STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 20, 2004
v	No. 241602 Oakland Circuit Court
PETER EMEKA NWANKWO, Defendant-Appellant.	LC No. 2001-179886-FH

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver between 50 to 225 grams of heroin, MCL 333.7401(2)(a)(iii). The trial court sentenced defendant to ten to twenty years' imprisonment.[1] He appeals as of right. We affirm.

I. Facts

Defendant's conviction arises from allegations that the police discovered heroin in his vehicle following a routine traffic stop. On July 27, 2001, the Oakland Country Macomb Interdiction Team ("OMIT"), a multi-jurisdictional FBI drug unit, conducted surveillance of defendant and codefendant Ijoma Ekwedi Raymond, after receiving information that the two may be involved in drug trafficking. At approximately 11:00 a.m., defendant got into a green Grand Prix,[2] and left the motel via Telegraph Road. OMIT officers testified that they observed defendant make stops at Walgreen's, a restaurant, and a few private residences. During this time they described defendant's driving as "erratic." An OMIT officer ultimately contacted the Southfield Police Department and reported defendant's erratic driving to the dispatcher. The officers claim that they did not order the Southfield police to stop defendant's vehicle.

Southfield Police Officer Mark Wood testified that he received information from the Southfield police dispatch that officers from another jurisdiction reported an erratic driver in a

[1] Defendant also pleaded guilty of failure to display his driver's license upon demand of a police officer, MCL 257.311, and was sentenced to ninety days in jail. That conviction is not at issue on appeal.

[2] The vehicle was registered in codefendant Raymond's name.

green Grand Prix driving toward Southfield. When defendant's vehicle came into view, Officer Wood observed defendant look at his patrol car and immediately change lanes, "abruptly" swerving across three lanes of traffic without signaling. Officer Wood effectuated a traffic stop for improper lane usage and failure to signal when changing lanes and requested backup. He testified that defendant appeared very nervous, was sweating, and "literally shaking in his seat." Defendant was arrested for failing to produce a valid driver's license.

Officer Wood's backup arrived in the form of a canine unit, which included a narcotic sniffing canine.[3] The canine did a narcotics "alert" on various parts of defendant's car. An OMIT officer who approached the scene after defendant was arrested searched the vehicle and discovered heroin in a Walgreen's bag on the front floor of the passenger's side. Defendant also had $323 on his person.

Defendant denied any involvement in actually selling heroin. However, he admitted that he planned to introduce codefendant Raymond to a person to whom she could sell her heroin. He maintained that any heroin discovered in the car must have been "planted."

II. Motion to Suppress

Defendant initially argues that the trial court erroneously denied his motion to suppress the evidence seized from his car because the initial stop and subsequent search of his vehicle were both unlawful. As support for his claim, defendant asserts that the police officers "gave dubious testimony" at the evidentiary hearing and manufactured a pretext to stop and search his vehicle. We disagree.

At an evidentiary hearing, Sergeant Terrence Mekoski, the OMIT leader, testified that, he and other OMIT officers followed defendant and observed his driving to be "very erratic." He claimed that he personally observed defendant commit several traffic violations, including "speeding, improper lane changes, [and] turning without signaling." As a result, Sergeant Mekoski called the local police department dispatcher to report defendant's driving. He testified, however, that defendant's car was not stopped until after the Southfield police officer personally observed defendant's driving and decided to stop the vehicle. Sergeant Mekoski specifically denied ordering the stop or requesting that a canine unit be sent to search the vehicle. Rather, he explained that if the Southfield police had not stopped defendant's vehicle for committing traffic violations, the OMIT officers would have simply continued surveillance. Several other OMIT officers corroborated this testimony.

Southfield Police Officer Wood testified that he received a radio communication regarding defendant's driving from his police department. He denied speaking with anyone from OMIT or being ordered to stop defendant's vehicle. Rather, Officer Wood claimed that he effectuated the stop after he observed a traffic violation, i.e., "failure to signal lane change." He indicated that , after defendant made "direct eye contact" with him, he "immediately shot over

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[3] The police witnesses testified that a canine unit was not requested as backup. Officer Jeff Midici, the canine handler who responded to the scene, explained that he answers regular patrol runs like the non-canine units.

three lanes of traffic, failing to signal and cut in front of another vehicle forcing him to use his brakes to avoid striking him in the rear." Officer Wood also denied requesting a canine unit as backup. He explained that defendant's vehicle was impounded and searched pursuant to his arrest, and that a narcotics canine typically examines the vehicle in nearly every arrest following a traffic violation. Officer Wood testified that the OMIT officers did not arrive until after defendant was placed under arrest.

Following the evidentiary hearing, the trial court denied defendant's motion to suppress the evidence obtained as a result of the stop and subsequent search of the vehicle. The trial court held that the search was proper "in light of the fact that the defendant's driver's license was invalid" and noted that the subjective motive of the police officer was irrelevant. The trial court further found that "the Southfield Police officer stopped the defendant independent of the crew."

We review a trial court's factual findings regarding a motion to suppress for clear error.[4] "A decision is clearly erroneous if, although there is evidence to support it, the Court is left with a definite and firm conviction that a mistake has been made."[5] To the extent a trial court's ruling involves an interpretation of the law or the application of a constitutional standard to uncontested facts our review is de novo.[6] The trial court's ultimate decision regarding a motion to suppress is also reviewed de novo.[7]

"The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures."[8] An arrest or stop cannot be used as a pretext to search for evidence of a crime.[9] To lawfully stop a vehicle, a police officer must "have 'a particularized suspicion, based on an objective observation, that the person stopped has been, is, or is about to be engaged in criminal wrongdoing.'"[10] The totality of the circumstances should be considered when assessing a police officer's suspicion of criminal activity.[11] A traffic violation presents sufficient probable cause to justify the stop of a vehicle if the circumstances create a reasonable suspicion that a traffic offense has been committed or is being committed.[12] Regardless of a police officer's subjective intent in making a stop, where his actions constitute "no more than [he is] legally permitted and

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[4] *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

[5] *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992).

[6] *Attebury*, *supra* at 668.

[7] *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999).

[8] *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000), citing US Const, Am IV; Const 1963, art 1, § 11.

[9] *People v Haney*, 192 Mich App 207, 209; 480 NW2d 322 (1991).

[10] *People v Peebles*, 216 Mich App 661, 665; 550 NW2d 589 (1996); quoting *People v Shabaz*, 424 Mich 42, 59; 378 NW2d 451 (1985).

[11] *Peebles*, *supra* at 665.

[12] See *Kazmierczak*, *supra* at 420 n 8; *Peebles*, *supra* at 665-666; *Haney*, *supra* at 210.

objectively authorized to do," the stop will be considered constitutionally valid as "necessarily reasonable under the Fourth Amendment."[13]

Here, there was evidence that Officer Wood had a reasonable and articulable suspicion, based on his personal observation of defendant's driving, that defendant had committed a traffic violation by failing to signal a lane change. Although defendant raises questions as to the veracity of the officers' claims that defendant was stopped for violating a traffic law, we defer to the trial court's assessment that the officers were credible.[14]

Because the police were legally permitted to effectuate a stop of the vehicle given the observed traffic violation, the stop itself was constitutionally valid despite any alleged subjective motivations the officer may have harbored in effectuating the stop.[15] We further note that the police could properly search defendant's vehicle following his arrest as a search incident to that arrest or as an inventory search in accordance with standard departmental procedure.[16] Accordingly, the trial court properly denied defendant's motion to suppress the evidence confiscated from the vehicle.

III. Request for Substitution of Trial Counsel

Defendant next argues that the trial court abused its discretion by denying his request for substitute counsel. We disagree. A decision regarding substitution of counsel is within the sound discretion of the trial court, and will not be disturbed on appeal absent an abuse of that discretion.[17]

An indigent defendant is constitutionally guaranteed the right to appointed counsel.[18] But an indigent defendant "is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced."[19] Rather, appointment of substitute counsel is justified only upon a showing of good cause and where the judicial process will not be unreasonably disrupted by the substitution.[20] "'Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic.'"[21] We note, however, that disagreements fairly characterized as matters of professional judgment or trial strategy do not justify substitution of counsel.[22] A

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[13] *Haney, supra* at 210.

[14] See *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999).

[15] See *Haney, supra* at 210.

[16] See *People v Houstina*, 216 Mich App 70, 75, 77; 549 NW2d 11 (1996).

[17] *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

[18] *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973).

[19] *Mack, supra* at 14.

[20] *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001).

[21] *Traylor, supra* at 462, quoting *Mack, supra* at 14.

[22] *Traylor, supra* at 463.

defendant's mere allegation that he lacked confidence in trial counsel is insufficient to support a substitution.[23]

After carefully reviewing the record, we find that defendant failed to establish good cause to support his request for substitute appointed counsel. While the record reflects defendant's dissatisfaction with the general manner in which defense counsel was handling his case, defendant failed to make any showing that there was a legitimate disagreement with his counsel over fundamental trial tactics.[24] Rather, the record reveals that defendant's dissatisfaction with defense counsel involved no more than alleged communication difficulties and disagreements on certain matters of trial strategy that fall short of establishing good cause for substitution.

To the extent that defendant claimed that defense counsel was not interested in his case and believed he was guilty, the record shows that defense counsel presented a cogent and vigorous defense. Indeed, he effectively cross-examined prosecution witnesses and was prepared and competent to represent defendant. We further note that there is no indication that communication between defendant and his attorney had ceased.

While defendant complained that defense counsel failed to ask a certain question, defense counsel stated on the record that, although worded differently, he did ask the question. On appeal, defendant does not indicate what question defense counsel allegedly failed to ask, or what supportive information the answer to the unasked question would have yielded.[25] Nevertheless, defense counsel's decisions concerning what questions to ask are presumed to be matters of trial strategy,[26] which do not support a finding of good cause for substitution.[27] Because defendant failed to show good cause justifying substitution of counsel, the trial court did not abuse its discretion by denying defendant's request for new counsel.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Jessica R. Cooper

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[23] *Id*.

[24] See *Mack, supra* at 14.

[25] See *Traylor, supra* at 464.

[26] *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

[27] See *Traylor, supra* at 463.