

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ARTHUR WINGFIELD,

Defendant-Appellant.

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UNPUBLISHED

August 26, 2003

No. 239705

Calhoun Circuit Court

LC No. 01-003053-FH

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendant appeals by right his conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), entered after a jury trial. We affirm.

Defendant orally moved to suppress evidence against him on the ground that the police lacked probable cause to arrest him or even reasonable suspicion to make an investigatory stop. The parties agreed that the evidence revealed the following facts. A woman who did not identify herself stopped Officer Miller and told him that she had just witnessed what she believed to be a narcotics transaction in the parking lot of a market. She told Miller that it appeared that a woman purchased drugs from an African-American man in a white Chrysler Sebring. Miller could see the market from his vantage point and saw a white Sebring in the parking lot. He immediately drove to the market and parked behind the Chrysler. An African-American man identified as defendant exited the market and entered the car. Defendant could not produce a driver's license. Miller sought consent to search the car, which defendant granted. Miller searched the car and found a plastic bag containing smaller bags that held what appeared to be crack cocaine. Defendant had \$600 in cash on his person. Defendant waived his *Miranda*<sup>1</sup> rights and admitted that the cocaine belonged to him. He admitted that just before Miller's arrival he accepted money from a woman who approached his car but that the woman was repaying a loan.

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

The trial court denied the motion to suppress the evidence. The trial court indicated that while denial of the motion would be justified because defendant had not filed a motion before trial, the substance of the motion was without merit. The trial court observed that Miller was able to verify the information given to him by the anonymous woman. The trial court found that Miller reasonably detained defendant, and that defendant consented to the search.

The jury found defendant guilty as charged. The trial court sentenced defendant as a fourth habitual offender to two and one-half to fifteen years in prison.

We review a trial court's findings of fact on a motion to suppress for clear error and its ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

A brief investigatory stop short of arrest is permitted if a peace officer has a reasonable suspicion that criminal activity is afoot. *Terry v Ohio*, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968). An investigatory stop must be justified by a particularized suspicion, based on some objective manifestation, that a person has been, is, or is about to engage in some type of criminal activity. The suspicion must be based on the totality of the circumstances presented to the officer. *People v Shields*, 200 Mich App 554, 557; 504 NW2d 711 (1993). In determining the existence of a reasonable suspicion, the trial court should consider objective factors and should defer to the experience of law enforcement officers and their assessments of criminal behavior. *People v Oliver*, 464 Mich 184, 196, 200; 627 NW2d 297 (2001).

An investigatory stop of a vehicle may be based on an anonymous tip if, under the totality of the circumstances, sufficient indicia of reliability exist to support a reasonable suspicion of criminal activity. *People v Faucett*, 442 Mich 153, 168-169; 499 NW2d 764 (1993). Independent police corroboration of an informant's predictions imparts a degree of reliability. An informant's ability to predict a suspect's future behavior demonstrates a special familiarity with the person's affairs. *Id.*, 165-166. An anonymous tip which does not contain predictive information from which to establish the informant's knowledge and credibility does not establish a reasonable suspicion which justifies a stop and search of a person. *Florida v JL*, 529 US 266, 272; 120 S Ct 1375; 146 L Ed 2d 254 (2000).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have erred so seriously that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id.*, 600. Counsel is presumed to have afforded effective assistance, and the defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant argues that the trial court erred by denying his motion to suppress the evidence and that trial counsel's failure to file a timely written motion to suppress the evidence constituted ineffective assistance. We disagree and affirm defendant's conviction. A woman who did not identify herself approached Miller and told him that she witnessed what she believed was a narcotics transaction between a woman and an African-American man in the parking lot of a

particular market. She said the man was driving a white Chrysler Sebring. This case is distinguishable from *JL, supra*: in that in that case the informant relayed the information from an unknown location and gave no basis for his knowledge, 529 US at 271. Here, Miller had face-to-face contact with a person who explained the basis of her suspicion that a narcotics transaction had taken place. Shortly after Miller arrived at the market, defendant, an African-American, exited the market and entered the vehicle. Miller independently verified the location of the car and the basic description of the driver. *Faucett, supra*, 165. We conclude that because of the information provided to and corroborated by Miller and Miller's assessment of the facts, the stop of defendant was reasonable under the totality of the circumstances. *Shields, supra*; *Oliver, supra*.

The consent exception to the warrant requirement allows search and seizure when consent is unequivocal, specific, and freely given. *People v Marsack*, 231 Mich App 364, 378; 586 NW2d 234 (1998). Defendant freely consented to the search of the car. An investigatory stop is not so inherently coercive as to render a consent to search given during the stop involuntary. *People v Acoff*, 220 Mich App 396, 400; 559 NW2d 103 (1996).

Trial counsel's failure to file a written motion did not constitute ineffective assistance. The trial court considered the substance of the motion and found it to be without merit. Defendant has not demonstrated prejudice because he has not shown that had counsel filed a written motion the trial court would have ruled differently. *Carbin, supra*.

We affirm.

/s/ Jane E. Markey  
/s/ Mark J. Cavanagh  
/s/ Henry William Saad