STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 22, 2000
v	No. 211342 Wayne Circuit Court
DESHEAN M. MCCLINTON, Defendant-Appellant.	LC No. 97-006752

Before: Jansen, P.J., and Collins and J.B. Sullivan*, J.J.

PER CURIAM.

Following a bench trial on November 18-19, 1997, defendant was convicted of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to lifetime probation. Defendant appeals as of right, and we affirm.

Defendant first argues that his waiver of jury trial "was invalid in that it occurred mid-way through trial, after extensive testimony had been presented," that the waiver was therefore involuntary and that he was thereby denied his constitutional right to jury trial. We disagree. We review for clear error the trial court's determination that a defendant validly waived his right to a jury trial. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997). A valid waiver of the constitutional right to a jury trial must be voluntary. MCR 6.402(B); *People v Godbold*, 230 Mich App 508, 512; 585 NW2d 13 (1998); *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993).

We note initially that, because defendant failed to object in the trial court, this issue has not been preserved for appellate review. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999), reaffirming *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Further, except for the standard of review, defendant cites no authority in support of his position. *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998). In any event, the record contains defendant's signed waiver of jury trial, which is dated September 23, 1997, almost two months before the combined motion to suppress and jury trial, and the waiver before the trial court, which occurred because "counsel indicated

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

that he couldn't remember whether it was put on the record [on September 23, 1997,] and suggested that maybe we should do it again," was virtually identical to the waiver approved by this Court in *Shields, supra.* See MCR 6.402(B).

The record does not support defendant's claim that "the trial court [] attempt[ed] to save time and circumvent due process . . ." At the very beginning of the procedure, the clerk stated that "the matter is before the Court today for trial, it's a waiver trial." The clerk then noted counsel's request to repeat the waiver. The court stated, "Also [sic] after the waiver is put on the record, there was a Motion to Suppress Defendant's statement [*Walker*[1] hearing to determine the voluntariness of defendant's statement to the police] that was filed to be heard this morning, but I've been informed that it's going to be incorporated in the trial," to which defense counsel responded, "That is correct, Your Honor." The court then advised defense counsel that such motions are normally ruled on before the start of the trial so an appeal is preserved, but that the testimony from the motion could then be incorporated into the trial. Defense counsel agreed with the court stating, "That's fine." Defense counsel then made a request for sequestration which the court granted, and the first witness was called. Based on the record before us, we simply cannot impute any evil to the fact that defendant's waiver occurred after one officer testified in the *Walker* hearing, testimony which was then incorporated into the trial. The court clearly intended to take the waiver at the start of the proceedings, but the attention of the court and both counsel was then focused on the proper procedure for the *Walker* hearing. Immediately following the testimony of the officer, the court interrupted the proceedings to place defendant's waiver of jury trial on the record. There is no error.

Defendant next argues that the incorporation of testimony from the *Walker* hearing into the trial denied defendant his constitutional right to trial and to confront witnesses. We again disagree. As with defendant's first issue, not only did defendant not object, but the record clearly indicates that the defense counsel either requested or approved of the proceedings below. *People v Griffin,* 235 Mich App 27, 46; 597 NW2d 176 (1999). On at least three occasions, the court and defense counsel commented, either without objection or with approval, on the fact that the court was allowing testimony beyond the issue of the voluntariness of defendant's confession to avoid the need to have the witnesses testify again. In Michigan, it is well settled that a party cannot request that the trial court take a certain action or stipulate to a matter and then argue on appeal that the action constituted error. *People v McCray,* 210 Mich App 9, 14; 533 NW2d 539 (1995). Moreover, armed with the knowledge that the *Walker* hearing testimony was going to be incorporated into the trial, defense counsel took full advantage of the ample opportunity afforded by the trial court to cross-examine and confront defendant's accusers.

Affirmed.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Joseph B. Sullivan

[1] *People v Walker (On Rehearing),* 374 Mich 331, 132 NW2d 87 (1965).