

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FERANDAL SHABAZZ REED,

Defendant-Appellee.

UNPUBLISHED

June 13, 1997

No. 202109

91-002558

LC No. 91-02558

ON REMAND

Before: McDonald, P.J., and Griffin and Neff, JJ.

PER CURIAM.

This matter is before us on remand from the Supreme Court. Following a jury trial defendant was convicted of first-degree felony murder and assault with intent to commit armed robbery. After filing an appeal as of right, this Court remanded the case to the trial court to permit defendant to move for a new trial on the ground he had been denied the effective assistance of counsel.¹ The trial court found no ineffective assistance of counsel and denied the motion. Thereafter, this Court reversed defendant's convictions holding the trial court erred in failing to sua sponte give a cautionary instruction regarding accomplice testimony and that defense counsel was ineffective for failing to request the instruction.² The Supreme Court reversed holding the trial court was not required nor permitted to give an accomplice instruction under the facts of this case, and thus, defense counsel was not ineffective for failing to request the instruction. The matter was remanded for determination of any issues properly preserved but not addressed by this Court in its earlier opinion.³ We affirm.

The only undecided issue raised before this court is defendant's claim he was denied effective assistance of counsel because defense counsel failed to move to suppress defendant's statement to the police on the basis he was arrested without probable cause.⁴ We find no error in the trial court's denial of defendant's motion for new trial based on these grounds. A review of the record reveals sufficient probable cause to support defendant's arrest and subsequent interrogation. Although mere suspicion is insufficient, *Tope v Howe*, 179 Mich App 91; 445 NW2d 452(1989), equivocation and lying by a suspect may raise reasonable suspicions to the level of probable cause. *People v Mitchell*, 138 Mich App 163, 360 NW2d 158 (1984). Defendant has failed to demonstrate counsel's performance was deficient and that, under an objective standard of reasonableness, counsel made an error so serious

counsel was not functioning as an attorney as guaranteed under the Sixth Amendment to the United States Constitution. *People v Thew*, 201 Mich App 78, 506 NW2d 547 (1993).

Affirmed.

/s/ Gary R. McDonald
/s/ Richard Allen Griffin
/s/ Janet T. Neff

¹ *People v Reed*, unpublished order of the Court of Appeals, entered 04/29/93 (Docket No. 145406)

² *People v Servant (and Reed)*, unpublished opinion per curiam of the Court of Appeals, issued 01/11/95 (Docket Nos. 145405, 145406), reh den *People v Servant*, unpublished order of the Court of Appeals, entered 05/11/95 (Docket No. 145405).

³ *People v Reed*, ____ Mich ____; ____ NW2d ____ (Docket No. 102651, issued 12/30/96).

⁴ Although it appears additional issues were raised in defendant's application for cross-appeal before the Supreme Court, we address only those issues properly raised before this Court.