STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE ANTHONY BROWN,

Defendant-Appellant.

UNPUBLISHED
June 27, 1997

No. 190997
Wayne Circuit Court
LC No. 95-003992-01

Before: White, P.J, and Bandstra and Smolenski, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than fifty grams of a mixture containing heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). After a bench trial, defendant was convicted of possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.14(7403)(2)(a)(v). He was sentenced to one to four years in prison. Defendant now appeals as of right. We affirm.

The instant case arose on March, 18, 1995, when Detroit Police Officer Darryl Stewart and his partner went to the corner of Monterey Street and 12th Street in the City of Detroit, to meet an individual with knowledge of the whereabouts of a stolen vehicle. When the officers arrived at the scene, the individual directed them to a vehicle parked at the corner of Monterey and 12th Street. A man, identified as defendant, was seated in the driver's seat of the vehicle. After checking the license plate number of the vehicle, the officers learned the vehicle was stolen, and arrested defendant. Defendant was frisked, handcuffed, placed in the rear seat of the patrol car, and driven to the police station. As Officer Stewart was helping defendant out of the car at the police station, defendant's hat fell onto the floor of the rear seat of the patrol car. As Officer Stewart retrieved the hat, he observed a white coin envelope packet of suspected heroin on the rear seat of the car. Officer Stewart then removed the rear seat, and found eleven more packets of heroin underneath the rear seat. In addition to the packets of heroin found in the car, a beeper and $245 were taken from defendant as evidence.

Defendant first argues that insufficient evidence was presented to prove beyond a reasonable doubt that defendant possessed the heroin. We disagree.

To determine whether sufficient evidence was presented to sustain a conviction, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jeffrey*, 445 Mich 287, 296; 519 NW2d 108 (1994).

The offense of possession of a controlled substance requires proof that the defendant had actual or constructive possession of the substance. *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990).

Detroit Police Officer Darryl Stewart, the only witness to testify at trial, testified that he inspected his patrol car at the beginning of his shift on March 18, 1995, and that no contraband was found in the car. He further testified that no one was in the rear seat of the car, or had access to the rear seat of the car, between the time he inspected the car and the time defendant was arrested. It can reasonably be inferred from Officer Stewart's testimony that the heroin packets belonged to defendant. *People v Harrington*, 396 Mich App 33, 49; 238 NW2d 20 (1976). Accordingly, we find that sufficient evidence was presented to justify a finding beyond a reasonable doubt that defendant had possession of the heroin.

Defendant next argues that he was denied effective assistance of counsel. We disagree. To prove ineffective assistance of counsel, defendant must show both that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). To show prejudice, defendant must show that there is a reasonable probability that, but for the error, the result of the proceedings would have been different. *People v Lavearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Lavearn, supra*, 448 Mich 217. In order to succeed on a claim of ineffective assistance of counsel, defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), cert den 513 US __, 115 S Ct 923, 130 L Ed 2d 802 (1995). Furthermore, because defendant did not move for a new trial or a *Ginther*[1] hearing below, our review of this issue is limited to mistakes apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

Defendant first claims he was denied effective assistance of counsel because counsel failed to move for an adjournment to obtain the activity logs kept by Officer Stewart regarding his shift on March 18, 1995, even though the trial court suggested that it would grant such a motion. We disagree.

Defense counsel's decision not to request an adjournment was a matter of trial strategy, which will not be second guessed by this Court. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). Had defense counsel sought the adjournment and obtained the activity logs only to find that they corroborated Officer Stewart's testimony, the prosecution could have admitted the evidence and further strengthened its case against defendant. Instead, defense counsel relied on his cross-examination of Officer Stewart, during which the officer testified that he could not remember how many runs he had before defendant's arrest, and how many people he encountered during those runs. Because defense counsel's decision not to request an adjournment to obtain the activity logs was a

matter of trial strategy, the decision did not constitute ineffective assistance of counsel. *Barnett, supra,* 163 Mich App 338.

Defendant also argues that he was denied effective assistance of counsel because defense counsel failed to elicit testimony from Officer Stewart to show that defendant's hands were handcuffed behind his back while he was in the patrol car, and failed to argue that defendant could not have placed the heroin on the rear seat of the patrol car if his hands were handcuffed behind his back. We disagree.

There was testimony that defendant was handcuffed, although it was not established that he was cuffed in back, rather than in front. Even if handcuffed behind his back, defendant still would have had limited movement of his arms and hands, and it would not have been impossible for defendant to have attempted to hide the heroin. Defendant has not established a reasonable probability that the result of the proceedings would have been different had counsel questioned Officer Stewart regarding the manner in which defendant was handcuffed. Accordingly, defendant has not shown ineffective assistance of counsel. *Pickens, supra,* 446 Mich 309.

Affirmed.

/s/ Helene N. White
/s/ Richard A. Bandstra
/s/ Michael R. Smolenski

[1] *People v Ginther,* 390 Mich 436; 212 NW2d 922 (1973).