STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 30, 2009
v	No. 284568 Oakland Circuit Court
RYAN CARLTON BROWN, Defendant-Appellant.	LC No. 2007-217742-FH

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of delivery of 50 or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(*iii*), and two counts of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(*iv*). He was sentenced as a habitual offender, fourth offense, MCL 769.12, to concurrent terms of 15 to 40 years' imprisonment for each delivery of 50 or more grams of cocaine conviction and 30 months' to 40 years' imprisonment for each delivery of less than 50 grams of cocaine conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arise from controlled buys of cocaine initiated and made by an informant on September 16, November 8, and December 7, 2005, and on January 10, 2006. In a statement to the police, defendant admitted that approximately four times the informant called him for drugs, he obtained them from a friend, and he made approximately $150 in each transaction.

On appeal, defendant argues that trial counsel was ineffective for not filing a motion to sever the individual counts. To establish ineffective assistance of counsel, a defendant must show that his counsel's representation "fell below an objective standard of reasonableness" and "overcome[s] the strong presumption that his counsel's action constituted sound trial strategy under the circumstances." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant must also demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different . . . ." *Id*. at 302-303 (citation and internal quotations omitted).

If trial counsel had moved for severance, the court would have been required to grant the motion because the offenses were not related. MCR 6.120(B)(1), (C). See *People v Tobey*, 401 Mich 141, 151-153; 257 NW2d 537 (1977). However, defendant has not overcome the strong

presumption that the failure to request severance was a strategic decision. With respect to each charge, the informant's credibility was critical to the prosecution's case. Defense counsel may have reasonably determined that it would have been more difficult to successfully defend four separate prosecutions than one single prosecution, or he might have concluded that his efforts to attack the informant's credibility would be less effective after the initial trial because the informant would be more prepared to respond to counsel's cross-examination. Moreover, even if counsel had requested severance and the court had granted it, there is no reasonable probability that the result of the proceeding would have been different. Counsel could reasonably anticipate that the prosecution would have been able to present testimony concerning the various drug transactions at the individual trials pursuant to MRE 404(b). See *People v Williams*, 240 Mich App 316, 324; 614 NW2d 647 (2000). In summary, defendant has not overcome the presumption that his counsel reasonably declined to request severance of the charges as a matter of trial strategy. See *Toma*, *supra* at 402.

Defendant also argues that the trial court erred in finding that he waived his rights and made his police statement voluntarily. Defendant contends that he waived his rights and made his statement under duress because a police detective told him he could spend the rest of his life in prison and that his children would be taken away from him.

We review the issue of voluntariness independent of the trial court. *People v Sexton* (*After Remand*), 461 Mich 746, 752; 609 NW2d 822 (2000). However, we will affirm the trial court's decision unless we reach a definite and firm conviction that a mistake has been made. *Id*. Where resolution of a disputed issue of fact requires an assessment of the credibility of the witnesses or the weight of the evidence, we defer to the trial court. *Id*.

Defendant was 27 years old when he gave his statement. He had completed a portion of the 10th grade and had worked on a G.E.D. He had previous experience with the police and prior drug-related convictions. According to the detective, defendant did not appear to be in ill health, sleepy, or hungry. Defendant was not physically abused or threatened with abuse. The detective advised defendant of his rights, and defendant initialed the advice of rights form. Defendant gave his statement less then 90 minutes after his arrest. The interview lasted approximately 30 to 40 minutes. Defendant wrote out his statement with the assistance of the detective.

According to the detective, defendant denied being intoxicated or high and did not appear to be under the influence of alcohol. However, defendant testified that he was "high" from marijuana and told the detective that. Defendant also testified that the police detective told him that he could spend the rest of his life in prison and that his children could be taken away from him. Defendant claimed that the detective told him that if he did not sign the advice-of-rights form, the detective would book him on the charges; according to defendant, he therefore signed the form and wrote out a statement because he feared what would happen to him if he did not. However, the detective denied discussing with defendant the loss of custody of his children or the penalties for conviction of the charged offenses.

The success of defendant's claim that his waiver and statement were given under duress hinges on the credibility of his testimony. The trial court determined that the detective's testimony was credible and that defendant's testimony was not credible. Giving deference to the

trial court's assessment of the witnesses' credibility, *Sexton*, *supra* at 752, we hold that the trial court did not err in concluding that defendant's statement was voluntarily made.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio