STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 31, 2013
v	No. 305437 Genesee Circuit Court
DARYL EDWARD SMITH, Defendant-Appellant.	LC No. 10-027124-FH

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by right his conviction after a jury trial of possession with intent to deliver 450 or more but less than 1,000 grams of cocaine, MCL 333.1401(2)(a)(*ii*). The trial court sentenced defendant as a second controlled substance offender, MCL 333.7413, to a prison term of 126 to 252 months. This Court has previously granted defendant's motions to remand for an evidentiary hearing and for new trial on the basis that he was improperly restrained at trial and that standby counsel failed to object. *People v Smith*, unpublished order of the Court of Appeals, entered August 6, 2012 (Docket No. 305437). After conducting an evidentiary hearing, the trial court concluded that although defendant had been improperly restrained at trial, a poll of the jurors and the overwhelming evidence of defendant's guilt established that the error was harmless beyond a reasonable doubt. The trial court also rejected defendant's claims that standby counsel had either interfered with defendant's right of self-representation or was constitutionally ineffective. The trial court therefore denied defendant's motion for new trial. We now affirm.

I. SEARCH AND SEIZURE

We address first whether the evidentiary basis for defendant's conviction should have been suppressed. Defendant moved to suppress evidence of cocaine the police seized from a vehicle he was driving on the basis that it was unconstitutionally obtained and a statement that defendant gave to the police following his arrest for possession of the seized cocaine. We review de novo the trial court's ultimate ruling on a motion to suppress but the trial court's findings of fact are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). In this case, we find no clear error by the trial court in its findings of fact, and on de novo review, we conclude that the trial court properly denied defendant's motion to suppress.

The search and seizure in this case was based on a multi-jurisdictional drug enforcement unit's, the Flint Area Narcotics Group (FANG), investigating an anonymous tip. Michigan State Police Lieutenant David Rampy testified that he had received a telephone tip on August 14, 2009 with respect to a black male, bald with glasses, driving a black possibly Ford Fusion traveling northbound on I-75, with cocaine in the vehicle. Rampy described that twice before August 14, 2009, at two-week intervals, he had received identical tips; FANG members undertook unsuccessful surveillance activities on each prior occasion.

William Renye, a Grand Blanc Township police officer and member of FANG testified that on the day of the stop, he had received information about an anonymous tip of a black Ford vehicle driving northbound I-75 that was occupied by a black male, having a bald head in his 40's wearing glasses that would be in route to the Flint area with a lot of cocaine. Kenneth Shingleton testified that he worked as a Michigan State Police trooper and had assisted FANG in a traffic stop of defendant. He had heard the radio traffic regarding the anonymous tip and that another officer had observed a vehicle matching the tip description traveling northbound on I-75 and being driven by a black male with glasses and a bald head. Trooper Shingleton observed the suspect vehicle being driven at 80 miles per hour in a 70-mile-per-hour zone and saw defendant's car twice change lanes without signaling. Shingleton requested by radio that a marked police car stop the suspect car. Rampy also testified that he saw the car and driver matching the tip's description heading north on I-75 and "paced" it at approximately 75 miles per hour in a 70-mile-per-hour speed zone.

Michigan State Police trooper Steven Skrbec testified that he stopped defendant's car on August 14, 2009, on the basis of FANG team member reports that the car had improperly changed lanes and was speeding. Skrbec testified that defendant cooperatively provided his driver's license, but would not consent to a search the car. Grand Blanc Township police sergeant Matthew Simpson testified regarding his expertise as a canine officer searching for drugs and that he went to the a traffic stop of defendant after hearing a radio call for canine assistance. Simpson testified it took him 10 minutes to arrive with his dog after hearing the radio request. Shingleton testified it took between 15 and 20 minutes from initiating the traffic stop to the arrival of the police dog; Renye thought the drug dog arrived around 15 minutes after the beginning of the stop; Rampy estimated that it took between 20 and 25 minutes for the canine officer to arrive. Defendant estimated that around 10 minutes elapsed between the commencement of the traffic stop and the call for canine assistance, and then another 10 minutes elapsed before the canine officer arrived.

Simpson testified his dog circled the black Fusion and on reaching the driver's side of the car the dog gave a positive alert, biting the handle on the rear door. Simpson testified this action signaled the presence of marijuana, methamphetamines, heroin or cocaine in that area of the car. Shingleton testified that within one to three minutes the police dog began biting and scratching at a driver's-side door handle, which prompted officers to search the black Fusion. On opening the trunk, Shingleton observed a yellow plastic bag near the spare tire. Flint Police officer Scott Watson assisted Shingleton and also described finding yellow plastic baggie containing white powder in the trunk of the Fusion.

Defendant testified that Watson told him that the police pulled him over because he had a Detroit license plate and that "guys come from Detroit all the time carrying large amounts of

cocaine." Defendant also testified that when he asked why he was stopped, Renye said that "we been following you since Grand Blanc, so speeding, changing lanes, pick something."

The trial court denied the motion to suppress, finding that the police had articulable suspicion that criminal activity was afoot which justified the stop. Specifically, that the police corroborated the tip information that (1) a black Ford Fusion auto would be travelling (2) northbound on (3) I-75 carrying cocaine and driven by (4) a black male (5) who was bald and (6) wearing glasses (7) on August 14, 2009. The court further determined that the time elapsed from the traffic stop to conducting the search with the dog was not unreasonable.

Both the United States and Michigan Constitutions protect against unreasonable searches and seizures. US Const, Am IV; 1963 Const, art 1, § 11; *People v Dillon*, 296 Mich App 506, 508; 822 NW2d 611 (2012). "The Fourth Amendment search and seizure protections also apply to brief investigative detentions." *People v Steele*, 292 Mich App 308, 314; 806 NW2d 753 (2011). "An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v Cortez*, 449 US 411, 417; 101 S Ct 690; 66 L Ed 2d 621 (1981). Thus, the police may "stop and detain a motor vehicle on the basis of an articulable and reasonable suspicion that the vehicle or one of its occupants is violating the law." *Dillon*, 296 Mich App at 508. The determination that reasonable suspicion exists to warrant a stop and detention is based on a common sense evaluation of the totality of the circumstances, i.e., whether the "whole picture" establishes "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Cortez*, 449 US at 417; *Dillon*, 296 Mich App at 508.

"Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). In "a case involving an anonymous tipster," an investigative stop "must be tested under the totality of the circumstances with a view to the question whether the tip carries with it sufficient indicia of reliability to support a reasonable suspicion of criminal activity." *People v Faucett*, 442 Mich 153, 169; 499 NW2d 764 (1993) (emphasis omitted). "An anonymous tip can provide reasonable suspicion if it is considered along with a 'totality of the circumstances' that show the tip to be reliable." *People v Perreault*, 287 Mich App 168, 176 (O'CONNELL, J, *dissenting*); 782 NW2d 526 (2010), rev'd for the reasons stated in the Court of Appeals dissent 486 Mich 914 (2010). "[A] sufficiently detailed tip may provide reasonable suspicion of criminal activity, especially (but not necessarily) when there is independent corroboration of some of the facts." *Id*. But an anonymous tip will not establish reasonable suspicion where it lacks indicia of reliability or the police lack other means to test the informant's knowledge or credibility. *People v Horton*, 283 Mich App 105, 111-112; 767 NW2d 672 (2009).

We conclude that the anonymous tip the police received on August 14, 2009, and the totality of the circumstances surrounding the FANG investigation, provided "sufficient indicia of reliability to support a reasonable suspicion of criminal activity." *Faucett*, 442 Mich at 169. Lt. Rampy related that the tipster had proffered similar information twice around July 2009, but that these tips had not resulted in locating a vehicle matching the tip information. The tip on August 14, 2009, contained predictive information concerning a bald, bespectacled black man driving a black Ford Fusion northbound on I-75 with cocaine in the trunk. Furthermore, shortly after

receiving the tip on August 14, 2009, the FANG team members spotted a bald, bespectacled black man driving a black Ford Fusion northbound on I-75. Moreover, the detention was reasonably brief to allow the assistance of a trained narcotics-detection dog to confirm or dispel the officer's reasonable suspicion. See *Williams*, 472 Mich at 315, 318 n 16; *People v Lewis*, 251 Mich App 58, 73-75; 649 NW2d 792 (2002). After a brief investigatory detention, the officers discovered apparent cocaine in the trunk of the black Fusion. We conclude that the anonymous tip possessed sufficient indicia of reliability for the officers to reasonably suspect defendant's participation in criminal activity, especially in light of the officer's independent corroboration of its details. Therefore, we affirm the trial court's denial of defendant's motion to suppress.

II. SELF-REPRESENTATION AND INEFFECTIVE STANDBY COUNSEL

Defendant next argues that structural error occurred when his standby counsel interfered with his constitutional right of self-representation by discussing with the court, outside of defendant's presence, courtroom seating arrangements to conceal from the jury that the defendant was wearing leg restraints. We conclude that standby counsel's brief discussion with the trial judge while neither the jury nor defendant were present did not interfere with defendant's right of self-representation because it did not "substantially interfere with any significant tactical decisions" or prevent defendant from speaking on his own behalf "on any matter of importance." *McKaskle v Wiggins*, 465 US 168, 178; 104 S Ct 944; 79 L Ed 2d 122 (1984).

Defendant's alternative claim that he is entitled to relief because standby counsel was ineffective for failing to object to the restraints is without merit. There is no constitutional right to the appointment of standby counsel, but it is within the discretion of the trial court to do so. *McKaskle*, 465 US 184; *People v Dennany*, 445 Mich 412, 439-446; 519 NW2d 128 (1994). However, the appointment of standby counsel will not legitimize a defective waiver of counsel. *Id*. at 446. In this case, defendant validly waived his right to counsel while affirmatively asserting his constitutional right of self-representation. While standby counsel may offer advice, he does not speak for the defendant or bear the responsibility for the defense. *People v Willing*, 267 Mich App 208, 227-228; 704 NW2d 472 (2005)(citations omitted). Having chosen to represent himself, defendant cannot now assert that his voluntary choice to do so denied him the effective assistance of counsel. *People v Kevorkian*, 248 Mich App 373, 419; 639 NW2d 291 (2001). Thus, we conclude that defendant's alternative claim that his standby counsel provided ineffective assistance lacks merit.

We review constitutional questions de novo. *Williams*, 472 Mich at 313. "The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense." *Faretta v California*, 422 US 806, 819; 95 S Ct 2525; 45 L Ed 2d 562 (1975). In *McKaskle*, 465 US at 174, the Court elaborated:

> A defendant's right to self-representation plainly encompasses certain specific rights to have his voice heard. The *pro se* defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in *voir dire*, to question witnesses, and to address the court and the jury at appropriate points in the trial.

The *McKaskle* Court addressed the defendant's claim that his right to self-representation "was impaired by the distracting, intrusive, and unsolicited participation of counsel throughout the trial." *Id*. at 176. The Court noted that "the primary focus must be on whether the defendant had a fair chance to present his case in his own way." *Id*. at 177. Because the unsolicited participation of counsel may undermine the right of self-representation, the Constitution "must impose some limits on the extent of standby counsel's unsolicited participation." *Id.* One limit is that "participation by standby counsel without the defendant's consent should not be allowed to destroy the jury's perception that the defendant is representing himself." *Id*. at 178. Here, counsel's discussion with the court occurred outside the presence of the jury and defendant contends only the following limitation imposed by *McKaskle* was breached:

> [T]he *pro se* defendant is entitled to preserve actual control over the case he chooses to present to the jury. . . . If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak *instead* of the defendant on any matter of importance, the *Faretta* right is eroded.

Defendant correctly argues that a denial of his right of self-representation is a structural defect that would elude harmless error analysis. See *People v Anderson (After Remand)*, 446 Mich 392, 405-406; 521 NW2d 538 (1994). "Since the right of self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to 'harmless error' analysis. The right is either respected or denied; its deprivation cannot be harmless." *McKaskle*, 465 US at 177 n 8.

Hearings in the trial court on remand revealed that defendant was restrained while appearing in court as matter of the local sheriff's long-standing policy. Because defendant is a diabetic, he could not wear a hidden stun device that would have permitted defendant to freely move about the courtroom. Consequently, defendant was fitted with leg braces under his clothing that would lock in place if he fully extended his legs. While wearing the leg braces, defendant was required to remain seated at a table in the courtroom. The issue of whether it was necessary to restrain defendant while in the courtroom was never raised before or addressed by the trial court. Instead, standby counsel accepted that defendant would be restrained and attempted to minimize its effect on defendant's defense.[1]

The record discloses that on the first day of trial, before the venire was brought into the courtroom and before defendant arrived, a discussion occurred between standby counsel and the

[1] We reject defendant's argument on this issue to the extent that it suggests that defendant's right of self-representation was violated because he had to remain seated while doing so. See *People v Arthur*, 495 Mich ___; ___ NW2d ___ (2013), citing *Lefevre v Cain*, 586 F3d 349 (CA 5, 2009) (shackling does not violate a defendant's right to self-representation), *cert den* 559 US 1016, 130 S Ct 1941, 176 L Ed 2d 381 (2010). See also *State v Harding*, 137 Ariz 278, 288; 670 P2d 383 (1983); *State v Shashaty*, 251 Conn 768, 787-788; 742 A2d 786 (1999); *State v Taylor*, 63 Conn App 386; 776 A2d 1154 (2001).

court regarding seating arrangements to conceal from the jury that defendant was wearing leg restraints. Counsel advised the court that defendant could not wear a stun device called "bandit" because of his medical condition and that defendant's medical condition would provide a somewhat truthful explanation for the jury as to why defendant would remain seated during the trial. This discussion commenced at 10:09 A.M. and concluded at 10:14 A.M., when the record was closed. Court reconvened at 10:28 A.M. in defendant's presence, and the trial court informed defendant that it did not want the jury to see all the security devices. Defendant indicated his agreement by responding, "Right," and "No, no. We've got it fixed." The trial court stated that if defendant remained seated in his current position, a juror might be able see something when coming forward from the gallery. The court then suggested that "maybe we should start out with [defendant] on this side," but "we're thinking . . . that during the witness questioning [defendant] should be on the end so . . . [he] can see the witness more clearly." Defendant asked whether the jury might become "suspicious that everybody's getting up and standing up and I'm the only person that's not," to which standby counsel stated, "We'll fix that," suggesting where defendant could be seated. Standby counsel told defendant that the jury would be informed defendant's medical condition required him to remain seated. Further, standby counsel told defendant that while seated he would "be able to look at the witness and talk with them and the jurors will not be able to see your feet" and that defendant would be "be able to look to the whole jury" and "be able to do everything except you won't be able to stand up." To all of this explanation, defendant responded: "Okay."

Standby counsel in the earlier colloquy out of defendant's presence had informed the court that defendant wanted counsel to conduct the jury selection process and to question any expert witnesses that appeared at trial. So, after discussing the seating arrangements, the trial court asked defendant about the division of duties between defendant and standby counsel, which defendant confirmed. The trial court next reminded defendant of his right to not incriminate himself and to exercise caution in asking witnesses questions. Defendant indicated he "absolutely" understood. The Court then asked, "Do we need to cover anything else?" Thereafter, the court asked whether the jury could be brought into the courtroom. Only the prosecutor responded with "yes."

On remand, the trial court addressed this issue as follows:

> [Standby counsel's] discussion of logistical seating arrangements with the Court outside Defendant's presence was not a violation of self-representation. Standby counsel may assist in "help[ing] ensure the defendant's compliance with basic rules of courtroom protocol and procedure." [*McKaskle*, 465 US at 183.] No legal arguments were made at that time the seating arrangements were discussed and Defendant could have objected or raised the issue as to shackling when his seating arrangements and restraints were addressed in his presence. Once Defendant came into the courtroom and the Court addressed the seating arrangements, Defendant responded, "ok." Defendant was not prevented from objecting or addressing this issue further when he was brought before the Court.

Defendant argues on appeal that the trial court erred by likening counsel's discussion with the court as a matter of "courtroom protocol and procedure." *McKaskle*, 465 US at 183. Rather, defendant argues, the discussion occurring out of his presence related to "significant

tactical decisions" and "matter[s] of importance." *Id*. at 178. We need not choose between these alternate perspectives of the discussion between standby counsel and the court out of defendant's presence. In conformity with *McKaskle*, 465 US at 174, defendant had the opportunity "to control the organization and content of his own defense, to make motions, to argue points of law, to participate in *voir dire*, to question witnesses, and to address the court and the jury at appropriate points in the trial." Standby counsel's discussion with the court did not preclude defendant from objecting to being restrained or if such objection were denied, voicing his own position regarding courtroom arrangements to conceal from the jury the fact of being restrained. The record is clear that standby counsel did not participate at trial over defendant's objection and that defendant had the opportunity to speak for himself on any matter of importance. *Id*. at 178. Indeed, standby counsel participated in some matters at trial with defendant's express consent. Defendant's authorization of standby counsel's participation occurred before the discussion at issue with the court. "Once a *pro se* defendant invites or agrees to any substantial participation by counsel, subsequent appearances by counsel must be presumed to be with the defendant's acquiescence, at least until the defendant expressly and unambiguously renews his request that standby counsel be silenced." *Id*. at 183. Here, defendant voiced no objection to standby counsel's participation, and he had the opportunity to object to the restraints or the courtroom arrangements. No violation of defendant's right of self-representation occurred. *Id* at 174, 178.

III. SHACKLING WAS HARMLESS ERROR

On remand, the trial court found that because defendant did not object to being shackled at trial, the issue was unpreserved and should be reviewed for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The trial court concluded that plain error had occurred because no reason was articulated as to why defendant was restrained at trial. As discussed already, however, efforts were made at trial to conceal from the jury that defendant wore leg braces under his clothing and to also provide an explanation to the jury as to why defendant remained seated during the trial. As part of the remand proceedings, the trial court sent a questionnaire to each juror to determine if he or she were aware of defendant's being shackled and, if so, whether it affected their verdict. The trial court reported that eleven jurors answered that they were not aware that defendant was shackled at trial. One juror answered "yes" to the question: Were you aware at the time of the trial that Mr. Smith was wearing leg restraints? But this juror answered "no" to the query "did the leg restraints influence your verdict? Based on this poll of the jurors and the overwhelming evidence of defendant's guilt admitted at trial, the trial court found beyond a reasonable doubt that the error in shackling defendant without cause did not contribute to defendant's being found guilty, i.e., that the error was harmless beyond a reasonable doubt.[2]

Defendant argues that because the trial court acknowledged that no reason existed to justify shackling him during trial and because at least one juror apparently observed the shackles,

[2] Thus, although finding the alleged constitutional error was unpreserved, the trial court applied the standard of review for preserved constitutional error. See *Carines*, 460 Mich at 774.

a presumption of prejudice should arise, especially in this case because the shackling disadvantaged his self-representation efforts. We disagree.

When a trial court fails to offer any justification for maintaining a defendant in visible shackles, the defendant "need not demonstrate actual prejudice to make out a due process violation." *Deck v Missouri*, 544 US 622, 635; 125 S Ct 2007; 161 L Ed 2d 953 (2005). Rather, the prosecution bears the burden of demonstrating beyond a reasonable doubt that the shackling error did not contribute to the verdict obtained. *Id.*; *Anderson*, 446 Mich at 404-406.

Like the trial court, we assume that constitutional plain error occurred because defendant was restrained without specific justification and because at least one juror either observed defendant's leg restraints or assumed that was the reason that defendant remained seated. Applying the plain error standard of review to forfeited constitutional error, we conclude defendant would not be entitled to relief because the error did not affect the outcome or result in the conviction of an actually innocent defendant or seriously affect the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence. *Carines*, 460 Mich at 763, 774. Moreover, even applying the standard of *Deck* regarding preserved constitutional error of visible shackling, defendant is not entitled to relief because the record establishes beyond a reasonable doubt that the shackling of defendant did not contribute to the verdict. *Deck*, 544 US at 635.

We conclude that irrespective of defendant's being shackled at trial, the record demonstrates beyond a reasonable doubt defendant's guilt of possessing with the intent to deliver between 450 and 1,000 grams of cocaine. At trial Lt. Rampy testified that on August 14, 2009, he had received an anonymous tip concerning a black Ford Fusion traveling north on I-75, driven by a bald, black male wearing glasses. Rampy relayed the tip information to FANG officers and directed that they patrol the northbound I-75 lanes in southern Genesee County. Rampy also spotted a car and driver matching the tip description heading north on I-75, notified the other team members about his sighting of the vehicle and requested other team members to conduct further surveillance. Rampy observed the black Fusion, driving 75 miles an hour in a 70 mile-per-hour zone. At the traffic stop of the black Fusion, officers after a brief detention and positive indication by a trained police dog, found in the car's trunk about 500 grams of cocaine.

After other officers found the apparent cocaine inside the black Fusion, Officer Renye arrested defendant and advised him of his *Miranda*[3] rights. Renye testified that defendant acknowledged his rights, waived them and stated that "the cocaine [in the black Fusion] was his"; the cocaine and packaging weighed 501 grams; he bought the cocaine in Detroit and paid $12,000 for it; and that he intended to sell the cocaine for $16,000 in Flint.

At trial, an expert in latent fingerprint print examination testified that a latent fingerprint on a Ziploc bag recovered from the black Fusion's trunk and concluded that the print matched defendant's right middle fingerprint. An expert chemical analyst testified that the 490.9 grams of

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

the substance he tested contained cocaine. Officer Watson testified that in his training and experience the 490-gram quantity of cocaine that was seized was meant for delivery.

Based on the overwhelming evidence of defendant's guilt and the lack of any evidence that the jury was influenced by the fact that defendant was wearing concealed restraints, we agree that the trial court correctly found beyond a reasonable doubt that the unjustified shackling of defendant did not contribute to the verdict. *Deck*, 544 US at 635. Consequently, the alleged constitutional error was harmless beyond a reasonable doubt. *Anderson*, 446 Mich at 405-406.

IV. PROSECUTOR MISCONDUCT

Defendant next argues that he is entitled to relief because the prosecutor engaged in misconduct by allowing several police officer witnesses to testify falsely at trial. We disagree.

Defendant did not object at trial to the testimony of police officer witnesses on the basis that they were offering false testimony. Consequently, defendant's claims of prosecutorial misconduct are unpreserved for appellate review. *People v Unger*, 278 Mich App 210, 234-235; 749 NW2d 272 (2008). With no contemporaneous objection and request for a curative instruction, appellate review of claims of prosecutorial misconduct is limited to determining whether there was plain error that affected substantial rights. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). In general, the test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004). In making this determination, the alleged improper remarks or conduct must be viewed in context. *Id*. at 454.

Defendant initially maintains that Trooper Skrbec testified falsely concerning the patrol car that he had used when stopping defendant on August 14, 2009, and that the prosecutor knowingly failed to correct the perjured testimony. Defendant characterizes as false Skrbec's trial testimony that the video camera in the patrol car was not working at the time of the stop and had not worked for some time before that. A review of Skrbec's testimony at the suppression hearing and at trial reveals that he consistently recounted that the camera in his car did not function at the time of the stop and that he did not remember precisely when it stopped working. Even assuming that Skrbec incorrectly testified at trial regarding when the state police disposed of the patrol car, defendant has offered no evidence that Skrbec intentionally lied, and we cannot conceive of the alleged misstatement about the year of the patrol car's sale adversely impacting defendant's right to a fair trial. *Thomas*, 260 Mich App at 453.

Defendant maintains that Trooper Shingleton intentionally misrepresented Trooper Skrbec's movements before the traffic stop, which left a false impression with the jury that defendant was fleeing from the police. We find nothing inconsistent between Skrbec's accounts of his location when he first saw the black Fusion—on the shoulder of northbound I-475 near Stewart Avenue—and Shingleton's descriptions of Skrbec's patrol car having passed Shingleton's undercover police car near the Stewart exit in pursuit of the black Fusion. Defendant offers nothing from the preliminary examination to support the allegation that Skrbec intentionally altered his account of events at trial. Additionally, we fail to discern any prejudice to defendant's right to a fair trial from the alleged discrepancy, especially in light of the substantial evidence of his guilt.

Defendant next asserts that Lt. Rampy's trial testimony regarding hearing Shingleton's radio broadcast of the black Fusion's license plate number was a contrived lie. Rampy testified that he initially saw the black Fusion when he was around three miles from the I-75 interchange with I-475 and recalled hearing Trooper Shingleton's radio broadcast of the license plate number at or around this time. To extent that Rampy misstated at trial that he had heard Shingleton radio broadcast regarding the black Fusion's license plate at the same moment that Rampy was pace clocking the black Fusion, we find that (1) defendant has not substantiated that Rampy intentionally attempted to deceive the jury, and (2) we do not believe that the misstatement adversely impacted defendant's right to a fair trial, especially in light of the substantial evidence of his guilt and defendant's cross-examination of Rampy on this point.

Defendant next characterizes as false testimony Trooper Shingleton's trial account of the black Fusion "traveling at speeds of more than 80 hour on a three lane highway," primarily because Shingleton did not remember details about which lanes the black Fusion had improperly moved into. Defendant also asserts that Officer Renye's testimony that he did not see Trooper Shingleton during the pursuit of the black Fusion as showing that Trooper Shingleton was intentionally giving false testimony.

We conclude that it does not appear unreasonable that approximately 22 months after the traffic stop Trooper Shingleton did not recall into which lanes the black Fusion may have made unsignaled changes. We also find no inherent contradictions exist between the trial testimony of Officer Renye and Trooper Shingleton. Renye's account of recommencing his pursuit near I-475 and Bristol Road occurred around two miles after Shingleton had begun following the black Fusion near I-475 and Hill Road and could have seen the unsignaled lane changes. Again, we find that defendant has not substantiated that Shingleton intentionally testified falsely. Further, we also reject the claim that Shingleton's testimony about the black Fusion's unsignaled lane changes prejudiced defendant such that he was denied his right to a fair trial in any respect.

In summary, Defendant has not substantiated that the prosecutor offered or permitted false testimony at trial or that any of the alleged misstatements by the testifying police officers prejudiced his right to a fair trial. *Thomas*, 260 Mich App at 453.

We affirm.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Michael J. Riordan