STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 13, 2009
v	No. 285354 Bay Circuit Court
ANTHONY TYRONE SNOW, Defendant-Appellant.	LC No. 07-010667-FH

Before: Talbot, P.J., and Wilder and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his conviction after a jury trial of one count of delivery of a controlled substance less than 50 grams. MCL 333.7401(2)(a)(iv). The trial court sentenced defendant to three years' probation for the conviction. Because we conclude that there were no errors warranting relief, we affirm.

The prosecutor charged defendant with two counts of delivery of cocaine after defendant sold drugs to an informant for the Bay City Police Department's VIPER unit. The informant was working with the police, in part, to fulfill his community service sentence after having been convicted of retail fraud. The jury ultimately acquitted defendant of the charge related to the first sale.

The second cocaine sale occurred after the informant contacted defendant by phone and asked defendant to bring $100 in cocaine. The police provided the money to the informant, which consisted of five $20 bills. Defendant arrived in front of the informant's residence with a female passenger. The informant exchanged the money for a baggie believed to contain cocaine. The informant recorded the sale with a video camera and a digital audio recorder provided by the police. After the sale, the informant confirmed that the sale had been completed and an officer came to his apartment to recover the suspected drugs and the video and audio recorders. Later tests confirmed that the substance in the baggie was cocaine.

The police stopped defendant approximately one and one-half miles from the informant's residence and recovered the money that had been provided to the informant from defendant. The police then took defendant and his passenger to the police station for questioning. An officer testified that during the interview defendant admitted to selling $100 worth of cocaine to the informant and indicated that he would be willing to act as an informant.

At trial, defendant testified on his own behalf and denied that he delivered drugs to the informant. He also denied making any incriminating statements to the police.

Defendant first argues that the trial court erred in denying his motion to suppress his incriminating statements. We review a trial court's decision on a motion to suppress de novo. *People v Bolduc*, 263 Mich App 430, 436; 688 NW2d 316 (2004). However, a trial court's factual determinations related to a motion to suppress are reviewed for clear error. *People v Custer* (*On Remand*), 248 Mich App 552, 558; 640 NW2d 576 (2001).

In order for a defendant's statement to be admissible, the defendant must have "voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). On appeal, defendant argues that his statements were not made after a proper waiver of his rights. Specifically, he contends that his statement should have been suppressed because he was not advised of his rights before the interview and was denied the opportunity to have an attorney after he requested one.

At trial, the prosecutor began to question an officer about an interview he conducted with defendant after his arrest. At that time, defendant's trial counsel moved to suppress defendant's statements based on the officer's failure to advise defendant of his rights. In a separate record made outside the presence of the jury, defendant explained that he was taken to the police department immediately after the traffic stop and asked for an attorney, but was told not to worry about it. Defendant stated that after approximately one hour of questioning he was told he was under arrest and was then asked to sign the waiver card.

The officer who interviewed defendant testified that he did advise defendant of his rights before the interview, that he did not wait until the end of the interview to have defendant sign the waiver card, and denied that defendant ever asked to speak to an attorney.

After hearing the testimony, the trial court resolved the factual dispute by flatly rejecting defendant's testimony in favor of the police officer's testimony. The trial court is in the best position to judge witness credibility. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). For that reason this Court gives special deference to a trial court's finding that a defendant is not a credible witness. *People v Sherman-Huffman*, 241 Mich App 264, 267; 615 NW2d 776 (2000). On this record, we cannot conclude that the trial court clearly erred when it rejected defendant's assertions that he requested an attorney and did not sign the waiver card until after the interview.

Defendant also argues that his statements were involuntarily given after the police pressured him to act as informant.

Whether a statement was voluntary is determined by viewing the totality of the circumstances surrounding the statement. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). The relevant circumstances include: "the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he

gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse." *Id.* No single factor is determinative. *Id.*

A review of the record demonstrates that defendant was 41 years old at the time of the interview. In addition, defendant had completed high school and was able to read. The interview lasted approximately one hour. Defendant denied being under the influence of drugs, injured, or ill during the interview. Defendant also denied being subjected to rough treatment. Defendant did indicate that he was asked to be an informant, but denied knowing any drug dealers. The police officer's testimony contradicted this statement and instead indicated that defendant appeared to want to cooperate and work as an informant. In fact, the officer testified that the reason defendant was allowed to leave after the interview was because it was believed that defendant was interested in acting as a confidential informant. Given the totality of the evidence, defendant has failed to establish that his statements were involuntary. Therefore, the trial court did not err when it permitted the admission of defendant's statements.

Defendant next argues the trial court erred in denying his entrapment motion.

A trial court's findings concerning entrapment are reviewed for clear error. *People v Johnson*, 466 Mich 491, 497; 647 NW2d 480 (2002). Entrapment occurs when: (1) the police engage in impermissible conduct which would induce a law-abiding individual under similar circumstances to commit the crime; or (2) the police engage in conduct so reprehensible that it cannot be tolerated by the court. *Id.* at 498. Defendant concedes that only the latter form of entrapment is at issue here. Defendant specifically contends that police conduct in allowing a convicted felon to complete his community service by acting as an informant is so reprehensible that the trial court should have deemed the conduct entrapment. We find this argument to be without merit.

A trial court may impose community service as part of an intermediate sentence. MCL 769.31(b)(xii). Community service is not defined by statute. But community service is commonly understood to be a punitive sentence requiring a convicted person to perform unpaid work for the community in lieu of imprisonment. While it is true that the more traditional notion of community service includes activities such as picking up trash, working in a soup kitchen, or lecturing children on the dangers of drugs or alcohol, it is not beyond the pale to permit a defendant to fulfill his or her service requirement by working with the police; and acting to eliminate drug trafficking is a clear service to the community. Further, we do not share defendant's concerns that completing community service in this way somehow increases crime and violates the probation statute's prohibition against a probationer engaging in criminal activity. The trial court did not err when it denied defendant's motion premised on entrapment.

Finally, defendant argues that the trial court denied him a fair trial when it permitted both cocaine sales to be tried in a single trial.

Whether charges are related for purposes of consolidating them for trial is a question of law that we review de novo. *People v Girard*, 269 Mich App 15, 17; 709 NW2d 229 (2005). The trial court's ultimate decision on a motion to join or sever charges is reviewed for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court chooses an outcome that

falls outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Recently, our Supreme Court held that MCR 6.120 governs joinder and severance of cases for a single defendant and that the court rule supercedes prior case law. *People v Williams*, 483 Mich 226, 238; 769 NW2d 605 (2009). Two or more informations or indictments may be consolidated for a single trial. MCR 6.120(A). In addition, the trial court may join multiple offenses on its own initiative when appropriate. MCR 6.120(B). Joinder is appropriate when the offenses are related, which occurs when the offenses are based on: (1) the same conduct or transaction, (2) a series of connected acts, or (3) a series of acts constituting parts of a single scheme or plan. MCR 6.120(B)(1).

Here, both cocaine sales involved the same buyer, the same seller, the same type of drug, and occurred in the same location. In addition, both offenses were set for trial on the same day at the same time, effectively putting defendant on notice that the trial court intended to try both offenses together. Thus, joinder was proper. MCR 6.120(B)(1); *Williams, supra* at 234-235.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Kelly