

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN LAMAR HALL,

Defendant-Appellant.

UNPUBLISHED

April 23, 2002

No. 229270

Ingham Circuit Court

LC No. 99-075322-FH

Before: Gage, P.J., and Griffin and G. S. Buth*, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of possession of less than twenty-five grams of a controlled substance, MCL 333.7403(2)(a)(v), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A search of defendant's apartment revealed a prescription bottle containing crack cocaine in the bedroom and drug paraphernalia in the living room. Defendant's theory was that the bottle belonged to him, but the crack cocaine did not belong to him. Police officer witnesses testified that defendant acknowledged the bottle belonged to him, and stated it was for his personal use. Defendant objected to the introduction into evidence of the paraphernalia, crack pipes, and push rods on the grounds that the items were irrelevant to the charge of possession and that the evidence was more prejudicial than probative. The trial court admitted the evidence; finding that its presence made it more probable that defendant knew the cocaine was in the residence. Two women present in the apartment were not questioned.

Generally, relevant evidence is admissible. MRE 402. Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). Evidence is admissible if it sheds light on any material point. *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001). To be material, evidence need not relate specifically to an element of the charged crime or to an applicable defense. The relationship of the elements of the charge, the theories of admissibility, and the asserted defenses govern relevance and materiality. *People v Brooks*, 453 Mich 511, 517-518; 557 NW2d 106 (1996). Relevant evidence may be excluded if its probative value would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, delay, or needless

* Circuit judge, sitting on the Court of Appeals by assignment.

presentation of cumulative evidence. MRE 403; *People v Sabin (After Remand)*, 463 Mich 43, 58; 614 NW2d 888 (2000). We review a trial court's decision to admit evidence for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

Defendant argues that the trial court abused its discretion by admitting irrelevant evidence, specifically the paraphernalia, and that even if relevant, that evidence was more prejudicial than probative. We disagree. Defendant maintained that the prescription bottle found in his residence belonged to him, but that the cocaine in the bottle did not belong to him. A person's mere presence at a location where drugs are found is insufficient to prove constructive possession. Some additional link between the controlled substance and the defendant must be shown. *People v Echavarria*, 233 Mich App 356, 370; 592 NW2d 737 (1999). The prescription bottle bearing defendant's name constituted an additional link between defendant and the cocaine, as did the officers' testimony that defendant said that the bottle belonged to him, and that it was for his personal use. The presence of the paraphernalia in defendant's residence also provided a link between defendant and the cocaine. The evidence made a fact of consequence, that defendant possessed cocaine, more probable than it would be without such evidence. MRE 401. The evidence was not more prejudicial than probative. MRE 403. The evidence did not confuse the issues, but rather established an additional link between defendant and the cocaine.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and that counsel's performance resulted in prejudice. To demonstrate prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Counsel is presumed to have afforded effective assistance, and a defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

Defendant argues that he was denied the effective assistance of counsel at trial in that counsel failed both to secure a drug test to establish that he did not use cocaine and to interview the two women who were in the residence to determine if the cocaine and drug paraphernalia belonged to them. We disagree. Defendant did not move in the trial court for an evidentiary hearing or a new trial; therefore, our review is limited to the facts on the record. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987). Defendant's allegation that trial counsel did not consider obtaining a drug test or interviewing the women is unsubstantiated. Counsel's decisions could have been trial strategy. We do not substitute our judgment for that of trial counsel regarding matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). Defendant has not overcome the presumption that counsel rendered effective assistance at trial. *Rockey, supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth