

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ALONZO LEO STURTEVANT,

Defendant-Appellant.

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UNPUBLISHED

November 18, 2008

No. 278572

Wayne Circuit Court

LC No. 06-013920-01

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant was convicted of attempted larceny in a building, MCL 750.92 and 750.360, and was sentenced as a fourth habitual offender, MCL 769.12, to one to fifteen years' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On November 14, 2006, three Wayne State University custodians were working together at the Old Main building on WSU's campus. At approximately 5 a.m., they heard a noise in an adjacent classroom. When they investigated, they observed defendant climbing out the basement window carrying a DVD or VCR player. After chasing defendant for a short distance, the custodians notified the WSU police of the situation. Within five to twenty minutes, the police apprehended defendant and brought him back to the Old Main building where the custodians definitively identified him as the person they saw stealing the electronics.

Defendant first argues on appeal that he was denied the effective assistance of counsel when defense counsel failed to move to suppress the in-court identification of him as having no independent basis because the circumstances surrounding his on-the-scene identification were unduly suggestive.

Whether a defendant was denied effective assistance of counsel presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review the trial court's factual findings for clear error and review its constitutional determination de novo. *Id.* A finding is clearly erroneous where, after reviewing the entire record, a definite and firm conviction is left that a mistake has been made. *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). Under de novo review, this Court gives no deference to the trial court. *People v Howard*, 233 Mich App 52, 54; 595 NW2d 497 (1998).

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 326-327; 521 NW2d 797 (1994). To overcome this presumption, the defendant must meet a two-pronged test. The defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms. *Strickland, supra* at 687-688; *Pickens, supra* at 302-303. Second, the defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different. *Strickland, supra* at 687-688; *Pickens, supra* at 309.

A prompt on-the-scene identification allows the police to immediately decide whether a "suspect [is] connected with the crime . . . or merely an unfortunate victim of circumstances." *People v Libbett*, 251 Mich App 353, 363; 650 NW2d 407 (2002) (internal citation and quotation marks omitted). Indeed, on-the-scene identifications are sometimes indispensable in order to determine whether a subject should be released from police custody. *Id.* at 361-362. They also allow victims to make identifications when their memories are fresh. *Id.* at 362. However, an identification procedure violates a defendant's right to due process of law when, in light of the total circumstances, it is so impermissibly suggestive that it gives rise to a substantial likelihood of misidentification. *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998); *People v Hornsby*, 251 Mich App 462, 466; 650 NW2d 700 (2002). The following factors are relevant to determine the likelihood of misidentification: (1) the opportunity for the witness to view the suspect at the time the crime occurred; (2) the witness's degree of attention; (3) the accuracy of any prior descriptions by the witness; (4) the witness's level of certainty during the identification; and (5) the length of time between the crime and the confrontation. *People v Colon*, 233 Mich App 295, 304-305; 591 NW2d 692 (1998).

The on-the-scene identification procedure used in this case occurred in a suggestive atmosphere because defendant, when presented to the custodians, was handcuffed and was the only person in the back of the police car. However, under the totality of the circumstances, defendant failed to show there was a substantial likelihood of misidentification. *Colon, supra* at 305. There was clear and convincing evidence that the custodians' identification was not based on any suggestiveness surrounding the on-the-scene identification, but had a sufficiently independent basis. *Id.* All three custodians testified that they had a good look at defendant in a well-lit classroom and that less than 20 minutes elapsed between the time they first saw him in the classroom and then saw him again in the back of the police car. Further, the custodians were fully focused on defendant during the incident, positively identified him as the person they saw in the classroom, and gave similar descriptions of him, which did not contradict the photo of him taken that same morning.

The performance of defendant's trial attorney did not fall below an objective standard of reasonableness. Indeed, an attorney is not required to raise futile objections. *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). Because the on-the-scene identifications were not impermissibly suggestive, a motion to suppress would have been futile.

Defendant next argues on appeal that the trial court violated his due process rights when it coerced him to waive a jury trial in exchange for a prompt bench trial. Defendant submits that *People v Williams*, 275 Mich App 194, 196-197; 737 NW2d 797 (2007), wherein this Court

ruled that offering the defendant a speedier bench trial in exchange for a jury waiver did not make the waiver involuntary or deprive the defendant of due process, was wrongly decided. The *Williams* panel reviewed the record and found no evidence of any pressure or coercion, *id.* at 197, nor do we find any here on facts very comparable to those that transpired in *Williams*. We decline to revisit the ruling in *Williams*, which is precedentially binding. MCR 7.215(C)(2) and (J)(1). We also reject defendant's argument that the trial court should have, under a local court rule, sought reassignment of the case to another judge for a jury trial. This argument lacks record development and requires unacceptable speculation.

Affirmed.

/s/ William B. Murphy  
/s/ David H. Sawyer  
/s/ Michael R. Smolenski