

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR JAMES BRIDGES, JR.,

Defendant-Appellant.

UNPUBLISHED

November 13, 2008

No. 277758

Saginaw Circuit Court

LC No. 06-027887-FH

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to serve a prison term of 76 months to 25 years. We affirm.

I. FACTS

On August 1, 2006, Sergeant Gregory Potts of the Bay City Police Department engaged in a “buy/bust” investigation of defendant with the help of Saginaw’s Police Department and a confidential informant.

The confidential informant was given a recording device in order to record her telephone and face-to-face conversation with defendant. She made a call to defendant to set up a meeting. The confidential informant was searched and provided with marked \$50 bills to use in the drug purchase. Potts drove the confidential informant to the meeting location designated by defendant. The confidential informant approached defendant and entered defendant’s vehicle. Defendant told the confidential informant to throw the money on the floor and then gave her a package of plastic that she believed to contain cocaine; the contents of which were later confirmed to be cocaine. The confidential informant exited defendant’s vehicle and returned to Potts’s unmarked vehicle. Defendant began to exit the parking lot, at which time Potts notified other officers that the purchase had been completed. Multiple officers in police vests arrived on the scene and ordered defendant to stop. Defendant drove his vehicle around the officers and exited the parking lot. Officers pursued defendant in unmarked cars until marked police cars arrived in the area. Defendant was pulled over and arrested shortly thereafter.

A scale and a cellular phone were seized from defendant’s vehicle; the phone was identified as the phone the confidential informant called. The marked \$50 bills were not found

on defendant or along his traveled path. The pursuing officers did not witness defendant throw anything from his windows; however, while in pursuit, the officers had lost sight of defendant's vehicle for a short period of time.

Defendant's trial began on March 13, 2007. Defense counsel raised numerous motions alleging error on defendant's behalf. Defendant repeatedly objected to the descriptions of those issues. The court instructed defendant to stop interrupting and making faces. Defendant then requested an interlocutory appeal, and the court once again instructed defendant to stop talking. Defendant stated that he wanted a "fair" trial, at which time the court warned if he interrupted one more time, defendant would be gagged. The court then denied all motions raised by defendant as either being frivolous or untimely and only for the purpose of delay.

Defendant then requested his Sixth Amendment right to self-representation. The court initially denied defendant's request, but then proceeded with inquiry regarding defendant's knowledge of self-representation. Defendant ignored the court's questions and stated that he was confused. Defendant then asked the court to state its jurisdiction. The court removed the defendant and placed him in holding. Shortly thereafter, defendant returned to the courtroom to proceed with the court's questioning. Defendant objected to the adjournment of the proceeding and objected to the challenge of accuracy and validity of his habitual offender status. At this point, the court denied defendant's request for self-representation. The court felt that defendant did not make an unequivocal waiver and would likely disrupt the proceedings and make the administration of justice difficult, if not impossible to proceed in the case. Defendant objected to the court's denial, requesting to no longer be present in the court and left, telling the court that it was "biased, prejudiced and unfair." Defendant now appeals.

II. REQUEST FOR SELF-REPRESENTATION

Defendant first contends that the trial court abused its discretion in failing to grant his request to represent himself at trial. We disagree.

A. Standard of Review

We review a trial court's factual findings regarding a defendant's request for self-representation for clear error, *People v Williams*, 470 Mich 634, 640; 683 NW2d 597 (2004), and the ultimate decision regarding a defendant's request for self-representation for an abuse of discretion, *People v Hicks*, 259 Mich App 518, 521; 675 NW2d 599 (2003).

B. Analysis

A criminal defendant's right to represent himself is explicitly guaranteed by both the Michigan Constitution and statute. Const 1963, art 1, § 13; MCL 763.1. However, this right is not absolute and a court must determine that: (1) the defendant's request is unequivocal; (2) the defendant is asserting his right knowingly, intelligently, and voluntarily; and (3) the defendant's self-representation will not disrupt, unduly inconvenience, and burden the court. *People v Russell*, 471 Mich 182, 190; 684 NW2d 745 (2004). The trial court has a duty to inform the defendant of the charge and penalty he faces, advise him of the risks of self-representation, and offer him the opportunity to consult with retained or appointed counsel. MCR 6.005(D). In the

instant matter, the trial court denied defendant's request to represent himself, finding that the request was not unequivocal, and that defendant was likely to create a disturbance if his request was granted.

We agree with the trial court's reasoning. Defendant's request for self-representation was not unequivocal. While defendant did repeatedly inform the court that he wished to represent himself, he also indicated repeatedly that he intended to rely on appointed counsel for assistance. It is true that this Court has previously held that a request for self-representation can still be unequivocal even where accompanied by a request for standby counsel. *People v Hicks*, 259 Mich App 518, 528; 675 NW2d 599 (2003). This does not mean, however, that the request for standby counsel cannot be considered when determining whether a request for self-representation is unambiguous and definite. See *id.* at 530 n 4.

The requirement that the request for self-representation be unequivocal is rooted in the desire to prevent gamesmanship:

Moreover, one of the by-products of the recent developments in the law relative to the assignment of counsel in all but a few of the cases of indigent defendants, has been an awareness by the prison population and a very considerable number of persons who may in the course of time add to the prison population, of the possibility of manipulating the basic rule in a fashion such as to produce a record of confusion on the subject, and to give the accused the opportunity to claim a reversal in the event of conviction on the ground that his rights under the Fifth and Sixth Amendments had been infringed. [*United States v Plattner*, 330 F2d 271, 276 (CA 2, 1964). See also *People v Anderson*, 398 Mich 361, 367; 247 NW2d 857 (1976).]

In the instant case, defendant's handling of the request created "a record of confusion on the subject," even if the intent do so is not inferred. Defendant did not raise his request to represent himself until after asserting numerous frivolous defenses and engaging in frequent interruptions of the court and his own counsel. In addition, when the trial court attempted to engage in the required colloquy to determine whether defendant effectively requested the right of self-representation, he responded to the questions with argument to both the jurisdiction of the court and the validity of the charges, with statements that he was confused and could not hear the judge, and with repeated references to the help he expected to receive from appointed counsel. Given that a trial court should "indulge every reasonable presumption against waiver" of the right to counsel, *People v Dennany*, 445 Mich 412, 428; 519 NW2d 128 (1994) (citations omitted), under these circumstances the trial court did not err in denying defendant's request to represent himself at trial. The record shows that the request was not unequivocal and that substantial disruption to the proceedings could have ensued had defendant represented himself.

Defendant also argues that the trial court improperly denied his request for self-representation because of inquiries into his legal competence and knowledge. In order to determine whether a defendant has knowingly, intelligently, and voluntarily asserted his right to waive assistance of counsel, the trial court should consider the defendant's general competence, rather than legal competence. *Id.* at 432. However, defendant's argument is not persuasive because even if the trial court's inquiry was improper, a defendant is not entitled to self-

representation if the trial court determines, as it did here, that it would result in a disruption of the proceedings. *Russell, supra* at 190.

The record reflects that defendant created numerous disruptions before the selection of the jury and presentation of proofs, as evidenced by his incessant interruptions at both the hearing before trial and the first two days of trial. For example, defendant continued to assert that his speedy trial rights had been violated even after the trial court had already ruled on that issue and explained its ruling several times. Defendant's interruptions were so numerous and distracting that the trial court threatened to gag him. In addition, when the trial court refused defendant's request to represent himself at trial, defendant declared the trial court was racist, prejudiced, and unfair, and thereafter refused to return to the courtroom. Therefore, defendant's assertion that he was disruptive only because of the denial of his right to represent himself is belied by the record, since he interrupted the court, was argumentative, and behaved in a generally disruptive fashion well before the request for self-representation was made and denied.

III. ADMISSIBILITY OF EVIDENCE

Defendant next contends that the trial erred by allowing the admission of a CD with the recorded conversation between defendant and the confidential informant. We disagree.

A. Standard of Review

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Pattison*, 276 Mich App 613, 615; 741 NW2d 558 (2007).

B. Analysis

Defendant contends that the practice of recording a conversation between a confidential informant and a suspect, without first obtaining judicial authorization, is strictly precluded by Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 USC 2510 *et seq.* However, defendant's understanding of the act is flawed. While it is true that judicial authorization is required for nonconsensual electronic surveillance, the act further states:

It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception. [18 USC 2511(2)(c).]

In *People v Collins*, 438 Mich 8, 40; 475 NW2d 684 (1991), the Michigan Supreme Court held that warrantless participant monitoring does not violate a defendant's rights under the federal or state constitutions. The recording at issue in this case was obtained with the knowledge and consent of the confidential informant. Judicial authorization was not necessary and the trial court did not abuse its discretion in admitting the CD into evidence.

IV. PROBABLE CAUSE FOR SEARCH

Defendant further asserts that the police lacked probable cause to stop and search his vehicle and that his conviction must be overturned.

A. Standard of Review

A trial court's determination that probable cause existed is reviewed for an abuse of discretion. *People v Wirth*, 87 Mich App 41, 44; 273 NW2d 104 (1978).

B. Analysis

“Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996).

Defendant relies on *People v Wing*, 43 Mich App 722; 204 NW2d 690 (1972), to support his argument that the police lacked probable cause to stop and search his vehicle. In *Wing*, this Court held that the trial court had erred by admitting heroin that had been seized from defendant's car into evidence when the circumstances of the arrest were as follows: (1) there was a plan for an informant to buy drugs from the defendant; (2) performance of the plan had occurred to the point where a sale by the defendant to the informant might have occurred; (3) the police officer thought he saw the informant nod after exiting the defendant's vehicle; and (4) there was no prearrangement for the informant to signal police when the sale was completed. *Id.* at 724-725. In *Wing*, the defendant's conviction was overturned because the conviction could not be sustained without the heroin as evidence. *Id.* at 725.

Defendant's reliance on *Wing* is misplaced given the substantial factual distinctions between the two cases. In the instant case, the cocaine that serves as the underlying basis for defendant's conviction was obtained from the confidential informant, not defendant's vehicle. More importantly, pursuit of defendant and the subsequent search of his vehicle resulted from the informant's verbal confirmation to the police of the sale, rather than a head signal that may or may not have occurred and was not prearranged. The informant's verbal indication that a drug sale had occurred as planned, coupled with the production of a substance the police believed to be cocaine allegedly obtained from defendant, provided sufficient probable cause to pursue defendant, arrest him, and search his vehicle.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Bill Schuette