding being an endangered/missing person created a great deal of suspicion. The above facts and circumstances were within the arresting officer's knowledge at the time of defendant's arrest and were sufficient to warrant a reasonable person to believe that an offense had been or was being committed. *Champion, supra* at 115. The arresting officer had probable cause to arrest defendant and the trial court did not err in admitting defendant's confession.

Defendant next argues that he was denied the right to a fair trial by the trial court's admission of hearsay testimony by Donaciano Alcala and Juan Pablo Alcantar-Cervantes. Alcala testified that defendant specifically stated that defendant killed Carlos Martinez. Additionally, Alcala testified that he overheard a conversation between defendant and Rafael in which defendant and Rafael talked about shooting Martinez. Defendant asserts that the latter testimony was inadmissible hearsay because the testimony involved statements made by Rafael. We disagree. The statements made by Rafael during a conversation with defendant discussing their involvement in the crime were admissible against defendant as admissions by a party under MRE 801(d)(2)(b) (a statement of which the party has manifested an adoption or belief in its truth). Similarly, defendant's statements made during the same conversation were admissible as admissions by a party under MRE 801(d)(2)(a) (the party's own statement).

Defendant raises the same hearsay argument with regard to Juan Pablo's unobjected-to testimony regarding statements made by Rafael. However, a review of the transcript reveals that defendant's argument is misplaced. Juan Pablo testified that defendant stated that "they" had committed a crime, but Juan Pablo specifically testified that Rafael did not "talk about what they had done." Contrary to defendant's assertion, Juan Pablo did not offer testimony with regard to statements made by Rafael. Defendant has failed to establish plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra