

consulting with counsel, or make it impossible for her to consult with counsel.

12. Kimes's right to be present was not violated by her absence when attorney questioned her mental competency

[14] At a bench conference held in Kimes's absence, her attorney informed [***24] the trial court that he believed Kimes should not testify because he felt she was mentally incompetent and becoming "irrational and delusional." The attorney requested a CPL 730.30 competency hearing. The court refused, stating that there was no basis for such hearing because Kimes was [**31] "clearly competent aware and attentive." The court then informed Kimes's attorney who attempted to argue further: "You have to put that on the record so [defendant] hears it." The issue of Kimes's competency was not pursued again, and Kimes did not testify.

On appeal, Kimes asserts that the exclusion violated her rights to be present at trial. She further asserts that her absence from this brief exchange between the judge and her defense attorney was tantamount to her exclusion from a critical moment in the proceedings that "involved factual matters about which [she] might have peculiar knowledge." We disagree.

HN25As a general matter, a defendant has a constitutional and statutory right to be present at all material stages of the trial. (People v Williams, 85 NY2d 945, 650 NE2d 849, 626 NYS2d 1002 [1995]; see CPL 260.20.) Moreover, a defendant has a right to be present at ancillary proceedings when he/she may have "something valuable to contribute." People v Williams, 85 NY2d at 947, 626 NYS2d at 1003 quoting People v Morales, 80 NY2d 450, 456, 591 NYS2d 825, 829, 606 NE2d 953, 957 [1992].) However, a defendant does not necessarily have a right to be present at a CPL 730.30 proceeding that does not entail a hearing or any significant factual inquiry. (See People v Horan, 290 AD2d 880, 737 NYS2d 145 [3d. Dept. 2002], lv denied 98 NY2d 638, 771 NE2d 840, 744 NYS2d 767 [2002]; People v Racks, 221 AD2d 664, 635 NYS2d 501 [2d Dept. 1995], lv denied 88 NY2d 992, 672 NE2d 625, 649 NYS2d 399 [1996]; People v Slejska, 197 AD2d 420, 603 NYS2d 30 [1st Dept. 1993], lv denied 82 NY2d 903, 632 NE2d 480, 610 NYS2d 170 [1993].) Therefore, we find that Kimes's absence at the bench conference did not violate either her constitutional or statutory right to be present.

13. The trial court did not overlook a Brady violation

Kimes contends that the trial court should have conducted an inquiry into a possible Brady violation on the grounds that a police report into the Silverman investigation contained a reference to latent prints that were identified as prints of one Shawn Little, described as a suspect. Kimes's allegation that the report was withheld from her and that therefore the People failed to comply with their ongoing Rosario obligations in providing her with exculpatory material is without merit.

Kimes failed to preserve the issue for appellate review. In any case, Kimes was, in fact, [*21] provided with the police report before trial. Indeed, Kimes's knowledge of the report and

fingerprint match was evident in her cross-examination of the detective who conducted that investigation.

Accordingly, the judgment of the Supreme Court, New York County (Herbert I. Altman, J., at pretrial motions; Rena K. [**32] Uviller, J., at pretrial motions, jury trial and sentence), rendered June 27, 2000, convicting Sante Kimes of murder in the second degree (three counts), robbery in the first degree, burglary in the first degree, criminal possession of a weapon in the second degree (two counts), criminal possession of a weapon in the third degree (two counts), criminal possession of stolen property in the third degree, forgery in the second degree (16 counts), criminal possession of a forged instrument in the second degree, eavesdropping ([***25] 29 counts), conspiracy in the fourth degree, and attempted grand larceny in the first degree, and sentencing her to an aggregate term of 120 years to life, should be affirmed.

Motion denied.

Tom, J.P., Marlow, Gonzalez and Malone, JJ., concur.

Judgment, Supreme Court, New York County, rendered June 27, 2000, affirmed. Motion denied.