STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 17, 2007
v KAREEM DALE RHODES, Defendant-Appellant.	No. 261276 Macomb Circuit Court LC No. 2004-002865-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v RONNIE KEVIN TURRENTINE, Defendant-Appellant.	No. 261277 Macomb Circuit Court LC No. 2004-002867-FC

Before: Zahra, P.J. and Cavanagh and Schuette, JJ.

PER CURIAM.

Defendants Kareem Rhodes and Ronnie Turrentine were each convicted of possession with intent to deliver 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(i), and conspiracy to possess with intent to deliver 1,000 or more grams of cocaine, MCL 750.157a, following a joint jury trial. Defendant Rhodes was sentenced to concurrent prison terms of 22-1/2 to 40 years for each conviction, and defendant Turrentine was sentenced to concurrent prison terms of 179 to 360 months for each conviction. Both defendants appeal as of right. We affirm.

I. Basic Facts and Procedure

Defendants' convictions arise from their participation in the possession and distribution of 11 kilograms (28 pounds) of cocaine. The cocaine was found in the gas tank of a rented Chevrolet Blazer that was being driven by defendant Turrentine. Defendant Rhodes and another

codefendant, Brian Lott, were implicated as individuals who helped place the cocaine into the gas tank.[1] The three allegedly acted together as one of the "transport" links of a larger conspiracy chain to sell the cocaine.

On February 11, 2004, Macomb County Sheriff Deputy Kenneth Rumps, a member of the County of Macomb Enforcement Team (COMET), a drug task force, went to the Extended Stay Motel in Roseville to conduct surveillance on the Chevrolet Blazer in response to information that the vehicle was involved in trafficking narcotics. He eventually saw defendant Turrentine get into the Blazer and leave. Deputy Rumps, who was in an unmarked vehicle, followed the vehicle and alerted other members of his team that the vehicle was moving. During his pursuit, Deputy Rumps saw defendant Turrentine commit several traffic violations, so he radioed Deputy Matthew Pecha, who was in a marked police vehicle, to assist him in making a traffic stop. Deputy Pecha initiated the stop as defendant Turrentine drove into a parking lot. Another officer, Deputy Christopher Topacio, arrived with a narcotics detection dog as Deputy Pecha spoke with Turrentine. The dog alerted to the back area of defendant Turrentine's vehicle. Deputy Pecha, who also had a narcotics canine with him, had his dog check the vehicle. It too alerted to the back of the vehicle. A subsequent removal of the tank revealed the presence of 11 tube socks tied with zip ties. Each sock contained cocaine that had been placed into heat-sealed plastic bags. A total of 11 kilograms of cocaine were found in the gas tank. Upon defendant Turrentine's arrest, police confiscated a key to a room at the Extended Stay Motel.

Deputy Rumps subsequently contacted Sergeant Brian Kozlowski and asked him to secure Turrentine's motel room. Police were informed by the motel clerk that defendant Turrentine was in the motel with two other men. Defendant Rhodes and defendant Lott subsequently arrived at the motel room and were stopped by police while trying to enter the room with a room key. Deputies Rumps and Topacio briefly interviewed defendant Rhodes and defendant Lott. Defendant Lott stated that he and defendant Rhodes had been driving around together all day in defendant Lott's vehicle, which was parked at the motel. Defendant Lott gave the police his key to his car and provided permission to search the car. The officers opened the trunk and found a toolbox with all the tools necessary to remove, disassemble and reassemble a gas tank. In addition, police found a pail smelling of gasoline, zip ties, latex gloves, two heat-sealers, and rolls of FoodSaver heat-sealable plastic bags.

During later questioning at the Macomb County Jail, defendant Lott stated that he was from California and had flown to Michigan to meet a girl. He rented a car and then went to Roseville to meet defendant Turrentine, who coincidentally was in the area. Defendant Lott explained that he planned to stay with defendant Turrentine to save money. Defendant Lott maintained that he "bumped into" defendant Rhodes at a mall and the two met some girls.

Police also questioned defendant Rhodes at the Macomb County Jail. After the police informed him that they might be able to help him if he provided information, defendant Rhodes admitted that he knew the general location where the cocaine was to be dropped off in Detroit. He explained that they were to pick up the money at that location after delivering the cocaine.

[1] Codefendant Lott is not a party to this appeal.

Defendant Rhodes stated that the cocaine was supposed to be delivered later that day, but the police had intercepted them before the delivery. Defendant Rhodes stated that his "take" from his participation would have been approximately $170,000. Defendant Rhodes stated that he could not provide further information because, now that one part of the deal had failed, the other participants would know something was wrong.

II. Docket No. 261276

A. Sufficiency of the Evidence

Defendant Rhodes first argues that the evidence was insufficient to support his conspiracy conviction. We disagree.

This Court reviews a challenge to the sufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). The evidence is viewed in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of the crime. *People v Warren* (After Remand), 200 Mich App 586, 588; 504 NW2d 907 (1993); *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992). "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

A conspiracy is an agreement to combine with others to accomplish an illegal objective. *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001). The prosecution must prove that the parties "specifically intended to further, promote, advance, or pursue an unlawful objective." *People v Justice* (After Remand), 454 Mich 334, 347; 562 NW2d 652 (1997). Proof of a conspiracy may be derived from the circumstances, acts, and conduct of the parties. *Id*.

In this case, defendant Rhodes was charged with conspiracy to deliver 1,000 or more grams of cocaine. To establish this offense, the prosecutor was required to prove that (1) defendant or a co-conspirator knowingly possessed a controlled substance; (2) defendant or a co-conspirator intended to deliver this substance to someone else; (3) the substance possessed was cocaine and defendant knew it was cocaine; and (4) the substance was in a mixture that weighed 1,000 grams or more. MCL 333.7401(2)(a)(i); *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998).

The evidence indicated that defendant Rhodes flew into Detroit from California approximately a week before the arrests. His identification indicated that he was from California. Defendant Lott also flew from California to Detroit a few days before the arrests and rented a car. Defendant Rhodes initially stayed at a Quality Inn Motel near the Detroit Metropolitan Airport, but then moved to the Extended Stay Motel, where Turrentine was staying. Defendant Turrentine's rental car information indicated that he had rented the car at the Las Vegas airport. Both defendant Turrentine and defendant Lott had Nevada licenses. After defendant Turrentine was arrested, defendant Rhodes and defendant Lott tried to enter Turrentine's motel room. Defendant Lott and defendant Turrentine had a key to the room.

The cocaine was hidden in the gas tank of defendant Turrentine's rental car, and was inside heat-sealed plastic bags, which in turn were placed in 11 tube socks tied with zip ties. The car's tank had been tampered with and the drive shaft bolts had been loosened. Defendant Turrentine did not possess any tools for this job, but defendant Lott's car contained a toolbox that smelled like gasoline. Inside the toolbox was a specialized tool to remove the car's drive shaft, latex gloves, a sponge, heat-sealing FoodSaver devices, three rolls of FoodSaver bags, and twist ties.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable the jury to find beyond a reasonable doubt that defendant Rhodes, defendant Turrentine, and defendant Lott were all part of a concerted effort to distribute 11 kilograms of cocaine.

This conclusion is further supported by defendant Rhodes's statements to the police in which he admitted his involvement in a scheme to sell the cocaine to others. Even though defendant Rhodes did not know all the details of the scheme, or know all the participants in the delivery chain, this did not preclude a conviction for conspiracy because it is not necessary that each conspirator have knowledge of all of the ramifications of a conspiracy, know all co-conspirators, or participate in all objects of the conspiracy. *People v Meredith* (On Remand), 209 Mich App 403, 412; 531 NW2d 749 (1995).

B. Admission of Defendant Lott's Statement to Police.

Defendant Rhodes next argues that the trial court impermissibly allowed the jury to consider statements made by defendant Lott, who did not testify at trial, as evidence against him in violation of *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), and MRE 403. We disagree. The trial court specifically instructed the jury that defendant Lott's statements could only be considered against him, and not against the other defendants. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998), citing *People v Hana* 447 Mich 325, 351; 524 NW2d 682 (1994). Further, there was no possibility of undue prejudice to defendant Rhodes arising from the admission of defendant Lott's statement. The statement that was admitted against defendant Rhodes was that defendant Lott told an officer that he was with "some other person" on the day of the arrests. Independent of defendant Lott's statement, however, the jury heard evidence, admissible against defendant Rhodes, that defendant Lott and defendant Rhodes both arrived at defendant Turrentine's motel room. Additionally, defendant Rhodes admitted to the police that he was with defendant Lott the day before their arrival at the motel and then again at the time defendant Lott and defendant Rhodes were arrested.

For these reasons, we reject this claim of error.

C. Failure to Disclose Information

In a pro se brief, defendant Rhodes argues that he was denied a fair trial because the prosecutor failed to reveal information concerning the identity of an alleged confidential informant. At trial, Deputy Rumps testified that he began conducting surveillance on defendant Turrentine's vehicle in response to information that the vehicle was involved in narcotics trafficking. On appeal, defendant Rhodes asserts that although the prosecutor represented before trial that the information came from an anonymous source, the source must have been know to

the prosecutor because the police reports referred to a "confidential informant." However, defendant Rhodes admittedly received copies of the police reports before trial and, therefore, was aware of the alleged discrepancy concerning the source of the information. Despite this knowledge, defendant Rhodes never argued or raised below, either before, during, or after trial, that the prosecutor withheld known exculpatory evidence concerning the source of the information. Under the circumstances, we consider this issue unpreserved. *People v Grant*, 445 Mich 535, 546, 551; 520 NW2d 123 (1994); *People v Pipes*, 475 Mich 267, 277; 715 NW2d 290 (2006). Therefore, we review this issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Goodin*, 257 Mich App 425, 431-432; 668 NW2d 392 (2003).

Due process requires disclosure of evidence in a prosecutor's possession that is exculpatory and material. *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963); *People v Lester*, 232 Mich App 262, 280-281; 591 NW2d 267 (1998). "Impeachment evidence as well as exculpatory evidence falls within the *Brady* rule because, if disclosed and used effectively, such evidence 'may make the difference between conviction and acquittal.'" *Lester, supra* at 281, quoting United *States v Bagley*, 473 US 667, 676; 105 S Ct 3375; 87 L Ed 2d 481 (1985). In order to establish a *Brady* violation, a defendant must prove that: (1) the state possessed evidence favorable to the defendant; (2) he neither possessed the evidence nor could have obtained it himself with any reasonable diligence; (3) the prosecution suppressed the favorable evidence; and (4) had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. *Lester*, *supra* at 281-282.

In the instant case, defendant Rhodes has not shown that the prosecutor withheld exculpatory information. He hypothesizes that the prosecutor actually possessed more information about the source of the information that led to the police investigation, but there is no support in the record for this claim. Further, defendant Rhodes has not provided any basis, beyond speculation, for concluding that further information concerning the identity of the source of the information would have been exculpatory. On the contrary, he admits that the prosecutor's case could have been strengthened if the informant was an acquaintance. Thus, there is no merit to this issue and defendant Rhodes has failed to show plain error.

D. Standing to Challenge the Search of Turrentine's Vehicle

Defendant Rhodes next argues that trial counsel was ineffective for failing to challenge the search of Turrentine's car. We disagree.

Because defendant Rhodes did not preserve this issue by raising it in a motion for a new trial or an evidentiary hearing, our review is limited to mistakes apparent from the record. *People v Thomas*, 260 Mich App 450, 456; 678 NW2d 631 (2004). To establish ineffective assistance of counsel, a defendant must show that counsel's performance was so deficient that counsel was not functioning as an attorney as guaranteed by the Sixth Amendment. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996). The defendant must also show that he was prejudiced, that is, "a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Id.*

The constitutional right to be free from unreasonable searches and seizures is personal. Thus, a defendant must personally have a reasonable expectation of privacy in the subject of a search to challenge its validity. *People v Wood*, 447 Mich 80, 89; 523 NW2d 477 (1994); *People v Lombardo*, 216 Mich App 500, 504-505; 549 NW2d 596 (1996). In this case, there is no basis for concluding that defendant Rhodes had a reasonable expectation of privacy in either defendant Turrentine's rental car or the area that was searched, the gas tank, which is not accessible to a passenger. *Rakas v Illinois*, 439 US 128, 130, 148-149; 99 S Ct 421; 58 L Ed 2d 387 (1978); *People v Armendarez*, 188 Mich App 61, 71; 468 NW2d 893 (1991). Thus, counsel did not act unreasonably by failing to challenge the search of Turrentine's vehicle.

E. Suppression of Inculpatory Statement

Defendant Rhodes also argues that he was denied his right to due process when he was "seized and illegally detained when no crime had been or was about to be committed and the officers who initially detained defendant was[sic] never brought forward as being a part of the entire transaction[.]" Although exceedingly difficult to follow, we will liberally restate defendant's argument to allege trial court error from the refusal to suppress his police statement on the ground that it was the product of an illegal arrest.

In reviewing a trial court's decision following a suppression hearing, we review the trial court's factual findings for clear error, and review the court's legal conclusions de novo. See *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). We likewise review constitutional issues de novo. *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996).

The general rule is that a "confession that results from an illegal arrest is inadmissible." *People v Richardson*, 204 Mich App 71, 78; 514 NW2d 503 (1994). An arrest warrant is not generally required to accomplish a felony arrest, "so long as there is probable cause to believe that [the] defendant committed a felony." *People v Johnson*, 431 Mich 683, 690-691; 431 NW2d 825 (1988). In reviewing a challenged finding of probable cause, a reviewing court must determine whether the facts available to an officer at the time of arrest would justify a fair-minded person of average intelligence in believing that the suspected person had committed a felony. *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998).

Deputy Rumps testified that, while he initially waited at the hotel for someone to take possession of the car he had been directed to as the result of a tip, he performed a search of the car's registration. He discovered that defendant Turrentine had rented it in Las Vegas. He then checked defendant Turrentine's criminal history and discovered that he had previously been apprehended with a large amount of cocaine in an automobile. He also discovered that defendant Turrentine had rented a room at the motel. A clerk informed the police that two other men were staying at the motel with defendant Turrentine.[2] Later, after he field-tested the cocaine, Deputy Rumps asked Sergeant Kozlowski to secure the room at the motel. His officers subsequently

[2] Although Rumps did not testify that he spoke with the clerk, the prosecution stated at the suppression hearing that the hotel clerk told officers that the room defendant Turrentine had two too many guests. Defense counsel did not challenge the prosecution's statement.

observed two men, defendant Lott and defendant Rhodes, attempting to enter the room. The officers prevented the men from entering the room and detained them.

Defendant Rhodes and defendant Lott were detained at the motel at approximately 11:00 p.m. After Deputy Topacio read defendant Rhodes and defendant Lott their *Miranda*[3] rights, Deputy Rumps questioned them. At this time, defendant Rhodes provided limited personal information and the officers then questioned defendant Lott. After learning that defendant Lott's car was at the motel, the officers received his permission to search it and subsequently found the tools and other accessories used to hide the cocaine in the tank. The questioning apparently ceased at that time and the two were subsequently "arrested" and taken to the Macomb County Jail. Another questioning session began at approximately 5:00 a.m. after a second set of *Miranda* warnings. It was during this later session that defendant Rhodes revealed the damaging information concerning his participation in the conspiracy.

On appeal, the prosecution concedes that defendant Rhodes was indeed under arrest from approximately 11:00 p.m. until 1:00 a.m., but maintains that defendants Rhodes' arrest was justified.[4]

There is little question that officers had a reasonable suspicion that defendant Rhodes and defendant Lott were involved in the crime when they were first detained at the motel room. Police knew defendant Turrentine needed physical assistance and tools to accomplish the difficult task of hiding and preserving the cocaine. Police also knew that defendant Turrentine's motel room likely contained further evidence of the crime and that defendant Turrentine had two additional guests to the motel room. That defendant Lott and defendant Rhodes arrived at the motel with the room key certainly permitted police to reasonably suspect that defendant Rhodes and defendant Lott arrived at the motel room to further a conspiracy, not to perform turn down service or deliver chocolates.

In any event, whether defendant Rhodes' detention from 11:00 p.m. until 1:00 a.m., was justified is not dispositive of whether his confession is admissible. As this Court explained in *Kelly*, *supra*:

> The mere fact of an illegal arrest does not per se require the suppression of a subsequent confession. It is only when an "unlawful detention has been employed as a tool to directly procure any type of evidence from a detainee" that the evidence is suppressed under the exclusionary rule. Intervening circumstances can break the causal chain between the unlawful arrest and

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[3] *Miranda v Arizona*, 384 US 436; 865 S Ct 1602; 16 L Ed 2d 694 (1966).

[4] Defendant initially raised the issue of probable cause in a written motion to suppress his statement. However, there is no record of a hearing on this issue. Later, at the end of a pretrial *Walker* hearing addressing defendant Turrentine's motion to suppress and defendant Rhodes's challenge to the voluntariness of his statement, defendant Rhodes raised the probable cause for arrest issue as if it were a new oral motion, and the trial court summarily denied it. As a result, only limited information was presented concerning the circumstances of defendant Rhodes's initial detention in the motel room.

> inculpatory statements, rendering the confession sufficiently an act of free will to purge the primary taint of the unlawful arrest. [*Id.* at 634 (Citations and internal quotations omitted).]

Further,

> "a custodial confession following an illegal arrest need not be suppressed if the police have uncovered evidence sufficient to establish probable cause to arrest the defendant before the challenged custodial statement was given. Under such circumstances, "'one could question the wisdom of requiring police to go through the formality of releasing [the defendant], only to rearrest him outside the jailhouse door.'" [*Kelly, supra* (Citations omitted).]

Here, defendant Lott subsequently informed police he had been driving around in the car with defendant Rhodes all day. Defendant Lott consented to a search of the car. The search revealed physical evidence tying defendant Rhodes and defendant Lott to the cocaine possessed by defendant Turrentine. At this point, defendant Lott and defendant Rhodes were arrested and taken to the Macomb County Jail. Another questioning session began at approximately 5:00 a.m. after a second set of *Miranda* warnings. It was during this later session that defendant Rhodes revealed the damaging information concerning his participation in the conspiracy.

Here, following defendant Lott's statement to police that defendant Rhodes was with him in his car all day, and evidence that clearly links defendant Lott's car to the conspiracy, we conclude that police "uncovered evidence sufficient to establish probable cause to arrest . . . defendant" [Rhodes.] *Kelly, supra*. More important, police uncovered this evidence "before the challenged custodial statement was given." *Id*. Thus, to the extent that the arrest of defendant Rhodes at the time he had attempted to enter the motel room with defendant Lott was illegal, the taint of this arrest was removed by the intervening discovery of the physical evidence found in defendant Lott's car that further implicated defendant Rhodes. *Kelly,* supra at 634.

As previously stated, defendant Rhodes does not have standing to challenge the seizure of the cocaine from defendant Turrentine's car, which was proper in any event. Likewise, defendant Rhodes does not have standing to challenge either the arrest or the initial interrogation of defendant Lott. Nor can defendant Rhodes challenge the search of defendant Lott's car, which led to the discovery of substantial physical evidence tying defendant Rhodes and defendant Lott to the cocaine. We conclude that the discovery of the physical evidence in the car that defendant Lott and defendant Rhodes had been utilizing for at least the full day prior to the discovery of the cocaine sufficiently broke the causal chain between the earlier arrest at 11:00 p.m. and the inculpatory statement made to police at 5:00 a.m. the next morning. *Id.*

III. Docket No. 261277

A Suppression of Cocaine

Defendant Turrentine first argues that the trial court erroneously denied his motion to suppress the cocaine seized from his rental car. He argues that the initial stop of the vehicle was improper because it was undisputed that the officer who stopped him did not personally observe any traffic violations. We find no merit to this issue.

Defendant Turrentine does not dispute that Deputy Rumps, who testified that he personally observed defendant commit several traffic violations, was authorized to stop defendant's vehicle. A police officer who witnesses the commission of a civil infraction "may stop the person, detain the person temporarily for purposes of making a record of vehicle check," and issue a written citation. MCL 257.742(1). Although Deputy Pecha did not personally observe the traffic violations, he stopped defendant Turrentine's vehicle based on information he received from Deputy Rumps. Under the "police team" theory, additional factual knowledge held by an investigating officer may be imputed to an arresting officer. See *People v Dixon*, 392 Mich 691, 696-699; 222 NW2d 749 (1974), *People v Mackey*, 121 Mich App 748, 753-754; 329 NW2d 476 (1982), and *United States v McManus*, 560 F2d 747, 750 (CA 6, 1977). Thus, Deputy Pecha was permitted to stop defendant Turrentine's vehicle based on the traffic violations reported by Deputy Rumps. Accordingly, the trial court did not err in denying defendant Turrentine's motion to dismiss.

B. *Batson* Issue

Defendant Turrentine next argues that the trial court erred in finding that the prosecutor did not impermissibly use a peremptory challenge to excuse an African-American juror. We disagree.

The use of a peremptory challenge to strike a potential juror solely because of that juror's race violates the Equal Protection Clause of the Fourteenth Amendment. US Const, Am XIV; *Batson v Kentucky*, 476 U.S. 79, 84; 106 S Ct 1712; 90 L Ed 2d 69 (1986); *People v Knight,* 473 Mich 324, 335; 701 NW2d 715 (2005). Under *Batson*, the opponent of the peremptory challenge must first make a prima facie showing of discrimination." *Id*. at 336. If the trial court determines that a prima facie showing has been made, the burden shifts to the proponent of the peremptory challenge to articulate a race-neutral explanation for the strike. *Id*. at 337. If the proponent provides a race-neutral explanation as a matter of law, the trial court must then determine whether the race-neutral explanation is a pretext for discrimination. *Id*. at 337-338. This Court reviews de novo whether the proponent of a peremptory challenge articulated a race-neutral explanation for the strike. *Id*. at 343-344. The clear error standard governs appellate review of a trial court's determination whether the race-neutral explanation for the use of a peremptory challenge is a pretext for discrimination. *Id*. at 344.

In this case, the prosecutor explained that he excused an African-American juror because the juror revealed that she had previously served as a juror in a criminal case in which the jury acquitted the defendant of criminal sexual conduct. This was a facially nondiscriminatory reason for excusing the juror and the trial court did clearly err in finding that this reason was not a pretext for discrimination.

C. Prosecutor Misconduct

Defendant Turrentine next argues that the prosecutor committed several acts of misconduct that denied him a fair trial. We disagree.

First, we have already rejected defendant Turrentine's argument that the prosecutor improperly dismissed an African-American juror on account of the juror's race.

Second, defendant Turrentine argues that the prosecutor improperly began arguing his case during jury voir dire. Although the prosecutor's voir dire comments became argumentative at one point, the trial court interrupted the prosecutor's commentary and the prosecutor immediately pursued another subject. Under the circumstances, this brief foray did not deny defendant Turrentine a fair trial. See *Graves*, *supra* at 486; *People v Reed*, 449 Mich 375, 379; 535 NW2d 496 (1995).

Third, defendant Turrentine argues that the prosecutor continued to engage in argumentative commentary during his opening statement. Because defendant Turrentine did not object to the prosecutor's opening remarks, we review this issue for plain error affecting defendant's substantial rights. *Goodin*, *supra* at 431-432. Viewed in context, we are not persuaded that the prosecutor's opening statement was improperly argumentative. Defendant Turrentine has not shown a plain error.

Fourth, defendant Turrentine argues that the prosecutor improperly elicited evidence of the investigating police officers' connections to drug trafficking interdiction groups and the fact that they were investigating defendant Turrentine in response to an anonymous tip. Defendant Turrentine failed to object to this evidence at trial, so we review this issue for plain error. *Goodin*, *supra* at 431-432. Contrary to what defendant Turrentine argues, the information concerning the officers' identities and background was relevant to explain why the officers all came from different police agencies, why the officers continued to be suspicious when they did not initially discover narcotics in the interior of defendant Turrentine's vehicle, and why they had ready access to a fiber optic scope that was used to check the gas tank. The information was also relevant to the veracity of the officers' valuation of the cocaine. MRE 401. Additionally, the limited background information was relevant to explain why the police began their surveillance of defendant Turrentine's vehicle. See *People v Wilkins*, 408 Mich 69, 73; 288 NW2d 583 (1980). Because this evidence was relevant, the prosecutor did not plainly commit misconduct by introducing it at trial. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999).

D. Ineffective Assistance of Counsel

Defendant Turrentine also argues that trial counsel was ineffective. Because defendant Turrentine did not preserve this issue by raising it in a motion for a new trial or an evidentiary hearing, our review is limited to mistakes apparent from the record. *Thomas*, *supra* at 456.

Defendant Turrentine first argues that counsel was ineffective for not requesting a separate trial. He argues that a separate trial was required to prevent the nontestifying defendants' statements from being improperly introduced against him in violation of his right of confrontation. As previously indicated, however, the trial court provided a specific limiting instruction advising the jurors that each defendant's statement could only be considered against that defendant and not against the other defendants. "It is well established that jurors are presumed to follow their instructions." *Graves*, *supra* at 486. Moreover, the statements were redacted at trial to minimize any prejudice to the other defendants. Under the circumstances, it is not apparent that counsel's decision not to seek severance was either unreasonable or prejudicial.

Defendant Turrentine also argues that counsel should have objected to the evidence describing the officers' involvement with drug interdiction teams and their reasons for beginning

their surveillance. As previously indicated in part III(C), however, this evidence was relevant and, therefore, was admissible. Therefore, counsel was not ineffective for failing to object to the evidence. Further, counsel specifically agreed concerning the extent to which the officers could reveal their reasons for the surveillance. Defendant Turrentine has not overcome the presumption that counsel agreed to allow this evidence as a matter of sound trial strategy, to limit the information the jury would hear concerning the circumstances surrounding the impetus for the police investigation. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). Defendant Turrentine has not shown that trial counsel was ineffective.

E. Cumulative Error

Defendant Turrentine lastly argues that cumulative effect of many errors requires a new trial. We disagree. We review this issue to determine if the cumulative effect of a combination of errors denied defendant Turrentine a fair trial. *People v McLaughlin*, 258 Mich App 635, 649; 672 NW2d 860 (2003). Only actual errors may be aggregated to determine their cumulative effect. *People v Rice* (On Remand), 235 Mich App 429, 448; 597 NW2d 843 (1999). Here, apart from the prosecutor's brief foray into improper argument during jury voir dire, defendant Turrentine has not established any other errors. Thus, appellate relief is not warranted.

IV. Conclusion

In Docket No. 261276 we affirm. In Docket No. 261277 we affirm.

/s/ Brian K. Zahra
/s/ Bill Schuette

STATE OF MICHIGAN

COURT OF APPEALS

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Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

CAVANAGH, J. (*dissenting*).

I respectfully dissent. I would hold that defendant Rhodes' warrantless arrest was illegal and his inculpatory statement should have been suppressed. Further, the error was not harmless and he is entitled to a new trial. With regard to the other issues raised in this appeal, I agree with the majority opinion.

First, defendant Rhodes' warrantless arrest was illegal. A police officer may make an arrest without a warrant if the officer has probable cause to believe that a felony has been committed and the person committed it. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996), citing MCL 764.15. Probable cause to arrest exists if the facts available to the officer at the time of arrest would justify a fair-minded person of average intelligence in believing that the suspected person committed a felony. *People v Oliver*, 417 Mich 366, 374; 338 NW2d 167 (1983); *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998).

Here, after it was determined that the gas tank on defendant Turrentine's vehicle held cocaine, Turrentine's motel room at the Extended Stay Motel was secured. During surveillance

of the room, defendant Rhodes and alleged co-conspirator Lott were seen attempting to enter Turrentine's motel room with a key. Lott had possession of the room key. Officers prevented their entry; they were separated and "detained" for hours, purportedly in handcuffs. Although the police officers testified that defendant and Lott were "detained," the officers admitted that defendant Rhodes and Lott were not free to leave the motel while they investigated the situation.[1] Therefore, defendant Rhodes and Lott were "seized" within the meaning of the Fourth Amendment. See *People v Daniels*, 186 Mich App 77, 80; 463 NW2d 131 (1990).

While under arrest and held at the motel, defendant Rhodes and Lott were read their *Miranda*[2] rights and each were briefly questioned. Lott indicated that he had rented a vehicle and it was located in the parking lot. Lott gave permission to the police officers to search the vehicle and a toolbox that smelled like gasoline was located. Inside the toolbox was a specialized tool to remove the car's drive shaft, latex gloves, a sponge, heat-sealing FoodSaver devices, three rolls of FoodSaver bags, and twist ties. Defendant Rhodes and Lott were then transported to the county jail and, after they were read their *Miranda* rights, they were further questioned. During that questioning, defendant Rhodes provided the inculpatory statement at issue.

Defendant Rhodes' initial arrest outside Turrentine's motel room door, to which Lott had the key, was not supported by probable cause. Although at that time the officers had discovered the cocaine in Turrentine's gas tank, other than an impermissible "guilt by association" theory,[3] the facts known to the arresting officers would not justify a fair-minded person of average intelligence in believing that defendant Rhodes committed a felony. That Lott had the key to Turrentine's motel room should not cause defendant Rhodes to be a felony suspect. The police officers admitted that defendant Rhodes and Lott were "detained," for hours, while they were *investigating* possible criminal activity. The prosecution concedes on appeal that defendant and Lott were arrested and not "detained."

Apparently, however, the majority concludes that, even if defendant Rhodes' initial arrest was unlawful, probable cause to arrest him arose (1) after Lott informed the police that he and Rhodes had been riding around all day in Lott's vehicle, and (2) after it was determined that Lott's vehicle held the tools suspected of being used to place the cocaine in Turrentine's gas tank. I disagree. Merely having purportedly been a passenger in a vehicle that may have some involvement with criminal activity that occurred at some previous time is not a reasonable justification for believing that the passenger was involved in that criminal activity. Any such inference is too tenuous to establish probable cause to arrest. Here, the police had no other evidence linking defendant Rhodes to the criminal activity; therefore, defendant's arrest was unlawful.

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[1] It is illegal to arrest a suspect for investigation of a crime. *People v Davenport*, 99 Mich App 687, 692; 299 NW2d 368 (1980); *People v Martin*, 94 Mich App 649, 653; 290 NW2d 48 (1980); see, also, *Brown v Illinois*, 422 US 590, 602, 605; 95 S Ct 2254; 45 L Ed 2d 416 (1975).

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[3] See, e.g., *People v Sobczak*, 344 Mich 465, 470; 73 NW2d 921 (1955); *People v Thomas*, 191 Mich App 576, 579-580; 478 NW2d 712 (1991); *People v Casper*, 25 Mich App 1, 5; 180 NW2d 906 (1970).

Second, defendant Rhodes' custodial inculpatory statement should have been excluded as fruit of the poisonous tree. See *People v Spinks*, 206 Mich App 488, 496; 522 NW2d 875 (1994). Suppression is required if there is a causal nexus between the illegal arrest and the inculpatory statement. *People v Mallory*, 421 Mich 229, 243 n 8; 365 NW2d 673 (1984). Factors to be considered in making that determination include: "(1) the time elapsed between the illegal arrest and the confession, (2) the flagrancy of official misconduct, (3) any intervening circumstances, and (4) any circumstances antecedent to the arrest." *Spinks*, *supra*. It is the prosecution's burden to show that the confession was free of the primary taint of defendant's illegal arrest. *People v Mosley (After Remand)*, 400 Mich 181, 183; 254 NW2d 29 (1977).

Here, defendant Rhodes was arrested at the motel at about 11:00 p.m., and at about 1:00 a.m., he was read his *Miranda* rights, signed an advice of rights form, and was asked a few questions. Eventually, defendant Rhodes was transported to jail. At about 5:00 a.m. he was, again, read his *Miranda* rights and he signed an advice of rights form before a second interview was conducted. It was during this second interview that defendant gave his inculpatory statement, after the police informed him that they might be able to help him if he provided information. The police officers testified that defendant was not permitted to make any telephone calls during the approximately six hours between his arrest and his second interrogation.

Based on the record evidence, I conclude the prosecution failed to sustain its burden of establishing that the causal chain between the unlawful arrest and the inculpatory statement was broken. See *People v Martin*, 94 Mich App 649, 653-654; 290 NW2d 48 (1980). The elapse of time between the arrest and inculpatory statement was relatively insignificant, defendant was held incommunicado for its duration, and the police officers admitted that it was, at least initially, an investigative arrest. Defendant was, apparently, merely arrested with the hope that over time he would "cooperate" with the investigation. The fact that defendant was read his *Miranda* rights does not cause the statement to be considered a product of free will for Fourth Amendment purposes. See *Brown v Illinois*, 422 US 590, 601-603; 95 S Ct 2254; 45 L Ed 2d 416 (1975); see, also, *People v Emanuel*, 98 Mich App 163, 176-177; 295 NW2d 875 (1980). And, the record fails to reveal any intervening or antecedent circumstances of significance that would purge the taint of the illegal arrest. See *Kelly*, *supra* at 636. Therefore, defendant Rhodes' inculpatory statement should not have been admitted into evidence.

Further, I cannot conclude that the admission of this evidence was harmless. But for the inculpatory statement, there was very little evidence linking defendant Rhodes to the crime. The evidence includes that he flew into Detroit from California and that he had spent some time with Lott on the day they were arrested. Accordingly, I would reverse the denial of defendant's motion to suppress, and would remand this matter for a new trial.

/s/ Mark J. Cavanagh