

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANDERSON,

Defendant-Appellant.

UNPUBLISHED
February 23, 2006

No. 258264
Wayne Circuit Court
LC No. 01-005968-01

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

MEMORANDUM.

Defendant appeals as of right from convictions of possession with intent to deliver less than fifty grams of cocaine and less than fifty grams of heroin, MCL 333.7401(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that trial counsel was ineffective for failing to move to suppress the evidence because he was not doing anything unlawful or remotely suspicious before fleeing the scene, and thus the police lacked reasonable suspicion for conducting an investigatory stop. Because defendant failed to raise this claim below in a motion for a new trial or an evidentiary hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). To prevail on a claim of ineffective assistance of counsel, defendant must show a serious error that affected the outcome of the proceedings. *People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001), aff'd 468 Mich 233 (2003).

A police chase is not a seizure unless the police exhibit some show of authority indicating that the person is not free to leave, such as activating lights and siren, commanding the person to stop, displaying weapons, or forcing the fleeing person into a circumscribed area. *People v Mamon*, 435 Mich 1, 12; 457 NW2d 623 (1990). Here, the police were simply driving down the street when defendant took off running. Thus, he was not seized when an officer gave chase. During the chase, defendant abandoned the gun and cut off his standing to challenge the introduction of the [weapon] under the Fourth Amendment. *Id.* at 7. Defendant's disposal of a gun plus his continued flight created reasonable suspicion that he might be involved in criminal activity, and justified the subsequent detention which resulted in the discovery of the narcotics. *People v Tooks*, 403 Mich 568, 581; 271 NW2d 503 (1978). Even if defendant had not disposed of the gun, the result would be the same. The Supreme Court has held that a defendant's presence in an area known for heavy narcotics trafficking, coupled with his unprovoked flight at

the appearance of police, provides reasonable suspicion to conduct an investigatory stop. *Illinois v Wardlow*, 528 US 119, 124-125; 120 S Ct 673; 145 L Ed 2d 570 (2000). Because defendant has not shown that the evidence was illegally seized, counsel was not ineffective for failing to move for suppression. *People v Kulpinski*, 243 Mich App 8, 24-27; 620 NW2d 537 (2000).

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald