

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 16, 2014

V
JURDUNN LEMECCA GARDNER,
Defendant-Appellant.

No. 308501
Wayne Circuit Court
LC No. 11-008715-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

V
ANGELA LEE SABLANI,
Defendant-Appellant.

No. 313760
Wayne Circuit Court
LC No. 11-008715-FC

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

In Docket No. 308501, defendant Jurdunn Lemecca Gardner appeals as of right his jury trial convictions of armed robbery, MCL 750.529, and assault with a dangerous weapon, MCL 750.82. He was sentenced to serve 12 to 20 years in prison for the armed robbery and one to four years for the assault. Because the trial court did not abuse its discretion in denying defendant's request for new appointed counsel and because there was no evidence that defendant's statement to the police was inadmissible, we affirm.

In Docket No. 313760, defendant Angela Lee Siblani appeals as of right her jury trial conviction of armed robbery, MCL 750.529. She was sentenced to serve 6 to 20 years in prison. Because the trial court did not err in failing to provide a specific unanimity instruction and because defense counsel was not ineffective for failing to request such an instruction, we affirm.

I. DOCKET NO. 308501

Defendant Gardner first argues that he was denied his constitutional right to counsel when the trial court declined to appoint substitute counsel at the start of trial. A trial court's decision regarding substitute counsel is reviewed for an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Strickland*, 293 Mich App 393, 397; 810 NW2d 660 (2011).

“An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced. Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic.” [*Traylor*, 245 Mich App at 462, quoting *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).]

Here, defendant first brought this issue to the attention of the trial court during jury selection. However, the presiding judge, Judge Gregory Bill, was only temporarily covering the proceeding for Judge Michael Hathaway, who was occupied conducting another trial. Judge Bill informed defendant that he was not hearing any motions and that any such requests needed to be made to Judge Hathaway. When the proceedings later convened before Judge Hathaway, defendant raised the issue again. Defendant stated that he wanted new appointed counsel because (1) his counsel only provided the discovery materials recently and (2) his counsel “not one time” talked to him about the case. Defendant further stated that he was uncomfortable with counsel because counsel “tried to sway” him to take a plea deal and refused to challenge the admissibility of his statement to the police.

Though defense counsel did not state when he provided the discovery materials to defendant, counsel nonetheless told the trial court that he has had the discovery materials for quite some time, but the content was very minimal and primarily consisted of the victim's statement and a statement defendant made to the police. Counsel also admitted that, in light of defendant's statement to the police, he encouraged a plea deal. Further, defense counsel stated that defendant has been insistent that they fight to suppress the statement, but in counsel's opinion, any attempt would have been unsuccessful.

The primary basis for defendant's request for new counsel was that he never spoke with trial counsel before trial. But defendant's own statements to the trial court belie this assertion since he explains how he and trial counsel had discussed defendant's statement to the police and a potential guilty plea. Further, although a legitimate disagreement regarding a fundamental trial tactic can constitute good cause, it is not good cause when an attorney declines to file a frivolous or futile motion. *Traylor*, 245 Mich App at 463. Additionally, a mere allegation that a defendant lacks confidence in his attorney, “unsupported by a substantial reason,” also does not amount to an adequate ground for the appointment of new counsel. *Strickland*, 293 Mich App at 398. The fact that defendant lacked confidence in his attorney because the attorney suggested pleading guilty in light of defendant's damaging admission to the police is not a substantial reason to appoint new counsel. Accordingly, the trial court did not abuse its discretion in denying defendant's request for the appointment of a new attorney.

Defendant next argues that he was denied a fair trial from the admission of his statement to the police because he asserts that the statement was involuntary. Because this issue was unpreserved, we review it for plain error that was outcome determinative. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant claims that his statement was involuntary because he was under the influence of medication. When determining whether a statement was voluntary, the court must consider the totality of the circumstances. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). While “[i]ntoxication from drugs or alcohol may preclude an effective waiver of *Miranda* rights, [it] is not dispositive of the issue of voluntariness.” *People v Akins*, 259 Mich App 545, 566 n 18; 675 NW2d 863 (2003). But on appeal, defendant cites to nothing in the lower court record to support his assertion that he was “under the influence of medication, and his will was simply overborne.” Consequently, we perceive no plain error in the trial court failing to sua sponte suppress the statement. Likewise, we conclude that there is nothing in the record to demonstrate that trial counsel was ineffective for failing to move to suppress the statement. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010) (stating that counsel is not ineffective for failing to raise a futile objection).

II. DOCKET NO. 313760

Defendant Siblani argues on appeal that she was denied a fair trial because the trial court did not instruct the jury that it must be unanimous regarding the type of weapon used in the armed robbery and that she was denied the effective assistance of counsel because her attorney did not request the instruction.

A jury verdict must be unanimous. MCR 6.410(B). The trial court must properly instruct the jury of this unanimity requirement. *People v Cooks*, 446 Mich 503, 512; 521 NW2d 275 (1994); *People v Gadomski*, 232 Mich App 24, 30; 592 NW2d 75 (1998). While the trial court provided the jury with a general unanimity instruction, defendant contends that the jury should have been given a specific unanimity instruction since there were two bases for the underlying armed robbery count. “In some circumstances, a general unanimity instruction . . . is not adequate to ensure a defendant’s right to a unanimous jury verdict.” *People v Gadomski*, 232 Mich App 24, 30; 592 NW2d 75 (1998). One circumstance where a general unanimity instruction is insufficient is “when the prosecution offers evidence of multiple *acts* by a defendant, each of which would satisfy the *actus reus* element of a single charged offense.” *Id.* (emphasis added), citing *Cooks*, 446 Mich at 530. Here, only *one act* of robbery was alleged, with multiple theories regarding the weapon with which it was committed. And this Court has established that such “multitheory” cases do not fall under the rule of *Cooks*. *People v Lynn*, 223 Mich App 364, 367 n 1; 566 NW2d 45 (1997). As a result, defendant was not denied a fair trial by virtue of the trial court failing to provide the instruction. Additionally, defendant was not denied the effective assistance of counsel because her attorney did not have a duty to make a

meritless argument. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Affirmed.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Karen Fort Hood