# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>June 1, 2001 |
| v | No. 216266<br>Delta Circuit Court |
| CINDY LABELLE,<br><br>Defendant-Appellant. | LC No. 98-006275-FH |

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant Cindy LaBelle of possessing methamphetamine[1] and marijuana,[2] but acquitted her of possessing cocaine[3] and methylphenidate,[4] which is commonly known as Ritalin. The trial court sentenced LaBelle to twenty-four months' probation, with thirty days in jail for her methamphetamine possession conviction and ten days in jail for her marijuana possession conviction, to be served concurrently. LaBelle appeals as of right. We affirm.

## I. Basic Facts And Procedural History

This case has a rather startling background, which we mention only by way of introduction. At the time of her arrest, LaBelle was the secretary to the Delta County prosecutor, with almost twenty years of service. The Delta Circuit judges, the Delta County prosecuting attorney, and the Delta County assistant prosecutors were disqualified from participating in these proceedings because of their potential conflicts of interest. Consequently, this case was assigned

[1] MCL 333.7403(2)(b); MSA 15.15(7403)(2)(b).

[2] MCL 333.7403(2)(d); MSA 15.15(7403)(2)(d).

[3] MCL 333.7403(2)(a)(v); MSA 15.15(7403)(2)(a)(v).

[4] MCL 333.7403(2)(b); MSA 15.15(7403)(2)(b).

to a judge from the Alger Circuit Court, with a Marquette County assistant prosecuting attorney serving as the special prosecutor.[5]

Officer Dale Vandrese, a regional narcotics investigator and lead investigator in this case, became suspicious of LaBelle after her ex-husband was arrested on drug possession charges. So, over a period of several months beginning in October 1997, he conducted a series of "garbage pulls" at her home, meaning that he searched LaBelle's curbside garbage for incriminating evidence to establish probable cause for a search warrant. During these garbage pulls, he found traces of marijuana as well as a number of pieces of burnt tinfoil, suggesting they had been used to process methamphetamine for ingestion. Laboratory analysis confirmed the presence of methamphetamine on the foil. Officer Vandrese also found correspondence in the garbage indicating that LaBelle's daughter, her daughter's boyfriend, and their baby were also living at that address.

Having gathered this evidence, Officer Vandrese obtained a search warrant, which he executed at LaBelle's home on 19th Street on February 25, 1998. When he entered the home, Officer Vandrese said, he explained the reasons for the search to LaBelle and she replied, "Yeah, I smoke marijuana, so what," a comment the prosecutor emphasized in her opening statement. Officer Vandrese found a box in LaBelle's bedroom dresser, in which there was a Goody brand mirror, a razor blade with a cardboard piece around the sharp end, a glass tube, a hollow pen, tinfoil, and a film canister of marijuana. Police officers found a second mirror with traces of a white powdery substances, a knife, a few pills, and some suspected marijuana in the basement bedroom LaBelle's daughter shared with her boyfriend and their baby. Later, when he testified at trial, Officer Vandrese said that he could not recall any visible drug residue on any of the items seized from LaBelle's bedroom. If he had seen any residue, he would have noted it in his report.

Officer Terrance Saunders, who also participated in the search of LaBelle's home, had known LaBelle since 1990 because of her work at the prosecutor's office. He observed that when she saw the search warrant, she became uncooperative. Consistent with Officer Vandrese's testimony, Officer Saunders said that LaBelle admitted smoking marijuana, but said that the drugs found in her the bedroom belonged to her daughter. When Officer Saunders saw an "actual mirror surface with some powder on it," he confronted LaBelle with the information and asked her to cooperate with the police effort to arrest the dealer. However, LaBelle refused to respond to his request for help.

Like Officer Saunders, Sgt. Charles Gross and Trooper Phillip Stanton saw what they believed to be white drug residue on the Goody mirror found in LaBelle's bedroom. Laboratory analysis by the Michigan State Police later confirmed that the residue on the mirror consisted of a combination of methylphenidate and cocaine. Michigan State Police Laboratory chemist Thomas Lacelle, who analyzed the evidence seized during the search, first saw residue plainly visible inside a hollow pen taken from LaBelle's bedroom and confirmed with tests that the residue was methamphetamine. Robert Kelly, the Director of the Marquette Forensic Science Laboratory for

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[5] MCL 49.160(1); MSA 5.578(1).

the Michigan State Police and Lacelle's supervisor, testified that the Laboratory's policy was to test only visible residue.

After the prosecution rested, defense counsel moved for a directed verdict on all but the charge alleging marijuana possession, arguing that there were insufficient quantities of cocaine, methamphetamine, methylphenidate, or their visible residue to support an inference that LaBelle knowingly possessed these drugs. The trial court denied the motion, reasoning that the quantities by themselves would not govern the overall circumstances and that there were sufficient other circumstances from which a jury could conclude that LaBelle knowingly possessed the drugs. The trial court also took the opportunity to place on record that defense counsel had objected to Officer Vandrese's testimony regarding the tinfoil and that defense counsel had requested a special jury instruction because the prosecution had lost the photographs of the crime scene.

Labelle's defense was that the drugs in her house belonged to her daughter, not to her. In support of this theory, LaBelle's father and one of her friends testified that LaBelle was essentially living with her boyfriend, Michael Caron, and her daughter, her daughter's boyfriend, and their baby were living in her house. LaBelle also called Caron to testify. Caron said that he saw LaBelle constantly and that she "virtually" lived with him because she was always at his house. According to Caron, LaBelle would go to her house after finishing work to "freshen up" before he met her and took her to his house. Caron said that Labelle's daughter and her boyfriend lived in Labelle's house on 19th Street but "they kind of took over the house because Cindy was never there." Caron believed that LaBelle's daughter and her boyfriend sometimes slept in the upstairs bedroom. He also explained that, on the day the police executed the search warrant, he and LaBelle were getting ready to leave when the police arrived. The police searched his truck where they found an empty film canister with marijuana residue. Caron admitted that the canister of marijuana the police found in LaBelle's bedroom was his, but he denied owning any other contraband items found in the room.

After closing arguments, the trial court denied a defense request for a jury instruction on the mere use of marijuana and then instructed the jurors on the applicable law. During the deliberations, the jurors requested further instructions on the meaning of "possession." The trial court, without objection, said that it could not expand the definition any further, but that it would repeat the standard instruction more slowly. After resuming deliberations, the jury returned a verdict of not guilty of possession of cocaine, not guilty of possession of methylphenidate, but guilty of possession of methamphetamine, and guilty of possession of marijuana

LaBelle filed a motion for a new trial in July 1999, arguing that the trial court erred by failing to properly instruct the jury and, alternatively, that trial counsel was ineffective. Following a *Ginther*[6] hearing, the trial court denied both motions.

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

## II. Jury Instructions

### A. Standard Of Review

LaBelle argues that the trial court erroneously instructed the jury regarding the limited use of other acts evidence, the date of the offense, and possession.[7] She failed to preserve the first two of these instructional issues by raising them in the trial court.[8] Therefore, we review those two issues for plain error that affected her substantial rights.[9] We apply review de novo to the preserved argument that the trial court erroneously denied her request to include an instruction on the quantity of drugs the police found within its possession instruction.[10]

### B. Instructions Generally

The trial court had to instruct the jury concerning the law that applied to this case and present the case to the jury in a full, fair, and understandable manner to the extent that justice required.[11] Accordingly, when we review jury instructions, we consider the instructions in their totality to determine whether the trial court committed error.[12] "Even if somewhat imperfect, instructions do not create error if they fairly present to the jury the issues tried and sufficiently protect the defendant's rights."[13]

### C. Other Acts Evidence

At trial, the prosecutor introduced evidence that the police had searched LaBelle's garbage for several months leading up to their search of her house in order to find probable cause to support a search warrant. Because this evidence tended to show that there was drug activity occurring in her home before the search, this evidence, such as the tinfoil laced with drug residue

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[7] LaBelle makes a number of minor arguments, scattered throughout her brief on appeal, that the "plain error affecting substantial rights" standard discussed in *Carines*, *infra*, should not apply in this case because *Carines* had not been decided at the time she was tried. However, she has not presented this issue for appeal by listing it in her statement of questions presented. MCR 7.212(C)(5). In any event, the *Carines* opinion merely clarified *existing* case law; it did not announce a new rule of law. Therefore, there is no obstacle to applying it retroactively. See *People v Neal*, 459 Mich 72, 80; 586 NW2d 716 (1998) (retrospective application depends, in part, on whether the more recent opinion announced a new rule of law).

[8] See *People v Smith*, 80 Mich App 106, 113; 263 NW2d 306 (1977) ("It is well-settled that no party may assign as error failure to give or the giving of an instruction unless objection is raised before the jury retires to consider the verdict. The objecting party must specifically state the grounds for his objection at that point.").

[9] *People v Carines*, 460 Mich 750, 761-764, 774; 597 NW2d 130 (1999).

[10] *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

[11] MCL 768.29; MSA 28.1052; *People v Henry*, 239 Mich App 140, 151; 607 NW2d 767 (1999).

[12] *Henry*, *supra* at 151.

[13] *People v Bartlett*, 231 Mich App 139, 143-144; 585 NW2d 341 (1998).

taken from her garbage, can be considered "[e]vidence of other crimes, wrongs, or acts . . . ."[14] Although she claims that this evidence was inadmissible for a number of reasons, including the short notice she had before trial that the prosecutor intended to introduce this evidence,[15] LaBelle does not argue that she is entitled to a new trial because of an evidentiary error.[16] Rather, she contends that the trial court's failure to instruct the jury regarding the proper use of this evidence by issuing CJI2d 4.11 constituted error requiring reversal.

CJI2d 4.11 would have been applicable and likely useful had the defense requested the trial court to issue it. The standard instruction distinguishes between the charged offenses and the other acts described at trial and puts into perspective the proper ways in which the jury may consider the other acts evidence. Nevertheless, "in the absence of a request or objection, the appellate courts have declined to impose a duty on trial courts to give sua sponte limiting instructions such as the one now suggested by defendant (CJI2d 4.11), even if such an instruction should have been given."[17] Furthermore, even if the trial court committed a plain error, we doubt that this error affected LaBelle's substantial rights because the prosecution kept this evidence in its proper context as an explanation for why the police initiated the investigation. The prosecution did not suggest that the evidence taken from LaBelle's garbage proved she committed the charged offense because she was a bad person, having committed other drug crimes.[18] Thus, we see no error requiring reversal with regard to the trial court's failure to issue CJI2d 4.11.

D. Date Of The Charged Offense

LaBelle argues that the trial court committed error warranting reversal by failing to specify the date of the charged offense while reading the charges to the jury at the beginning of the trial and while issuing the final instructions before the jury began their deliberations. This omission, she contends, allowed the jury to become confused regarding whether the evidence gathered from her garbage *before* the search could be used to support the charges that she possessed the four different drugs the police seized from her home on February 25, 1998.

If the trial court had complied with CJI2d 1.8 and read the whole criminal information to the prospective jurors as that instruction requires, the jurors would have heard the date of the

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[14] MRE 404(b)(1).

[15] MRE 404(b)(2) requires advance notice of other acts evidence. However, LaBelle's motion in limine to suppress this evidence claimed that it should be excluded because the prosecutor proposed to introduce the evidence after the pretrial deadline for exhibit lists had passed.

[16] The prosecutor contends that this was res gestae evidence, not other acts evidence. Because we have no grounds on which to reverse LaBelle's convictions, we assume for the sake of discussion that this was other acts evidence potentially subject to challenge, although not necessarily exclusion, under MRE 404(b).

[17] *People v Rice (On Remand)*, 235 Mich App 429, 444; 597 NW2d 843 (1999).

[18] See MRE 404(b)(1) ("Evidence of other crimes, wrongs, or acts is not admissible *to prove the character of a person in order to show action in conformity therewith*.") (emphasis added).

charged offenses directly referenced in the context of those charges. The trial court also could have included the date of the offense in its concluding instructions when defining the crime of possession. However, the trial court's failure to relate the date of the charged offenses at these two places did not constitute plain error that affected LaBelle's substantial rights. In the very first sentence of the opening statement, the prosecution informed the jury that the offenses for which LaBelle was being tried were alleged to have occurred on February 25, 1998. The trial testimony clearly differentiated between the drugs found during the search on February 25, 1998, and the tinfoil with drug residue found earlier in LaBelle's garbage. During closing arguments, the prosecution clearly discussed the evidence found during the search as evidence of LaBelle's guilt. Further, the trial court, during its closing instructions to the jury, related the prosecution's theory of the case, which included an assertion that LaBelle committed the charged offenses "on February 25, 1998, at her home in Escanaba." Given the prevalence of these other references to the date of the charged offenses, we see no realistic probability that LaBelle was denied a fair trial because the trial court did not specify the date of the charged offenses differently.

E. Knowing Possession

LaBelle argues the trial court's instructions concerning possession, which relied on CJI2d 12.7, were insufficient because they failed to state that the drugs the police found had to be in "visible quantities." In making this argument, she alludes to *People v Hunten*,[19] in which this Court wrote:

> The majority view is that any amount of a proscribed controlled substance is sufficient to establish the offense of possession. However, the majority view is also that knowledge of the presence of the substance is an essential element of the offense. Where, as in *Harrington*,[20] the substance is "there for [the defendant] to see", that evidence alone is sufficient to submit to a trier of fact the question of scienter, i.e., whether the defendant had, in fact, knowledge of the presence of the substance.

However, the invisibility of the illegal substance is dispositive *only* when there is no other evidence of the defendant's knowledge.[21] Ordinarily, the jury may consider "[o]ther facts and circumstances . . . from which criminal scienter may be inferred."[22]

In this case, not only did the trial court twice instruct the jury that, in order to find LaBelle guilty of any of the charges, it had to find beyond a reasonable doubt that she "knew that she was possessing" each drug, it also explained what constituted evidence generally as well as

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[19] *People v Hunten*, 115 Mich App 167, 170-171; 320 NW2d 68 (1982).

[20] *People v Harrington*, 396 Mich 33; 238 NW2d 20 (1976).

[21] *Hunten*, *supra* at 171.

[22] *Id*.; see also *People v Vaughn*, 200 Mich App 32, 37-38; 504 NW2d 2 (1993) (discussing and applying *Hunten* to conclude that other circumstances demonstrated that the defendant knew of the presence of the illegal substance).

the concepts of direct and indirect evidence. Taken together, these instructions adequately informed the jury of its obligation to find evidence of scienter. Also, critically, the testimony indicated that the methamphetamine residue in the pen was actually visible to the naked eye and there was other evidence from which the jury could infer Labelle's knowledge of the drugs. Consequently, the problem of minuscule evidence invisible to the average observer standing alone as proof of knowledge, which *Hunten* addressed, did not arise in this case, making this instruction unnecessary. In sum, we have no reason to conclude that the trial court's failure to give this instruction denied her a fair trial in light of the legal adequacy of the other instructions and the fact that the drug residue evidence was visible.[23]

## III. Ineffective Assistance Of Counsel

### A. Standard Of Review

LaBelle contends that she is entitled to a new trial because her trial counsel was ineffective in several respects. "The denial of effective assistance of counsel violates a defendant's Sixth Amendment right to a fair trial," meriting de novo review for this constitutional issue.[24]

### B. Legal Standards

In *People v Pickens*,[25] our Supreme Court held that

> to find that a defendant's right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive [her] of a fair trial.

"To establish prejudice, defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different."[26] Defense counsel's performance must be measured without the benefit of hindsight.[27] We presume that LaBelle was given effective assistance by her trial attorney and she must overcome this "strong presumption"

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[23] The record suggests that defense counsel may have also specifically approved the possession instruction immediately before the trial court repeated it to the jury, which would constitute a waiver. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). We, however, give LaBelle the benefit of the doubt on this issue and conclude that she did not waive or forfeit this issue, having specifically requested in writing that the trial court issue this instruction.

[24] *People v Toma*, 462 Mich 281, 310; 613 NW2d 694 (2000).

[25] *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994).

[26] *People v Noble*, 238 Mich App 647, 662; 608 NW2d 123 (1999), citing *Pickens*, *supra* at 314.

[27] See *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995).

in order to earn a new trial.[28] In this regard, we note that a defendant's trial counsel has full authority to manage the conduct of the trial and make strategic decisions, including what arguments and objections to make,[29] what evidence to present, and whether to call or question witnesses.[30]

C. Garbage Pull Testimony

LaBelle first argues that her trial counsel was ineffective for failing to object to the testimony concerning the evidence of drug use at her home gathered from her garbage, which she claims should have been excluded under MRE 404(b)(1). We disagree. At the *Ginther* hearing, LaBelle's trial counsel stated that he had thought about this evidence, he knew it was prejudicial, and he had tried, but failed, to determine grounds on which he could succeed on an argument to have it excluded. He could not say with complete assurance whether he had mentally categorized this evidence as other acts evidence under MRE 404(b)(1). This was a purposeful and calculated decision not to raise what defense counsel had concluded would be a meritless argument to exclude this evidence, just the sort of strategic decision not subject to question on appeal.[31]

Nevertheless, regardless of whether defense counsel challenged the admissibility of the garbage pull testimony, once admitted, it was incumbent on defense counsel to request a limiting instruction. The large quantity of this evidence – approximately fifty items extracted from the garbage and entered at trial – was surely prejudicial to the defense. Though this evidence was not used improperly at trial, we see no strategic value in failing to ask the trial court to issue a limiting instruction to the jury to prevent it from using this evidence, alone, as evidence of LaBelle's guilt of the charged offense. Defense counsel's failure to request the limiting instruction fell below an objective standard of reasonableness, especially because he knew that this evidence was prejudicial.

Though prejudicial generally, whether, in the absence of a limiting instruction, this evidence deprived LaBelle of a fair trial by being outcome determinative is a separate question.[32] We see no reasonable probability that the jury was confused regarding what evidence it was to consider as evidence of her guilt. Officer Vandrese clearly testified that he used the tinfoil taken from her garbage as evidence for the search warrant and distinguished between this evidence and the evidence seized from her home. The majority of the testimony at trial concerning the physical evidence seized from LaBelle's home focused on the evidence seized during the search on February 25, 1998, not the evidence seized from her garbage. LaBelle has failed to demonstrate how, in light of the way this evidence was actually used at trial, a limiting

[28] *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

[29] *Carter*, *supra* at 218, quoting *New York v Hill*, 528 US 110, 114-115; 120 S Ct 659; 145 L Ed 2d 560 (2000), quoting *United States v Mezzanatto*, 513 US 196, 200; 115 S Ct 797; 120 L Ed 697 (1995).

[30] *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

[31] See *People v Reed*, 449 Mich 375, 400; 535 NW2d 496 (1995).

[32] See *Noble*, *supra*.

instruction would have affected the outcome of this case, or that she was thereby denied a fair trial. Consequently, she is not entitled to a new trial on this basis.

D. Other Claims

LaBelle alleges that her trial counsel was also ineffective for failing to (1) move to suppress her statement to the police regarding her marijuana use without advising her of her rights, (2) object to the prosecutor's civic duty arguments, (3) object to legal opinion testimony by Kelly and Officer Vandrese, (4) object to Officer Saunder's irrelevant testimony concerning her failure to cooperate with the police, (5) object to cumulative testimony by the police officers, (6) exploit favorable evidence that the police did not find evidence her fingerprints on any drug evidence, (7) take advantage of the police officers' inability to determine what the powder on the mirror was, (8) object to the absence of an instruction concerning the date of the offenses, and (9) request an instruction that the residue had to be visible. We dispose of LaBelle's weakest claims first.

With regard to claims eight and nine, we have already determined that the trial court's instructions to the jury were adequate to ensure that LaBelle received a fair trial and that a visible quantity instruction was not necessary. Therefore, defense counsel's failure to ensure that the trial court issued these instructions did not constitute error requiring reversal because, regardless of defense counsel's need to request these instructions, they were not outcome determinative.

LaBelle's other claims have no more merit. The record is silent regarding whether the police warned LaBelle of her rights before she stated that she smokes marijuana.[33] We have no greater reason to infer from the circumstances of the search that the police failed to advise LaBelle of her rights than we would have to infer that they did give the warning. Therefore, we have no way to determine whether defense counsel should have moved to suppress her statement. The record is insufficient for us to conclude that defense counsel's inaction on this issue fell below an objective standard of reasonableness.

The prosecution did not make an improper civic duty argument in arguing that LaBelle was not above the law. "Civic duty arguments are generally condemned because they inject issues into the trial that are broader than a defendant's guilt or innocence of the charges and because they encourage jurors to suspend their own powers of judgment."[34] The prosecution's statement did not insert extraneous considerations into the trial because the argument specifically asked the jurors to hold LaBelle accountable under the law for her illegal actions. An objection in this instance would have been meritless, and so defense counsel did not need to make this objection to be effective.[35]

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

[34] *People v Williams*, 179 Mich App 15, 18; 445 NW2d 170 (1989).

[35] See *People v Snider*, 239 Mich App 393, 424; 608 NW2d 502 (2000).

The testimony of Kelly and Officer Vandrese did not infringe on the trial court's responsibility to instruct the jury on the applicable law. Kelly merely told the jury that each of the four substances found on items seized from LaBelle's home were illegal in Michigan. Though Officer Vandrese mentioned that individuals no longer have a right to privacy in their garbage when its placed at the curb, he did not purport to be a legal expert. Rather, he mentioned the law in the context of explaining to the jury why he was searching LaBelle's trash without a warrant. Additionally, his comments regarding the search warrant process were necessary to explain how he prepared for the search at LaBelle's home. None of these issues had any prominence at trial. Neither witness presumed to instruct the jury on an issue of law relevant to its final deliberations and the trial court made clear that it had the duty to instruct on the law. We see no error requiring reversal in defense counsel's failure to object in these instances.

LaBelle claims that Officer Saunders gave improper testimony because it made him seem as if he had been working for LaBelle's best interests rather than attempting to secure a conviction and because he said that LaBelle refused to cooperate with the police. Officer Saunders testified that the reason he participated in the search at her home was because they were professional acquaintances and he thought he could calm her, which was necessary because she appeared upset when the police arrived. His testimony did not imply that he had any motivation other than to help the police with their work. Further, his testimony concerning LaBelle's refusal to cooperate with the police occurred as he was discussing her conduct on the night of the search. It was a logical part of retelling the story of the search and her arrest. Though defense counsel may have been able to object to certain portions of this testimony as a whole, none of it absolutely required an objection.

As for the multiple police officers' testimony, though some of it overlapped, each officer played a different role in the search and testified to what he saw when participating in the search. Given that the officers searched different areas of the house at different times, some seeing items that the others had not seen, we cannot say that this evidence was "needless[ly]" cumulative and therefore subject to a challenge under MRE 403. Defense counsel's failure to object, therefore, did not constitute ineffective assistance of counsel.[36]

LaBelle contends that her trial counsel failed to point out to the jury that there was no testimony that her fingerprints had been found on any of the items that had drug residue. Defense counsel's *Ginther* hearing testimony suggests that, as a matter of strategy he chose not to pursue this line of questioning because it could not exclude LaBelle as the person connected to the drugs because the police did not find anyone else's fingerprints on the evidence. We agree with this view of the evidence and note, also, that LaBelle's view of this issue depends almost entirely on hindsight.[37] Because this evidence had no reasonable probability of affecting the outcome of the trial, defense counsel was not ineffective for failing to emphasize the lack of fingerprint evidence.

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[36] *Id.*

[37] See *LaVearn, supra*.

LaBelle's argument concerning the inability of the police to determine what was on the mirror is somewhat difficult to understand. Evidently, she contends that defense counsel should have pressed the officers who testified to state that they could not confirm that the residue on the mirror was a controlled substance rather than dust or makeup. However, Lacelle, who analyzed the mirror, was able to determine that the residue on the mirror was a mixture of cocaine and methylphenidate. With the chain of custody intact, the jury was able to infer that the residue that the officers saw on the mirror was the same residue that Lacelle analyzed and determined to be a combination of those two controlled substances. Critically, the jury acquitted LaBelle of possessing the two controlled substances, cocaine and methylphenidate, found on the mirror. This acquittal made the police testimony concerning residue on the mirror irrelevant to whether the outcome of the trial regarding the other two charges – neither of which involved cocaine or methylphenidate – would have been different had defense counsel dealt with this evidence differently.

Further, Lacelle was able to see the residue in the pen and determine that it was methamphetamine. We are uncertain what LaBelle would have had her trial attorney do differently regarding this evidence, but it is certainly something that only hindsight would have her believe to be a more effective approach to her representation. LaBelle's trial attorney had a definite strategy in attempting to convince the jury that the drugs belonged to LaBelle's daughter and that daughter's boyfriend. Pressing the fingerprint evidence, which did not show that her daughter or her daughter's boyfriend had touched the drug-tainted evidence, would not have advanced this strategy. That this strategy failed does not mean that her trial counsel was ineffective.[38] Consequently, she is not entitled to relief on this basis either.

In sum, when measured against an objective standard of reasonableness and without benefit of hindsight, there is no evidence that defense counsel's conduct was ineffective or that it was ineffective to the extent that it affected the outcome in this matter, denying LaBelle a fair trial. To paraphrase the Michigan Supreme Court, LaBelle received the fair trial to which she was entitled even though it may not have been perfect.[39]

Affirmed.

/s/ David H. Sawyer
/s/ Michael R. Smolenski
/s/ William C. Whitbeck

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[38] See *People v Bart (On Remand)*, 220 Mich App 1; 558 NW2d 449 (1996).

[39] *People v Bahoda*, 448 Mich 261, 292, n 64; 531 NW2d 659 (1995).