

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY EDWARD SEXTON,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 177061

Oakland Circuit Court

LC No. 93-129374

Before: Fitzgerald, P.J., and Holbrook, Jr., and E. R. Post,* JJ.

PER CURIAM.

Pursuant to an agreement, defendant pleaded guilty to second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The plea was conditional in that it preserved for appellate review the trial court's denial of defendant's motion to suppress statements he gave to the police. Defendant was sentenced to twenty to forty years' imprisonment for the second-degree murder conviction and to two years' consecutive imprisonment for the felony-firearm conviction. He appeals as of right. We reverse and remand.

On the authority of *People v Bender*, 452 Mich 594; ___ NW2d ___ (1996), the April 26, 1994 opinion and order of the trial court, which denied defendant's motion to suppress, must be reversed. The record establishes that the police failed to inform defendant that a retained attorney was available to consult with him at approximately 5:30 p.m. The failure to so advise defendant per se precludes a knowing and intelligent waiver of his rights to remain silent and to counsel. *Id.* The statements by defendant which were taken after 5:30 p.m. (when retained counsel first notified the police that he represented defendant and wished to contact him) shall be suppressed.

The trial court's order denying suppression of defendant's statements taken after 5:30 p.m. is reversed and the matter is remanded for further proceedings on the charges against

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

defendant utilizing only the pre-5:30 p.m. statements by defendant. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Donald E. Holbrook, Jr.

/s/ Edward R. Post