

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROASEVELT J. WRIGHT,

Defendant-Appellant.

UNPUBLISHED

May 25, 2001

No. 223137

Washtenaw Circuit Court

LC No. 98-011426-FH

Before: Jansen, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction 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), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defense counsel did not file a motion to suppress evidence; however, before trial he addressed remarks to the court in which he expressed concern that the police lacked probable cause to stop defendant and then to arrest him. The trial court found defendant's verbal motion to be untimely, and refused to consider it. The evidence showed that police officers, patrolling a high crime area in which narcotics were sold, observed defendant standing on the sidewalk. Defendant gestured to a passing truck. The truck stopped, the driver and defendant exchanged words, and defendant motioned for the truck to pull into a parking lot. An officer approached defendant, identified himself, and told defendant to stop. Defendant fled on foot, and a chase ensued. An officer observed defendant throw an object to the ground. Defendant was apprehended. The object which he had discarded was found to be a baggie containing cocaine. The jury found defendant guilty.

The brief detention of a person in a public place for the purpose of determining whether a crime has been committed does not violate the Fourth Amendment as long as the officer can articulate a reasonable suspicion on which to base the detention. To demonstrate reasonable suspicion, the officer must articulate specific facts which, when taken together with the reasonable inferences drawn therefrom, warrant the intrusion. *Terry v Ohio*, 392 US 1, 21; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Generally, an investigatory stop must be justified by a particularized suspicion, based on some objective manifestation, that one person has been, is, or is about to be engaged in some type of criminal activity. *People v Shabaz*, 424 Mich 42, 54; 378

NW2d 451 (1985). In determining the existence of a reasonable suspicion, deference should be given to the experience of law enforcement officers and their assessments of criminal modes and patterns. *People v Nelson*, 443 Mich 626, 636; 505 NW2d 266 (1993). A hunch is not sufficient to give rise to a reasonable suspicion. *People v LoCicero (After Remand)*, 453 Mich 496, 505; 556 NW2d 498 (1996).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that counsel's performance resulted in prejudice. To demonstrate prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Counsel is presumed to have afforded effective assistance, and a defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant argues that he was denied the effective assistance of counsel for the reason that counsel failed to file a proper motion to suppress the evidence. We disagree and affirm defendant's conviction. Defendant was observed in a high crime area in which narcotics were sold. A police officer who had made more than one hundred arrests for narcotics offenses observed defendant exchange words with the driver of a truck, and then gesture to the truck to pull into a parking lot. The officer stated that based on his experience, he believed that defendant was about to engage in a narcotics transaction. A trained officer is entitled to rely on inferences and deductions that might elude a person who is not trained in law enforcement techniques. *Nelson, supra*, p 633. The totality of the circumstances "as understood and interpreted by law enforcement officers, not legal scholars," *id.*, p 632, yielded a particularized suspicion that defendant was about to engage in criminal activity. The attempt to make an investigatory stop was proper. *Shabaz, supra*. Defendant discarded the cocaine as he fled the scene. The evidence was not obtained during an illegal seizure of defendant's person, and was admissible. *People v Lewis*, 199 Mich App 556, 559-560; 502 NW2d 363 (1993).

Defendant was not denied the effective assistance of counsel due to counsel's failure to file a timely written motion to suppress the evidence. Counsel does not render ineffective assistance by failing to advocate a meritless position. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000). Defendant has failed to show that he was prejudiced by counsel's performance. *Toma, supra*.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Donald S. Owens