

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Apellee,

v

IJOMA EKWEDI RAYMOND,

Defendant-Appellant.

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UNPUBLISHED

January 20, 2004

No. 241601

Oakland Circuit Court

LC No. 2001-179885-FC

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant Ijoma Ekwedi Raymond was convicted of possession with intent to deliver 650 or more grams of heroin, MCL 333.7401(2)(a)(i). The trial court sentenced defendant as a second-offense habitual offender, MCL 769.10, to a prison term of twenty to fifty years. Defendant appeals as of right. We affirm.

I. Facts

On July 27, 2001, the Oakland Country Macomb Interdiction Team (“OMIT”), a multi-jurisdictional FBI drug unit, conducted surveillance of defendant and codefendant Peter Emeka Nwankwo, after receiving information that the two may be involved drug trafficking. During their surveillance, OMIT officers observed that codefendant Nwankwo was pulled over by a Southfield police officer for erratic driving. The vehicle was registered to defendant. Codefendant Nwankwo was arrested for failure to produce a valid driver’s license. A subsequent search of the vehicle uncovered a package of heroin.

Sergeant Terrence Mekoski, the OMIT leader, testified that the OMIT team went to defendant’s motel room because they knew the car containing the heroin was registered in her name and that the two defendants were traveling together. After identifying themselves as police officers, Sergeant Mekoski stated that defendant opened the door and gave them permission to enter. At that point, Sergeant Mekoski claimed that he explained to defendant that codefendant Nwankwo had been arrested and that heroin was discovered in the car.

Sergeant Mekoski testified that defendant granted them oral and written permission to search her motel room for narcotics, drug paraphernalia, and drug proceeds. During the search, Detective David McNealy, III opened two children’s stuffed animals and uncovered several packets containing a substance suspected to be heroin. Sergeant Mekoski also discovered a

plastic “baby powder container” containing heroin. Nearly \$2,500 was recovered from underneath the lining of defendant’s purse. Defendant was placed under arrest.

Defendant waived her *Miranda*<sup>1</sup> rights and informed Sergeant Mekoski that she, codefendant Nwankwo, and two other people, “met up” in a Chicago motel room. Defendant explained that she and codefendant Nwankwo were given a kilogram of heroin to transport to Michigan to sell. Sergeant Mekoski testified that defendant initially indicated that codefendant Nwankwo was responsible for selling the heroin and collecting the money, while she would simply wait in the motel room for him to return to drop off the proceeds and collect more heroin. She maintained that the two other Chicago parties owned the heroin. According to Sergeant Mekoski, defendant later admitted that she was the actual connection to the heroin. She stated that she accepted codefendant Nwankwo’s offer to sell the heroin on the street because she needed money for medical bills.

Codefendant Nwankwo was called by the prosecution and testified in defendant’s case. He denied that he was involved in selling heroin, but admitted that he planned to introduce defendant to a person to whom she could sell her heroin.

## II. Motion to Suppress

Defendant initially asserts that the trial court erroneously denied her motion to suppress the evidence seized during the warrantless search of her motel room. We disagree.

At an evidentiary hearing, Sergeant Mekoski testified that he and three additional OMIT went to defendant’s motel room after heroin was discovered in a car registered in her name. Although dressed in plain clothes, Sergeant Mekoski claimed that their police badges were displayed around their necks and that none of their weapons were in plain view. When Sergeant Mekoski knocked on defendant’s door, he identified himself as a police officer and held his badge up to the peephole. Defendant opened the door and he informed her that he was performing a follow-up investigation because codefendant Nwankwo had been arrested. Sergeant Mekoski indicated that defendant thereafter permitted the officers to enter her room.

Sergeant Mekoski testified that, upon entering the room, he immediately told defendant that she was not under arrest. He claimed that he then explained to defendant that they had information that she was traveling with codefendant Nwankwo and that heroin had been found in the car. Sergeant Mekoski indicated that he then asked defendant for permission to search her room for additional drugs. According to Sergeant Mekoski, defendant gave the officers both oral and written consent to search the room. He testified that he assessed defendant’s ability to understand English and inquired into her educational background before obtaining her consent. He further indicated that defendant did not appear to be under the influence of any substance. Sergeant Mekoski stated that he went over the consent form with defendant “word by word.” The other OMIT officers that testified at trial essentially corroborated this testimony.

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Conversely, defendant testified that the officers identified themselves as maintenance and raced into her room without permission. She further claimed that their guns were in plain view and that she never saw their badges when they entered. Defendant indicated that when Detective McNealy subsequently asked if he could look around, she said, “sure.” She maintained that she was unaware that she could refuse the officer’s request. Defendant further denied ever signing a consent to search form and claimed that the signature on the consent form did not belong to her. She specifically noted discrepancies between the signatures on the consent form and the Advice of Rights form signed after her arrest. Defendant indicated that she did not feel free to leave during the search because armed officers were standing by the door.

Defendant testified that she signed an Advice of Rights form after she was arrested because the officers told her that if she refused to sign, “they could not cooperate with [her].” She also stated that she did not read her rights before signing because the officers refused to get her glasses. Defendant admitted, however, that she had been previously arrested for conspiracy to import heroin and that she was familiar with her *Miranda* rights. Although she initially denied any awareness that heroin was in her motel room, defendant later admitted in a post-arrest interview with the police that she did know it was there “[b]ecause they had already found it.”

Following the evidentiary hearing, the trial court denied defendant’s motion to suppress, concluding that, under the totality of the circumstances, defendant freely and voluntarily consented to the search of her motel room. The trial court did not find defendant’s testimony credible, given her contradictory position concerning her knowledge of the heroin. Rather, the trial court held that the police officers properly identified themselves and received defendant’s permission to search her room and its contents. The trial court further found that defendant’s awareness that she could refuse the officer’s request is only one factor to consider and that the totality of the circumstances supported a finding that her consent was voluntary.

We review a trial court’s factual findings regarding a motion to suppress for clear error.<sup>2</sup> “A decision is clearly erroneous if, although there is evidence to support it, the Court is left with a definite and firm conviction that a mistake has been made.”<sup>3</sup> To the extent a trial court’s ruling involves an interpretation of the law or the application of a constitutional standard to uncontested facts our review is *de novo*.<sup>4</sup> The trial court’s ultimate decision regarding a motion to suppress is also reviewed *de novo*.<sup>5</sup>

“The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures.”<sup>6</sup> Warrantless searches are unreasonable *per se*, “unless the police conduct falls

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<sup>2</sup> *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

<sup>3</sup> *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992).

<sup>4</sup> *Attebury*, *supra* at 668.

<sup>5</sup> *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999).

<sup>6</sup> *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000), citing US Const, Am IV; Const 1963, art 1, § 11.

under one of several specifically established and well-delineated exceptions.”<sup>7</sup> Valid consent is a recognized exception to the search warrant and probable cause requirements, and allows search and seizure when consent is unequivocal, specific, and freely given.<sup>8</sup> Whether consent to search is freely given involves a question of fact based on the totality of the circumstances.<sup>9</sup> The use of coercive tactics or the existence of a coercive atmosphere is relevant to determining if consent was voluntary.<sup>10</sup> In this regard, courts must consider whether police conduct would suggest to a reasonable person that he was free to decline their search request and leave the area.<sup>11</sup>

In this case, defendant testified that she did not freely give consent because the police falsely represented themselves as maintenance men to gain entrance and she felt threatened. However, the trial court concluded that the officers’ testimony that they knocked, identified themselves, and were granted permission to enter and search the motel room was more credible. We defer to the trial court’s assessment of the credibility of witnesses at a suppression hearing.<sup>12</sup>

Beyond defendant’s assertions, which the court found implausible, there is no indication in the record that the police used coercive measures or attempted to place defendant in duress to obtain consent. Additionally, there is no evidence that defendant was unaware of her right to refuse the police officers’ request or that she failed to possess sufficient intelligence to understand that she was consenting to a search. In fact, the evidence shows that defendant is college-educated, with previous exposure to the criminal justice system. Moreover, as noted by the trial court, an individual’s knowledge of the right to refuse consent is only one factor to consider and is not necessarily a prerequisite for consent to be valid.<sup>13</sup> Based on the totality of the circumstances, we find that the trial court did not err by denying defendant’s motion to suppress the evidence seized from her motel room.<sup>14</sup>

### III. Ineffective Assistance of Counsel

Defendant next argues that she is entitled to a new trial because defense counsel was ineffective. Specifically, defendant cites counsel’s failure to: investigate the signature on the consent form; object to the prosecutor’s late addition of codefendant Nwankwo as a witness; and request a cautionary instruction regarding accomplice testimony. We disagree. This Court granted defendant’s motion to remand to seek an evidentiary hearing to support her claim that

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<sup>7</sup> *People v Gonzalez*, 256 Mich App 212, 232; 663 NW2d 499 (2003).

<sup>8</sup> *People v Borchard-Ruhland*, 460 Mich 278, 294; 597 NW2d 1 (1999).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; *People v Klager*, 107 Mich App 812, 816; 310 NW2d 36 (1981).

<sup>11</sup> See *People v Bloxson*, 205 Mich App 236, 242-243; 517 NW2d 563 (1994).

<sup>12</sup> *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999).

<sup>13</sup> *Borchard-Ruhland*, *supra* at 294.

<sup>14</sup> We reject defendant’s claim that the post-arrest statement that she gave to the police should be suppressed because it was the “fruit of the poisonous tree.” Because the search and arrest were valid, plaintiff’s statement is not invalid on this basis.

defense counsel was ineffective. On remand, defendant moved for a *Ginther*<sup>15</sup> hearing, which the trial court denied.

Effective assistance of counsel is presumed and defendant bears a heavy burden to prove otherwise.<sup>16</sup> To establish ineffective assistance of counsel, defendant must prove: (1) that his counsel's performance was so deficient that he was denied his Sixth Amendment right to counsel; and (2) that this deficient performance prejudiced him to the extent there is a reasonable probability that but for counsel's error, the result of the proceedings would have been different.<sup>17</sup> Defendant must also overcome the strong presumption that his counsel's performance was sound trial strategy.<sup>18</sup>

#### A. Failure to Investigate the Signature on the Consent Form

We reject defendant's claim that defense counsel was ineffective for failing to investigate the signature on the consent form. Following trial, defendant retained a handwriting expert to analyze and compare the signature on the consent form to defendant's signature on six other documents that she admitted signing. The handwriting expert's report concluded that the expert was "unable to offer a conclusive opinion concerning whether [defendant] signed" the consent form, but that the signature on the consent form shows indications that it was not written by the same person that signed the other signature samples.

Defendant presented this report to the trial court during her motion for an evidentiary hearing. The expert's report indicates that he found *some* discrepancies in the signature samples that *may* indicate that defendant did not sign the consent form. As such, the expert's opinion was relatively equivocal. Even if defendant's expert's opinion had been offered at the suppression hearing, the trial court indicated that it would not have changed its decision to deny defendant's motion to suppress. A trier of fact is not bound to accept the opinion of an expert.<sup>19</sup> Accordingly, defendant has failed to demonstrate that but for counsel's alleged inaction, there was a reasonable probability that the result of the proceeding would have been different.<sup>20</sup>

#### B. Failure to Object to the Late Addition of Codefendant Nwankwo as a Witness

We likewise find no merit to defendant's claim that defense counsel was ineffective for failing to object to the late addition of codefendant Nwankwo as a witness.

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<sup>15</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

<sup>16</sup> *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

<sup>17</sup> *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

<sup>18</sup> *Id.* at 600.

<sup>19</sup> *People v Phil Clark*, 172 Mich App 1, 9; 432 NW2d 173 (1988).

<sup>20</sup> *Carbin*, *supra* at 600.

When claiming ineffective assistance because of counsel's alleged unpreparedness, a defendant must show prejudice resulting from the alleged lack of preparation.<sup>21</sup> There is nothing in the record that supports defendant's assertion that defense counsel was unprepared to cross-examine codefendant Nwankwo. To the contrary, the record shows that defense counsel was intimately familiar with the case, was not surprised by codefendant Nwankwo's testimony, and adequately cross-examined him. Defendant has further failed to indicate what questions defense counsel failed to ask or any other specific omissions defense counsel made during codefendant Nwankwo's testimony.<sup>22</sup> Nevertheless, decisions concerning what questions to ask are presumed to be matters of trial strategy.<sup>23</sup> This Court will not substitute its judgment on trial strategy, nor will it assess counsel's performance with the benefit of hindsight.<sup>24</sup>

There is also no indication that the trial court abused its discretion by allowing the witness to testify.<sup>25</sup> MCL 767.40a(4) provides that "[t]he prosecuting attorney may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties." Defendant has failed to demonstrate, or even argue, that an objection to the late addition of codefendant Nwankwo as a witness would have been successful. Counsel is not required to make frivolous objections or advocate a meritless position.<sup>26</sup>

### C. Failure to Request CJI2d 5.6 - Cautionary Instruction Regarding Accomplice Testimony

To the extent defendant claims that a new trial is warranted because defense counsel failed to request a cautionary instruction regarding accomplice testimony, we disagree.

Defendant relies upon *People v McCoy*<sup>27</sup> to support her position. In *McCoy*, our Supreme Court held that it has been "deemed reversible error . . . to fail upon request to give a cautionary instruction concerning accomplice testimony and, if the issue is closely drawn, it may be reversible error to fail to give such a cautionary instruction even in the absence of a request to charge."<sup>28</sup> A case is considered "closely drawn" if a determination of the defendant's guilt essentially comes down to a credibility contest between the defendant and her accomplice.<sup>29</sup> But our Supreme Court clarified its position in *People v Reed*,<sup>30</sup> and held that the *McCoy* rule "does not require automatic reversal when a case is 'closely drawn.'" In *Reed* the Court stated:

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<sup>21</sup> *People v Caballero*, 184 Mich App 636, 640; 459 NW2d 80 (1990).

<sup>22</sup> See *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001).

<sup>23</sup> *Rockey*, *supra* at 76.

<sup>24</sup> *Id.* at 76-77.

<sup>25</sup> See *People v Callon*, 256 Mich App 312, 325-326; 662 NW2d 501 (2003).

<sup>26</sup> *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

<sup>27</sup> 392 Mich 231; 220 NW2d 456 (1974).

<sup>28</sup> *Id.* at 240.

<sup>29</sup> *People v Gonzalez*, 468 Mich 636, 643 n 5; 664 NW2d 159 (2003).

<sup>30</sup> 453 Mich 685, 692; 556 NW2d 858 (1996).

Rather, *McCoy* states that such a failure to instruct *may* be error requiring reversal. This Court has never established standards for evaluating when the failure to instruct sua sponte *requires* reversal. In *People v Atkins*, for example, we declined to extend *McCoy* to a case involving an addict-informer. One of the reasons was that defense counsel had thoroughly explored the addict-informer's motivation to lie on cross-examination. Certainly, it would make little sense to require a judge to caution a jury sua sponte on a witness' motivation to lie when defense counsel has thoroughly explored the witness' motivations. Rather, *McCoy* stands for the proposition that a judge should give a cautionary instruction on accomplice testimony sua sponte when potential problems with an accomplice's credibility have not been plainly presented to the jury.<sup>[31]</sup>

While defense counsel's failure to request the instruction is questionable, we are satisfied there is no reasonable probability that the result of the proceedings would have been different in the absence of the alleged error. Contrary to defendant's claims, this case was not "closely drawn." Apart from codefendant Nwankwo's testimony, there was ample evidence implicating defendant. In addition to defendant's post-arrest statement to the police that connected her to the heroin found in the motel room, there was independent evidence that codefendant Nwankwo was arrested for possession of heroin while driving a car registered in defendant's name. We further note that a large amount of heroin was found in *defendant's* motel room, and that a large sum of money was hidden in the lining of *defendant's* purse.

Codefendant Nwankwo's questionable credibility was also made apparent to the jury and his motivation to lie was thoroughly explored by defense counsel. The record shows that defense counsel vigorously and extensively cross-examined both codefendant Nwankwo and the police about codefendant Nwankwo's involvement in the crimes, his motivations for testifying untruthfully, and the inconsistencies in his testimony. Defense counsel also discussed codefendant Nwankwo's motivation for falsely testifying and implicating defendant during closing argument.

#### IV. Cross-Examination of Codefendant Nwankwo

Defendant ultimately claims that the trial court impermissibly limited her cross-examination of codefendant Nwankwo concerning the mandatory penalty he was facing or his culpability regarding the drugs found in defendant's motel room. According to defendant, this information would have illustrated codefendant Nwankwo's bias against defendant and his motivation to provide false testimony. She asserts that the trial court's actions violated her constitutional right to present a defense and confront her accusers. We disagree.

A trial court's evidentiary rulings and limitation of cross-examination are reviewed for an abuse of discretion.<sup>32</sup> An abuse of discretion will only be found if an unprejudiced person would

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<sup>31</sup> *Reed, supra* at 692-693 (Citations omitted, emphasis in original).

<sup>32</sup> *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000); *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992).

say there was no justification or excuse for the ruling based on the facts presented.<sup>33</sup> A decision on a close evidentiary question is ordinarily not considered an abuse of discretion.<sup>34</sup> To the extent this issue implicates a defendant's right to confrontation, our review is de novo.<sup>35</sup>

All relevant evidence is generally admissible, whereas irrelevant evidence is not.<sup>36</sup> Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.<sup>37</sup> But relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, . . . undue delay, waste of time, or needless presentation of cumulative evidence."<sup>38</sup>

A criminal defendant has a constitutional right to present a defense and confront his accusers.<sup>39</sup> While the right to present a defense is a fundamental due process element, this right is not absolute.<sup>40</sup> As a general rule, a witness may be cross-examined on any matter relevant to any issue in the case,<sup>41</sup> but neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject.<sup>42</sup> Rather, a court has wide latitude to impose reasonable limits on cross-examination based on concerns, such as, prejudice, confusion of the issues, or questioning that is only marginally relevant.<sup>43</sup>

Here, we find no abuse of discretion. Defendant sought to demonstrate during cross-examination that codefendant Nwankwo was biased against defendant and motivated to "shift the blame" because of the mandatory penalty that he faced in connection with the heroin seized. As noted by the trial court, however, codefendant Nwankwo was never charged with possession of the heroin confiscated from defendant's motel room. And notably, he never asserted that defendant was the individual who had "planted" the heroin in the car. As such, this is not a case involving simple blame shifting between two defendants charged with the same crime, nor is it a situation where a witness testifies after avoiding a particular penalty by entering into a plea

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<sup>33</sup> *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

<sup>34</sup> *Sabin (After Remand)*, *supra* at 67.

<sup>35</sup> *People v Beasley*, 239 Mich App 548, 557; 609 NW2d 581 (2000); see also US Const, Am VI; Const 1963, art 1, § 20.

<sup>36</sup> MRE 402.

<sup>37</sup> MRE 401.

<sup>38</sup> MRE 403.

<sup>39</sup> US Const, Am VI; Const 1963, art 1, § 20; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993).

<sup>40</sup> See *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984).

<sup>41</sup> *People v Federico*, 146 Mich App 776, 793; 381 NW2d 819 (1985).

<sup>42</sup> *Adamski*, *supra* at 138.

<sup>43</sup> *Id.*

agreement.<sup>44</sup> We therefore agree with the trial court that, under the circumstances of this case, the proffered evidence was irrelevant and may have confused the issues.

We likewise reject defendant's claim that the trial court's evidentiary ruling deprived her of her constitutional right to present a defense. The trial court's ruling did not amount to a blanket exclusion of all evidence challenging codefendant Nwankwo's credibility. In fact, the trial court indicated that defense counsel could cross-examine codefendant Nwankwo regarding whether he was motivated to fabricate his testimony because he faces a potential conviction. Defense counsel cross-examined codefendant Nwankwo at length, and specifically raised questions regarding his truthfulness and motivations to falsely testify. Contrary to defendant's implication, evidentiary rulings do not ordinarily rise to the level of a constitutional violation.<sup>45</sup> We are not persuaded that the trial court abused its discretion by limiting the cross-examination.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Richard Allen Griffin  
/s/ Jessica R. Cooper

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<sup>44</sup> See, e.g., *People v Mumford*, 183 Mich App 149, 153-154; 455 NW2d 51 (1990).

<sup>45</sup> See *Crane v Kentucky*, 476 US 683, 690; 106 S Ct 2142; 90 L Ed 2d 636 (1986).