STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AMIR OWENS,

Defendant-Appellant.

UNPUBLISHED
March 24, 1998

No. 197249
Recorder's Court
LC No. 95-012218

Before: Doctoroff, P.J., and Reilly and Allen*, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of compounding or concealing a felony, MCL 750.149; MSA 28.346, and was sentenced to three years' probation and ordered to serve some jail time. He appeals as of right. We affirm.

Defendant was an employee of a Rite Aid when two masked gunmen robbed the store of more than $9,000. One of the gunmen was defendant's brother, Hakim Owens. Defendant admitted that he accepted $1,000 from Hakim for not revealing Hakim's participation in the crime to the police. Defendant was originally charged with being an accessory after the fact. At the end of the bench trial, the prosecution asked the trial court to instruct itself on the cognate lesser offense of compounding or concealing a felony. The trial court did so and convicted defendant of the lesser offense.

Defendant first argues that he was not given adequate notice that he would be charged with compounding or concealing as a cognate lesser offense. We disagree. Defendant was given adequate notice of the charge when his attorney was informed before the beginning of trial that the prosecutor would seek an instruction on the cognate lesser offense of compounding or concealing a felony. From this notice, defendant was able to fashion a defense that would anticipate the claim that he agreed, either expressly or impliedly, to conceal his brother's robbery in exchange for money. Defendant only presented his own testimony in his case. He did not ask for a continuance. The trial was quite brief. In this context, the notice on the day of trial was adequate notice to enable defendant to marshal his

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

defense against the allegation that he committed the lesser offense. See *People v Adams*, 202 Mich App 385, 387; 509 NW2d 530 (1993).

Defendant next argues that the evidence was inadequate to allow the trial court to instruct on the crime of compounding or concealing a felony or to convict him of it. Defendant ignores the fact that this crime does not require that defendant *actually* committed some act to conceal the crime by not prosecuting or giving evidence, but only that defendant *agreed* to do so in exchange for money. The only case in Michigan that has cited this statute, *People v Vincent*, 94 Mich App 626, 633, n 5; 288 NW2d 670 (1980), recognized this very point:

> It is apparent that Michigan, unlike the Federal jurisdiction, considers the acceptance of money or some other thing of value to be an important aspect of a defendant's culpability in concealing his knowledge of a felony. Indeed, this statute would appear to indicate that actually concealing the felony is of less importance than agreeing or promising to do so for value.

Defendant's own statement provided strong evidence that he agreed to conceal the crime in exchange for money when he knew his brother committed the robbery: "I really just got paid to shut my mouth. I received about a thousand dollars." As a consequence, there was an adequate basis on which to give this instruction and convict defendant of the crime.

Finally, defendant argues that his statement was improperly admitted at trial because it was the product of an illegal arrest where there was no probable cause for the police to arrest him before he was interrogated.[1] The prosecution did not dispute at trial that defendant was arrested when he was picked up and taken to police headquarters before he gave his statement. The question is whether there was probable cause to arrest defendant based on the information that the police had at the time of arrest. See *People v Richardson*, 204 Mich App 71, 79; 514 NW2d 503 (1994). The only facts the police had at that time was an anonymous call that defendant's brother and another man committed the robbery and that defendant was a participant as the "inside man." The officer who prepared the arrest warrant testified that there was no other evidence against defendant other than his own statement he later gave to the police. The anonymous tip, however, had been verified insofar as it identified defendant's brother as one of the gunmen because Hakim admitted that he committed the crime when he was interrogated. Defendant was arrested only after Hakim gave his statement. Moreover, the fact that Hakim Owens robbed the store *while defendant was working there* also corroborates the tip because it is likely that a person would commit armed robbery at a store at which his brother is working only after conferring with him about the crime. Consequently, under the circumstances of this case, the trial court did not clearly err in finding that this corroborated tip was adequate to establish probable cause on which to arrest defendant. See *People v Walker*, 401 Mich 572, 579-580; 259 NW2d 1 (1977).

The trial court also properly concluded that the statement was voluntarily given because defendant made the statement after he had been informed of his rights under *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). Defendant was a high school graduate who had taken some classes at a community college. Defendant knew of his rights, wrote the majority of the

incriminating statement in his own handwriting, initialed the other statements, and did not ask for an attorney. There was no evidence of coercion. The only factor that weighed against the confession's voluntariness was the prearraignment delay of more than sixteen hours from his arrest in the evening of one day until he gave his statement after 4:00 p.m. on the next. The questioning, however, lasted only approximately one hour over the entire period and defendant was informed of his rights both times before he was questioned. In the context of the different relevant factors, we believe, after an independent examination of the record, that the trial court did not clearly err in concluding that the statement was given voluntarily and in refusing to suppress the statement. See *People v Cipriano*, 431 Mich 315, 334, 339; 429 NW2d 781 (1988).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Maureen Pulte Reilly
/s/ Glenn S. Allen, Jr.

[1] Defendant asked for a *Walker* hearing in seeking to suppress the statement. See *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965). However, after the *Walker* hearing, defendant only asked the trial court to suppress the statement because it was not voluntarily given, but did not argue that the statement was made as a product of an illegal arrest. Nevertheless, this Court will consider the argument because it involves a constitutional issue and could be decisive to the outcome of the case. See *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994). Moreover, the trial court reached a decision on the point even though it was not argued.