

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TISHEAM MCADOO,

Defendant-Appellant.

UNPUBLISHED
September 18, 2003

No. 240002
Wayne Circuit Court
LC No. 01-005859

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

MEMORANDUM.

Defendant appeals as of right his jury conviction for armed robbery, MCL 750.529, carjacking, MCL 750.529, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in failing to suppress the statement he made to police. However, defendant withdrew his request for a hearing in this case, and withdrew his motion to suppress. Review of the issue has been waived. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000).

Defendant also argues that the court erred in denying his request for substitute counsel. A trial court's decision regarding substitution of counsel will not be disturbed absent an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). Appointment of substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. *Id.*, quoting *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic. *Id.*

Less than two weeks before defendant's trial commenced, he requested new counsel because he believed that his counsel misunderstood the law as it applied to his case. During trial, defendant again requested new counsel alleging that there had been a breakdown in communication and that defense counsel would not ask witnesses crucial questions. None of the reasons articulated by defendant constituted a legitimate difference of opinion regarding a fundamental trial tactic. Thus, we find that the trial court did not abuse its discretion in denying defendant's request for substitute counsel where defendant failed to show good cause.

Lastly, defendant argues that there was insufficient evidence to support his carjacking conviction because the complainant was not immediately present when his car was taken. We disagree. “When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.” *People v Green*, 228 Mich App 684, 694; 580 NW2d 444 (1998).

MCL 750.529a provides in part:

(1) A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined by section 412 from another person, in the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.

In regards to the “presence” requirement, this Court has stated,

[A] thing is in the presence of a person if it is so within the person's reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it. In other words, whether the taking of a motor vehicle occurs within the presence of a person, depends on the effect of violence or fear on that person's ability to control his possession of the motor vehicle at the time of its taking. [*Green, supra* at 695; internal quotations and citations omitted.]

Here, the evidence indicated that the complainant had just exited his car when defendant approached him with a gun, forced him into a waiting SUV. The complainant was driven a few blocks away, robbed of certain personal possessions, including his car keys, and told to get out of the SUV. The complainant walked the few blocks back to his car and observed defendant drive away in it. On these facts, we hold that a rational finder of fact could conclude that but for defendant’s threat of violence, complainant would have retained his keys and thus, control over his vehicle, which is sufficient to sustain a conviction of carjacking. *People v Raper*, 222 Mich App 475, 482-483; 563 NW 2d 709 (1997).

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder