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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SAMUEL LEE GORE, Defendant and Appellant.	E036028 (Super.Ct.No. FWV025432) OPINION

APPEAL from the Superior Court of San Bernardino County. Gus Skropos, Judge. Affirmed.

Lynelle K. Hee, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, and Scott C. Taylor, Supervising Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Samuel Lee Gore of one count of premeditated murder. (Pen. Code, § 187, subd. (a).)[1] The court sentenced defendant to 25 years to life. On appeal, defendant contends that the trial court erred by denying his motion to suppress evidence of a taped confession to the police and physical evidence. (§ 1538.5.) We affirm.

FACTUAL BACKGROUND

Prior to the trial date, defendant filed a motion to suppress all evidence obtained as a result of an allegedly illegal detention, which he claimed occurred when he was transported from the La Villa Motel to the police station. The following evidence was presented at the motion to suppress hearing:

On June 2, 2002, at about 6:42 a.m., the Fontana Police Department received a phone call from a jogger who found a female body in a drainage ditch. Detective Raymond Schneiders responded to the call. The victim had suffered a blunt force trauma to her skull. The victim had no identification and her description was distributed to other local police departments.

Later that morning, the San Bernardino County Sheriff's Department received a call from the motel manager. He reported a Jeep parked in the motel parking lot that did not belong to any of the motel guests. The keys were in the ignition, and a cell phone and a purse were inside the car. The police discovered that defendant was the registered

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[1] All further statutory references will be to the Penal Code.

owner of the Jeep. Reserve Deputy Sheriff James Tevelde went to defendant's residence to determine whether the Jeep had been stolen. Defendant told him that he and his wife had had an argument the night before and that she had left in the Jeep about midnight. Officer Tevelde gave defendant the motel address and left.

A couple hours later, defendant called the police and requested them to go to the motel because he discovered blood in the Jeep. Officer Tevelde responded to the call. When he arrived, he saw defendant and his friend standing by the Jeep. Because of the blood, Officer Tevelde asked defendant and his friend to move away from the Jeep so that he could contain it as a potential crime scene. No one was permitted to go near the Jeep.

Detective Schneiders was notified by the Sheriff's Department that defendant had reported his wife missing, that her physical description matched that of the victim, and that a Jeep with blood inside it was located at a motel located approximately two miles from where the victim's body was found. Detective Schneiders went to the motel, approached defendant, and told him he was investigating a crime that involved a female victim and was trying to determine whether the victim was defendant's missing wife. Detective Schneiders testified that he *asked* defendant and his friend to go to the police station because he wanted to talk to defendant and show him some photographs of the victim, and that defendant agreed to go. Defendant**,** on the other hand, testified that he was *told* he was going to be taken to the police station to get some information about his wife, and that he did not wish to go. Detective Schneiders arranged for them to get a ride

to the police station because defendant appeared distraught; Detective Schneiders did not think it would be safe for him to drive a motorcycle to the station.

Officer Michael Senior transported defendant to the police station. (Defendant's friend was transported there later.) Defendant was not handcuffed or placed under arrest before being transported, and he rode in the front seat of the patrol car. When they arrived at the station, Officer Senior escorted defendant into an interview room. Civilians were not allowed to wander around the station without someone with them, so Officer Senior stayed with defendant until Detective Schneiders arrived.

Detective Schneiders arrived and took defendant to an interview room that was equipped with a video camera so that he could tape the interview. Defendant remained unrestrained during the interview. Defendant gave Detective Schneiders some background information about him and his wife and voluntarily told him that they had had an argument the night before she disappeared. Detective Schneiders showed defendant some photographs of the victim, and defendant identified her as his wife.

At some point, Detective Schneiders asked defendant to take a polygraph test. Defendant refused and said he wanted to speak with an attorney. Detective Schneiders left the room to obtain a *Miranda* waiver form.[2] He also reviewed the evidence that had been obtained to that point, including information that two witnesses saw a man who matched defendant's description exit the Jeep and walk out of the motel parking lot,

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

about 4:00 a.m. Detective Schneiders determined that he had probable cause to arrest defendant, handcuffed him and placed him under arrest, and read him his *Miranda* rights. Defendant refused to sign the *Miranda* waiver form.

Defendant later inquired about the polygraph exam, saying that he wanted to cooperate with the investigation. Detective Schneiders took defendant back to the interview room and advised him of his *Miranda* rights a second time. Defendant signed the *Miranda* waiver form.

Defendant failed the polygraph exam. After he was advised that he failed, defendant stated that he had nothing else to say. Detective Schneiders placed him in a holding cell. Later, defendant asked to speak to Detective Schneiders. Defendant said to Detective Schneiders**,** "What if I had a rock and I thrown [*sic*] it and accidentally hit and killed Janet [his wife]?" Detective Schneiders then walked defendant back into the interview room to discuss the events leading to his wife's death. Defendant gave a detailed story about how he had killed his wife.[3] Defendant agreed to accompany the

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[3] The videotape of the interview was played for the jury during the actual trial. Defendant told Schneiders that he was upset while he was talking to his wife. Defendant picked up a 25-pound rock that he had previously dug up in the back yard and threw it out the back door. Defendant's wife "stepped in front of it" and it hit her on the right side of her head. She instantly dropped to the ground and stopped breathing. Defendant then wrapped his wife's body in a sheet and a pillowcase, put it in the Jeep with a pillow, and drove around. He eventually stopped the Jeep, opened the door, and his wife's body fell out and rolled into the drainage ditch where it was eventually found. Defendant drove off, saw a dumpster, and put the sheet, pillow, and pillowcase in the dumpster. He then drove to the motel, left the keys in the Jeep, and ran home.

police to retrace his steps and show them where he had placed certain pieces of evidence.[4]

The Court's Ruling

The court found that there was no detention at the motel. The court found that the police were conducting an investigation of a potential crime, and that they were being prudent by securing a potential crime scene and asking people to stay away from the Jeep. Furthermore, the court did not find that the police detained defendant when it asked him to go to the police station and to be transported in a patrol car. Rather, the police were simply trying to gather information to discover the identity of a victim (Jane Doe). The court stated that it reviewed all of the videotapes from defendant's interviews and noted that defendant appeared to be participating voluntarily. In view of the totality of the circumstances, the court denied defendant's motion to suppress.

ANALYSIS

The Trial Court Properly Denied Defendant's Motion to Suppress

Defendant argues that he was illegally detained when the police transported him to the police station to get some information from him and show him some photographs. He then argues that all of the fruits of the alleged detention, including his videotaped

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[4] At trial, a police officer testified that defendant led the police to the dumpster where he had discarded the sheet, pillow, and pillowcase. The police recovered those items from the dumpster.

statements to the police, the evidence obtained from the evidence-gathering trip, and the evidence gathered as a result of a search warrant, should have been suppressed.[5]

A. Standard of Review

"'[In] ruling on a motion under section 1538.5 the superior court sits as a finder of fact with the power to judge credibility, resolve conflicts, weigh evidence, and draw inferences, and hence . . . on review of its ruling by appeal or writ all presumptions are drawn in favor of the factual determinations of the superior court and the appellate court must uphold the superior court's express or implied findings if they are supported by substantial evidence. [Citation.]" (*People v. Profit* (1986) 183 Cal.App.3d 849, 862 (*Profit*).) The trial court's "determination of the applicable rule of law is scrutinized under the standard of independent review. [Citation.] We independently assess as a question of law whether, under such facts as found by the trial court, the challenged action by the police was constitutional. [Citation.]" (*People v. Coulombe* (2000) 86 Cal.App.4th 52, 55-56 (*Coulombe*).)

B. Defendant Was Not Unlawfully Detained

"A person is detained for purposes of the Fourth Amendment only if 'in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.' [Citations.] '"Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen[,]

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[5] The police apparently recovered two tower computers and a laptop computer from defendant's home, pursuant to a search warrant.

may we conclude that a ‘seizure’ has occurred.”’ [Citation.]” (*Coulombe*, *supra*, 86 Cal.App.4th at p. 57, fn. 3.) The test is objective, and the officer’s and defendant’s subjective state of mind about when the detention began do not matter. (*People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227.) “Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. [Citations.] In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.” (*United States v. Mendenhall* (1980) 446 U.S. 544, 554-555 (*Mendenhall*).)

The Fourth Amendment does not proscribe a consensual encounter or voluntary cooperation with the police. “The basic premise behind ‘consensual encounters’ is that a citizen may consent voluntarily to official intrusions upon interests protected by the Constitution.” (*People v. Franklin* (1987) 192 Cal.App.3d 935, 942.) When an officer *asks* a person to do something, “[s]uch a request, an *asking*, reasonably cannot be construed as a show of authority sufficient to transform the encounter into a detention. [Citation.]” (*Id*. at p. 942, italics in original.) Furthermore, “[t]he Fourth Amendment does not prevent a person from agreeing to accompany officers to the police station and remain there for interrogation. [Citations.]” (*Ford v. Superior Court* (2001) 91 Cal.App.4th 112, 125.)

1. Defendant Was Not Detained When He Was Asked to Move Away From the Jeep

Defendant initially asserts that he and his friend were detained when they were told to move away from the Jeep and stand in front of motel room number five. We disagree.

Officer Tevelde asked defendant and Heftman to move away from the Jeep so that he could contain it as a potential crime scene, since there was blood in the Jeep. At that point, Officer Tevelde did not suspect that defendant was involved in any criminal activity. Although defendant contends that the police exercised control over him by *telling* him to move away from the Jeep and stand in front of the motel room, both Officer Tevelde and Heftman testified that Tevelde *asked* defendant and Heftman to move away from the Jeep. Moreover, *no one* was permitted to go near the Jeep. Thus, defendant was not treated any differently than anyone else who attempted to go near the Jeep. In addition, the evidence showed that defendant was free to walk around the motel or stand by his motorcycle. As found by the trial court, the police were conducting an investigation of a potential crime and were securing a potential crime scene by asking people to stay away from the Jeep. In containing the scene, the police were simply following normal investigatory practices. Thus, defendant was not detained.

2. Defendant Was Not Detained When He Was Transported to the Police Station

Defendant's main contention is that he was illegally detained when he was transported from the motel to the police station. Detective Schneiders testified that he asked defendant to go to the police station because he wanted to gather information about

defendant's missing wife and he wanted to show defendant some photographs of Jane Doe. Detective Schneiders testified that defendant agreed to go to the police station. This testimony is substantial evidence that the trip to the station was consensual supporting the trial court's conclusion that defendant was not illegally detained.

Defendant points out that the trial court never found that the detention was consensual. Although the court never made the actual finding that defendant consented to being transported to the police station, such finding can be inferred from the court's specific findings—it need not be expressly made. The trial court found that the police did not detain defendant when it asked him to go to the police station and to be transported in a patrol car, but found that the police were simply trying to gather information to discover the identity of a victim.

Defendant testified that he did not wish to go to the station and now argues that Detective Schneiders *told* him that to go to the police station, that he went against his will, that the police took his driver's license from him so that he was dependent on the police to transport him back to the motel to get his motorcycle, and that he was never told that he was free to leave at any time. The trial court believed the officers' testimony, rather than defendant's testimony, that defendant agreed to go to the station and that the police did not take his license. Because the officer's testimony was substantial evidence that defendant voluntarily cooperated with the police, we must accept the court's credibility determination.

Moreover, in light of the circumstances that defendant had reported to the police that his wife was missing, that her abandoned Jeep was found at the motel with blood in

it, that Jane Doe's body had just been found near the motel that morning, and that defendant's wife's description matched that of Jane Doe, it was reasonable to infer that defendant voluntarily cooperated with the police. Furthermore, Detective Schneiders considered defendant a witness at that time, not a suspect, and arranged for defendant to get a ride to the police station because defendant appeared distraught. These subjective thoughts support the inference that the deputy did not give the objective impression that defendant was under arrest. Defendant was not restrained by any physical force or show of authority when taken to the police station. He was never handcuffed, and he rode in the front seat of the patrol car. This evidence was undisputed. Moreover, there was no evidence to indicate that defendant was unlawfully detained, such as "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." (*Mendenhall*, *supra*, 446 U.S. at pp. 554-555.)

Defendant additionally argues that the transportation to the police station was required to be justified by probable cause. Defendant asserts that "it is only in a rare case where, absent probable cause for arrest, the removal of a suspect to a police station for further investigation is constitutionally permissible." (*People v. Courtney* (1970) 11 Cal.App.3d 1185, 1192 (*Courtney*).) However, his reliance on *Courtney* and *Davis v. Mississippi* (1969) 394 U.S. 721 (*Davis*), is misplaced, because both cases dealt with *nonconsensual* detentions of *suspects* , not a *consensual* trip to a police station by a *witness*, as in this case. (See *id*. at pp. 722, 726-727, 729; *Courtney* at pp. 1188-1189.).)

Defendant similarly relies upon *Dunaway v. New York* (1979) 442 U.S. 200 (*Dunaway*), *Hayes v. Florida* (1985) 470 U.S. 811 (*Hayes*), and *People v. Farley* (1979) 90 Cal.App.3d 851 (*Farley*) to support his assertion that "[a]bsent consent, transportation of a suspect to another location, for purposes of fingerprinting [Citations] or questioning [Citation] or identification [Citation] must be supported by probable cause to arrest. However, again, defendant was not a suspect, and he was not brought to the police station to be fingerprinted, interrogated, or identified. These cases are distinguishable from the instant case for the same reasons that *Davis* is distinguishable and inapplicable.

Defendant further asserts that the police "made no attempt to employ less intrusive alternatives to transportation." Defendant avers that the police should have brought the photographs to the motel, instead of transporting him to the station to view the photographs. Defendant has cited no valid authority that the police were required to do so in this case. Defendant relies upon *People v. Harris* (1975) 15 Cal.3d 384 (*Harris*) to support this contention. *Harris* is factually distinguishable. In *Harris*, the defendant was a burglary suspect. The court found that the defendant was unlawfully detained when he was searched, handcuffed, placed in the back of a police car, and transported back to victim's residence for possible identification by the victims, prior to being arrested. (*Id*. at p. 387, 389-392.) In the instant case, defendant was not a suspect, was not searched, and was not handcuffed before transporting him to the police station. Nothing in *Harris* would require the police in the instant case to seek alternatives to transporting defendant to the police station to help identify a victim in photographs.

Thus, defendant was not detained when he was transported to the police station.

3. Defendant Was Not Detained At the Police Station

Finally, defendant asserts that a reasonable person would not have felt free to leave the police station. However, there was no evidence that defendant was detained there before his actual arrest. Once defendant arrived at the station, Officer Senior escorted him to an unlocked interview room. Officer Senior stayed with defendant until Detective Schneiders arrived simply because civilians were not allowed to wander around the station unaccompanied. Officer Senior did not physically or verbally restrain defendant in any way at the station.

D. Conclusion

Drawing all presumptions in favor of the trial court's factual determinations, as we must, we find that defendant was not illegally detained. Therefore, the trial court properly denied defendant's motion to suppress.

DISPOSITION

The judgment is affirmed.

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/s/ Ward
J.

We concur:

/s/ Ramirez
P. J.

/s/ Gaut
J.