

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BONNIE CALVIN WILLIAMS, JR.,

Defendant-Appellant.

UNPUBLISHED

May 2, 2006

No. 259440

Oakland Circuit Court

LC No. 04-196413-FH

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of breaking and entering a building with intent to commit larceny, MCL 750.110. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction arises from an incident on April 22, 2004, in which he was discovered by a night security guard inside the Lear Corporation's Waterview Street building. Although defendant claimed to be "Michael Johnson," an employee of Lear, the security guard was suspicious and called the police after defendant left the building. A sheriff's deputy followed defendant's car to a gas station where defendant stopped, and spoke to defendant after defendant exited his vehicle. Again, defendant claimed to be a Lear employee but could not produce any identification confirming it. Defendant claimed he left his ID in his locker at Lear Corporation. For that reason, the deputy asked defendant to accompany him in the squad car to verify defendant's employment and identification. Defendant did so without objection.

The deputy and defendant arrived at Lear Corporation approximately 45 minutes after the security guard found defendant in the building. The guard identified defendant as being the person he saw inside the building earlier. The deputy tried the keys that defendant claimed were issued by Lear to him for the exterior and interior doors of the building. The keys worked only on the interior office doors. Not only did they not open the outside locks, the deputy observed that the lock on the southeast door had been tampered with. This was the door that the security guard observed defendant exit from after being confronted by the guard.

At this point, defendant told the deputy that he did not work at the Waterview Street building, but rather that he worked at the Research Building. Defendant stated that his locker,

which contained his identification, was in the Research Building. The deputy then drove defendant to the Research Building, approximately an eighth of a mile away.

At the Research Building, the locker number defendant gave the deputy did not exist and the plant manager stated that defendant was not the Michael Johnson who worked at that facility. The deputy then transported defendant back to the police sub-station for further questioning. On the way, defendant admitted that his real name was Deon Carthane and that he had provided a false name because of outstanding warrants for his arrest. Thereafter, the deputy confirmed the warrants and placed defendant under arrest.

Following the preliminary examination, defense counsel filed a pretrial motion entitled “Motion for Evidentiary Hearing to Suppress Evidence,” arguing that defendant was illegally arrested and searched. At the hearing, defense counsel characterized the motion as a “Motion to Suppress or, in the alternative, . . . an Evidentiary Hearing.” Defense counsel cited the police officers’ testimony at the preliminary examination and claimed that they did not have probable cause to believe defendant committed a crime. Consequently, defense counsel argued it was illegal to put defendant in the back of the squad car and then drive him around while investigating whether a crime was committed. Therefore, defense counsel asserted that all the evidence subsequently discovered should be suppressed.

After reviewing the preliminary examination transcript, the trial court denied defendant’s motion, reasoning that defendant voluntarily entered the police car. Additionally, the court noted that defendant was driving without a license; therefore, there was a valid arrest and no reason to challenge the arrest.

Defendant argues on appeal that the trial court erred in denying his motion for an evidentiary hearing and, instead, relying on the preliminary examination testimony.

A trial court’s decision whether to hold an evidentiary hearing is reviewed for an abuse of discretion. *People v Mischley*, 164 Mich App 478, 482; 417 NW2d 537 (1987). An abuse of discretion occurs when a result is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but the defiance of it. *People v Meshell*, 265 Mich App 616, 634; 696 NW2d 754 (2005).

A court deciding a suppression motion must ordinarily convene its own evidentiary hearing to decide the matter. *People v Talley*, 410 Mich 378; 301 NW2d 809 (1981), overruled in part by *People v Kaufman*, 457 Mich 266; 577 NW2d 466 (1998). However, the lawyers may agree to have a suppression motion decided on the basis of the preliminary examination transcripts. *Kaufman, supra* at 276; MCR 6.110(D). In *Kaufman*, our Supreme Court ruled that the agreement can be implied, noting that defense counsel in that case had invited the trial court to “skim” the preliminary examination transcript, and that both the defense and the prosecution based their arguments on the testimony found in the transcript of the preliminary examination. *Kaufman, supra*, 270. Further, MCR 6.110(D) authorizes the trial court to admit or exclude evidence on the basis of any “prior evidentiary hearing.”

In the instant case, the parties impliedly agreed to have the suppression motion decided on the basis of the preliminary examination. Both defense counsel and the prosecution based

their remarks on the testimony at the preliminary examination. Defense counsel, by requesting the trial court to suppress the evidence or, in the alternative, convene an evidentiary hearing, signaled defendant's willingness to accept a decision from the existing record of the preliminary examination. *Kaufman, supra*. Moreover, neither the defense nor the prosecution objected to the court's reliance on the preliminary examination testimony in deciding defendant's motion. The trial court also acted in accord with MCR 6.110(D) in deciding the motion based on the testimony received at the preliminary examination. The trial court did not abuse its discretion in denying defendant's request for a separate evidentiary hearing.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot