STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 18, 2001
v	No. 219353 Genesee Circuit Court
LAWRENCE EDWARD CADROY, Defendant-Appellant.	LC No. 96-054139-FC

Before: Owens, P.J., and Holbrook, Jr., and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to possess with intent to deliver 650 or more grams of cocaine, MCL 750.157a and MCL 333.7401(2)(a)(i) (count one), possession with intent to deliver 650 or more grams of cocaine, MCL 333.7401(2)(a)(i) (count two), conspiracy to possess with intent to deliver forty-five or more kilograms of marijuana, MCL 750.157a and MCL 333.7401(2)(d)(i) (count three), possession of a firearm during the commission of a felony, MCL 750.227b (count four), carrying a concealed weapon, MCL 750.227 (count five), possession with intent to deliver forty-five or more kilograms of marijuana, MCL 333.7401(2)(d)(i) (count six), and delivery of marijuana, MCL 333.7401(2)(d)(iii) (count seven). He was sentenced to life imprisonment for counts one and two, one to fifteen years each for counts three and six, ninety days for count five, one to four years for count seven, and the mandatory two-year term for count four. The sentence for count four is to be served preceding and consecutive to all others, and the sentence for count two is to be served consecutive and preceding the sentences for counts one, three, five, six, and seven, which are to be served concurrently. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by denying his motion to suppress the evidence found on his person and in his truck on the grounds that the stop and arrest of defendant were unlawful. We disagree. We review the trial court's findings of fact regarding a motion to suppress for clear error, but review the court's ultimate decision de novo. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999).

Pursuant to *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), a police officer may make a valid investigatory stop if he has a "reasonable suspicion" that crime is afoot. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). A reasonable suspicion entails something more than an inchoate or unparticularized suspicion or "hunch," but less than the level

of suspicion required for probable cause. *Id*. "A valid investigatory stop must be justified at its inception and must be reasonably related in scope to the circumstances that justified interference by the police with a person's security." *Id.* "Justification must be based on an objective manifestation that the person stopped was or was about to be engaged in criminal activity as judged by those versed in the field of law enforcement when viewed under the totality of the circumstances." *Id*. "The detaining officer must have had a particularized and objective basis for the suspicion of criminal activity." *Id*. at 98-99.

The record indicates that Frank Reynolds had been the subject of police surveillance pursuant to an ongoing investigation into narcotics trafficking by the Flint Area Narcotics Group (FANG). The police had arranged a controlled purchase of narcotics and knew that arrangements had been made to have Reynolds deliver the drugs to their informant. The police reasonably believed that Reynolds would be picking up the drugs before the scheduled buy. The police observed Reynolds leave his home on the date scheduled for the pre-arranged purchase and meet with defendant in a parking lot. Defendant got out of his truck and into Reynolds' car with him. After approximately thirty minutes, both men got out of the car. Reynolds removed a plastic container from the trunk of his car and placed it into the cab of defendant's truck. Defendant took two bags from his truck and placed them into the trunk of Reynolds' car. Officers followed both cars from the parking lot. Considering the totality of the circumstances, the police officers had a particularized and objective basis to suspect criminal activity on the part of defendant and therefore conducted a valid *Terry* stop of defendant.

After stopping defendant, the police determined that defendant was armed with a gun and arrested him. "A police officer may arrest an individual without a warrant if a felony has been committed and the officer has probable cause to believe that the individual committed the felony." *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998), citing MCL 764.15(c); *Champion*, *supra* at 115. Defendant's possession of a handgun provided probable cause to believe that he had committed a felony by carrying a concealed weapon. "The exception to the warrant requirement regarding a search incident to a lawful arrest allows an arresting officer to search the person arrested and seize any evidence to prevent its concealment or destruction." *People v Solomon*, 220 Mich App 527, 530; 560 NW2d 651 (1996). With respect to the evidence seized from defendant's truck, the record indicates that one of the officers at the scene detected the odor of burning marijuana emanating from defendant's truck. The smell of marijuana may establish the requisite probable cause to search a motor vehicle. *People v Kazmierczak*, 461 Mich 411, 426; 605 NW2d 667 (2000). Accordingly, the trial court did not err in denying defendant's motion to suppress the evidence seized from defendant's truck.

Defendant also challenges the search of his residence, claiming that the affidavit offered in support of the search warrant was deficient. In reviewing the magistrate's conclusion that probable cause to search existed, we apply the standard of review set forth in *People v Russo*, 439 Mich 584; 487 NW2d 698 (1992). This standard requires that we review the search warrant and underlying affidavit in a common-sense and realistic manner and ask whether a reasonably cautious person could have concluded that there was a "substantial basis" for the finding of probable cause. *Id.* at 603-604.

Viewing the facts in a common-sense and realistic fashion, a reasonably cautious person could have concluded that there was a substantial basis for the finding of probable cause. The facts could have reasonably permitted the magistrate to conclude that defendant was storing drugs and/or drug-related items in his home. *People v Nunez*, 242 Mich App 610, 614-615; 619 NW2d 550 (2000). Moreover, the court was entitled to rely on the affiant's training and experience in assessing whether there was probable cause. *People v Darwich*, 226 Mich App 635, 638-639; 575 NW2d 44 (1997). Accordingly, the trial court did not err in refusing to suppress the evidence on this basis.

Next, defendant argues that error occurred because some of the drugs that were displayed to the jury had not been tested. The decision whether to admit evidence is left to the discretion of the trial court. *People v Williams*, 240 Mich App 316, 320; 614 NW2d 647 (2000). An abuse of discretion will be found only when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling. *Id*.

Not every item of evidence need be qualitatively tested before being admissible, provided certain foundational facts are first introduced. *People v Kirchoff*, 74 Mich App 641, 647; 254 NW2d 793 (1977); *People v Koehler*, 54 Mich App 624, 633-634; 221 NW2d 398 (1974). Here, the police seized several bales of suspected marijuana. There is no indication that the bales that were not analyzed were different in appearance from the bales that were analyzed. On the contrary, the evidence indicates that the bales were all found together and were packaged similarly. Given these circumstances, the trial court did not abuse its discretion in denying defendant's motion to exclude the evidence.

Defendant also contends that there was an inadequate foundation for the admission of some of the drug evidence. Because he did not object on this basis in the trial court, this issue is unpreserved. *People v Coy*, 243 Mich App 283, 286-287; 620 NW2d 888 (2000). We review this issue for plain error affecting defendant's substantial rights. *Id.* An adequate foundation for the admission of tangible evidence requires that the prosecution show that the object offered is the object that was involved in the incident and that the condition of the object is substantially unchanged. *People v Prast (On Rehearing)*, 114 Mich App 469, 490; 319 NW2d 627 (1982). Here, nothing in the record suggests that the drugs offered at trial were not the ones recovered, or that they had changed. Thus, defendant has failed to show plain error resulting from the admission of the evidence.

Next, defendant argues that the trial court abused its discretion by forcing him to proceed to trial with an attorney other than one of his own choosing. We disagree. A trial court's arbitrary and unjustified removal of a defendant's attorney, over the defendant's objection, violates the defendant's Sixth Amendment right to counsel. *People v Johnson*, 215 Mich App 658, 665-666; 547 NW2d 65 (1996). However, a court may remove a defendant's attorney on the basis of gross incompetence, physical incapacity, or contumacious conduct. *People v Arquette*, 202 Mich App 227, 231; 507 NW2d 824 (1993). The trial court's order indicates that defendant's attorney was removed "for the reasons set forth on the record." Because defendant has not provided the transcript of the hearing held in connection with this issue, despite a request from this Court, we deem this issue waived. MCR 7.210(B)(1)(a); *People v Anderson*, 209 Mich

App 527, 535; 531 NW2d 780 (1995); *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987).[1]

Defendant also claims that the admission of codefendant Wooten's police statement constituted a *Bruton*[2] violation. We disagree. Because codefendant Wooten testified at defendant's trial and was subject to cross-examination by defendant, the trial court correctly rejected defendant's claim of a *Bruton* violation. *Bruton v United States*, 391 US 123, 136; 88 SCt 1620; 20 LEd 2d 476 (1968); *People v Frasier (After Remand)*, 446 Mich 539, 544; 521 NW2d 291 (1994) (Brickley, J.). Although defendant also contends that codefendant Wooten's statement should have been excluded because it was coerced, he did not raise this issue in the trial court, and cites no authority in support of his position on appeal. Accordingly, this issue does not entitle defendant to appellate relief. *Kelly, supra* at 640-641.

Finally, defendant argues that the police and prosecution tactics formed a systematic scheme to prejudice him. Defendant again refers to the issues involving the introduction of drug evidence and the court's dismissal of his attorney. For the reasons previously discussed, we conclude that these issues do not warrant appellate relief. Defendant also refers to other circumstances that he contends denied him a fair trial. However, because defendant provides no supporting argument or citation of authority supporting his claims, he has waived any claim of error. *Kelly, supra* at 640-641.

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Talbot

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[1] We note that the record suggests that defendant's attorney was removed because he was determined to be physically incapable of trying the case. This constitutes a proper basis for removal and, hence, would not constitute an abuse of discretion. *Arquette, supra*.

[2] *Bruton v United States*, 391 US 123; 88 SCt 1620; 20 LEd 2d 476 (1968).