

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 13, 2011

V

ANTHONY BOLES,

Defendant-Appellant.

No. 293592
Saginaw Circuit Court
LC No. 08-030771-FH

Before: K. F. KELLY, P.J., AND GLEICHER AND STEPHENS, JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction of possession of cocaine, MCL 333.7403(2)(a)(v). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On March 6, 2008, at approximately 9:15 p.m., defendant was stopped while driving by Michigan State Police troopers, ostensibly because he was operating his automobile without headlights or taillights. Defendant was subsequently arrested for driving without a driver's license. The troopers performed a search of defendant's person, and found a number of rocks of suspected cocaine in his socks. After he returned to the police post, one of the troopers performed a preliminary field test, and the substances tested positive for cocaine. The trooper sent the evidence to the laboratory for testing. A Michigan State Police forensic scientist testified that the laboratory received the material taken from defendant during the stop on March 13, 2008, and tested it on March 14, 2008. The material tested positive for cocaine. A complaint was issued on April 3, 2008, and defendant was arraigned on April 4, 2008.

On appeal, defendant's sole argument is that he was denied due process due to the delay between the initial stop and discovery of the suspected cocaine, and the issuance of the complaint for this offense. We review this constitutional question de novo. *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006).

"Mere delay between the time of the commission of an offense and arrest is not a denial of due process." *People v Anderson*, 88 Mich App 513, 515; 276 NW2d 924 (1979). To merit dismissal of a charge, a pre-arrest delay must have resulted in actual and substantial prejudice to the defendant's right to a fair trial and the prosecution must have intended a tactical advantage. *People v Patton*, 285 Mich App 229, 237; 775 NW2d 610 (2009). To be substantial, the prejudice to the defendant must have meaningfully impaired his ability to defend against the

charges such that the outcome of the proceedings was likely affected. *Id.* An unsupported statement of prejudice by defense counsel is not enough, nor are undetailed claims of loss of physical evidence, witness memory loss, or witness death. *People v Walker*, 276 Mich App 528, 546; 741 NW2d 843 (2007), vacated in part on other grounds 480 Mich 1059; 743 NW2d 912 (2008). “If a defendant demonstrates prejudice, the prosecution must then persuade the court that the reason for the delay sufficiently justified whatever prejudice resulted.” *Patton*, 285 Mich App at 237, citing *People v Cain*, 238 Mich App 95, 109; 605 NW2d 28 (1999). The need to investigate further, rather than a desire to obtain a tactical advantage, is a proper reason for a delay. *People v Adams*, 232 Mich App 128, 140; 591 NW2d 44 (1998).

Defendant has not demonstrated prejudice resulting from the delay between the search of his person and the discovery of his cocaine, and his arrest 29 days later. Defendant’s affidavit sets forth the following allegations of prejudice:

3. I recall that, at the time of the traffic stop, I had seen six or seven people in their yards on Lynwood Street, on both sides of the street, who would have been in a position to observe that I had been driving my car with the headlights on, contrary to the testimony of the arresting officers.

* * *

5. Had I known sooner that I was going to face formal charges, I would have been able to locate potential eyewitnesses to the traffic stop. However, due to the delay of 29 days, it would have been impossible to locate witnesses who would have remembered the incident, due to the frequency of police traffic stops on Lynwood Street, of which I have personal knowledge because I resided in that neighborhood.

Defendant’s allegations of prejudice are not substantial under the analysis above. Defendant does not assert that he questioned any of the residents of this street and actually determined that they did not remember the incident. His assertion of prejudice is essentially an undetailed claim of witness memory loss, which is insufficient to show substantial prejudice. *Walker*, 276 Mich App at 546.

Moreover, defendant cannot demonstrate that the delay was caused by deliberate misconduct on the part of the police or the prosecutor. The complaint was issued on April 3, 2008, one day after the prosecution received the results of the laboratory report. The prosecution’s decision to wait for the official laboratory results, i.e., further evidence of this crime, appears proper. *Adams*, 232 Mich App at 140. Defendant has presented nothing to indicate deliberate misconduct.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens