STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 4, 2001
v	No. 225051 Kent Circuit Court
MATTHEW M. PARKER, Defendant-Appellant.	LC No. 98-008589-FH

Before: Holbrook, Jr., P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by a jury of possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and maintaining a drug house, MCL 333.7405(d). We affirm.

Defendant first argues that the trial court should have granted his motion for a directed verdict on the cocaine charge because the prosecutor failed to prove that he knowingly possessed over fifty grams of cocaine. Specifically, defendant contends that the prosecution failed to adequately link him to the substantial quantity of cocaine found in a safe in the basement of the house where defendant was residing with two other adults, Mattie Madison and Lionel Madison.

In analyzing a trial court's denial of a motion for a directed verdict, we consider the evidence presented up to the time the motion was made. *People v Lemmon*, 456 Mich 625, 634; 576 NW2d 129 (1998). "[W]e review the record de novo and consider the evidence presented by the prosecution in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

We initially note that "[a] person need not have actual physical possession of a controlled substance to be guilty of possessing it," and "[p]ossession may be actual or constructive." *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748, amended 441 Mich 1201 (1992). Constructive possession entails having the right to exercise control over the cocaine and knowing that it is present. *Id*. at 520. Furthermore, "[i]t is well established that a person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession," and

"some additional connection between the defendant and the contraband must be shown." *Id*. Moreover, "[a]ny one of various factors may be sufficient under given circumstances to establish this connection." *Id*. at 520-521.

Our review of the record leads us to conclude that the prosecutor established a sufficient connection between defendant and the drugs in question. According to Michigan State Police Officer Robin Lynde, defendant told her that he had lived at the house in question for about eight months; he also told her that he was sitting in the basement when the officers knocked on the door. When Lynde asked defendant about the small amount of cocaine found sitting on a coffee table in plain view in the basement, defendant said that the cocaine was not his, but he also said that his fingerprints would be found on both the cocaine packaging and on the cigarette pack in which the packaged cocaine was located. Defendant's driver's license was found next to the cigarette pack on this basement coffee table. When Lynde asked defendant whether his fingerprints would be found on any other cocaine in the residence, defendant replied that his recollection was not that good.

The prosecution presented evidence of two items found in the basement safe alongside the substantial amount of cocaine that supported defendant's conviction of possession with intent to deliver more than 50 but less than 225 grams of cocaine: a pen with the name "Matt" on it, and an electronic planner containing the name and telephone number of Lionel Madison. The significance of the pen is obvious given that defendant's name is Matthew.[1] Regarding the electronic planner, the prosecution introduced evidence suggesting that, through a process of elimination, the jury should infer that the address book belonged to defendant, because (1) a paper address book had been found in Mattie Madison's room with her name in the front, but not in the address section, and (2) yet another address book had been found containing Lionel Madison's name in the front, but not in the address section. The prosecution's theory was that this third address book found in the safe belonged to defendant because "one generally does not list one's own name in the address section of an address book" (meaning that it was unlikely that the book belonged to Lionel, because it contained Lionel's name and number). Further, the prosecution pointed out that the electronic book did not contain any of the names found in Lionel's or Mattie's address books, arguing in closing argument that it was unlikely that either of them was transferring the contents of the paper book to the electronic one. Based on these circumstances, the prosecution argued that the electronic planner belonged to defendant, along with the "Matt" pen and the cocaine within the safe in the basement.[2]

We agree with the thrust of the prosecution's argument. Taken together and viewed in the light most favorable to the prosecutor, the above evidence supported a finding by reasonable jurors that defendant had control over cocaine found in the basement safe. The trial court did not err by denying defendant's motion for a directed verdict on the cocaine charge.

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[1] We note that defendant does not even contend that "Matt" might have been a shortened version of "Mattie" Madison.

[2] Defendant admitted during his testimony that he slept in the basement the majority of the time.

Next, defendant argues that defense counsel rendered ineffective assistance of counsel by opposing a jury instruction on the lesser-included offense of possession with intent to deliver less than fifty grams of cocaine. Defendant contends that counsel's decision could not be justified as reasonable trial strategy, given the large disparity of sentences between the two offenses.

To establish ineffective assistance of counsel, a defendant must show that his attorney's performance was deficient under an objective standard of reasonableness and that the deficiency reasonably affected the outcome of the case. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Snider*, 239 Mich App 393, 423-424; 608 NW2d 502 (2000). An attorney is presumed to provide effective assistance; therefore, a defendant bears a heavy burden of proving otherwise. *Stanaway, supra* at 687. A defendant must overcome the presumption that the challenged action or omission by counsel could conceivably be considered sound trial strategy under the circumstances. *People v Knapp*, 244 Mich App 361, 385-386; 624 NW2d 227 (2001). This Court will not second-guess counsel's trial tactics. *Id.* at 386 n 7.

Here, while we conclude that the prosecutor presented sufficient evidence to support the cocaine conviction beyond a reasonable doubt, we also conclude that there were several cogent defense arguments to be made and that were made regarding the cocaine in the basement safe that supported the conviction of possession with intent to deliver more than 50 but less than 225 grams of cocaine. By contrast, defendant *admitted* that the small amount of cocaine found in a different safe in the northwest bedroom was his. Moreover, defendant admitted to Lynde that his fingerprints would be found on the cigarette pack located on the basement coffee table and containing an additional small amount of cocaine. Therefore, we agree with defendant's assertion that "the prosecution could tie him to under 50." A request for an instruction on the lesser-included offense virtually would have guaranteed defendant a guilty verdict.

Furthermore, while defendant is correct that the refusal to give a *requested* instruction for a necessarily included offense constitutes error requiring reversal, see *People v Reese*, 242 Mich App 626, 629; 619 NW2d 708 (2000), "a court generally has no duty to instruct the jury sua sponte regarding all lesser included offenses." *Id*. at 629 n 2. As noted in *People v Nickson*, 120 Mich App 681, 687; 327 NW2d 333 (1982):

> Defendant was not denied effective assistance of counsel because of trial counsel's decision not to request an instruction on additional lesser included offenses. The decision to proceed with an all or nothing defense is a legitimate trial strategy.

Defendant has failed to overcome the presumption that counsel's decision to pursue the chance of a complete acquittal on the cocaine charge, rather than to request a lesser-included offense instruction that would almost certainly result in a conviction carrying a mandatory prison term, constituted reasonable trial strategy. Accordingly, defendant has failed to establish that his attorney rendered ineffective assistance of counsel.

Next, defendant argues that the trial court should have granted his motion for a directed verdict with regard to the marijuana charge because the prosecutor failed to prove that defendant possessed the marijuana found in a black bag in the bedroom defendant sometimes shared with Mattie Madison's grandson. We first note that defendant failed to provide any supporting

authority for his argument. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Defendant's failure to cite any supporting legal authority constitutes an abandonment of this issue. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Even if we *were* to review this issue, we would find no basis for reversal. Officer Lynde testified that a black duffel bag was found in a closet in the bedroom and that it contained three large Ziploc baggies that contained several smaller baggies of marijuana. The bag also contained an electronic scale, a box of sandwich-size baggies, another large Ziploc bag, a brown bag, and a receipt. Lynde further testified that defendant sometimes shared the bedroom with Mattie Madison's eight-year-old grandson and that the bedroom also contained a small safe holding penny rolls, an expired driver's license belonging to defendant, a pager, the title to a 1961 Oldsmobile, and a small quantify of cocaine.

The prosecution presented evidence that Lionel Madison had his own stash of drugs and set of scales in his bedroom and that Mattie Madison kept her own set of drugs in her bedroom. Thus, there was no reason for either of them to keep the drugs in the eight-year-old boy's room, rather than with the rest of their drugs; the evidence more logically suggested that defendant kept the marijuana, scales, and baggies in the northwest bedroom that he shared and in which he kept other items. Accordingly, there was sufficient evidence for the jury to conclude beyond a reasonable doubt that the marijuana belonged to defendant. No error occurred.

Finally, defendant argues that the court erred by denying his motion for a directed verdict on the drug house charge because the prosecutor failed to prove that defendant controlled the premises.

MCL 333.7405(d) states:

> A person ... [s]hall not knowingly keep or maintain a store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this article for the purpose of using these substances, or which is used for keeping or selling them in violation of this article.

Defendant argues that defendant did not "keep or maintain" the premises because "[t]he person keeping or maintaining the property is clearly the landlord/owner within any reasonable contemplation of those terms, and only that person." Defendant disagrees with the decision in *People v Bartlett*, 231 Mich App 139, 143-155; 585 NW2d 341 (1998), in which this Court reasoned that a rent-paying tenant who knew that drugs were being sold on the premises could be said to "keep or maintain" the premises. Specifically, defendant rejects the following reasoning from *Bartlett:*

> In light of defendant's rental obligations to Mitchell, it is difficult to comprehend how defendant could deny that he had any control over his own bedroom. If we permit defendant to avoid responsibility for keeping and

> maintaining a drug house simply because the drug transactions allegedly took place out of his sight and behind closed doors, yet in the house where he lived, we would effectively gut the Legislature's attempt to curb the sale of controlled substances from homes within our neighborhoods. Defendant provides no authority for this position, and we can find no rationale to support it. [*Id.* at 153.]

Bartlett, which is binding under MCR 7.215(I)(1), essentially resolves the issue defendant presents on appeal. Under *Bartlett*, the "keep or maintain" language within the statute requires only that a defendant have general control over the premises. Furthermore, the payment of rent for the premises where the controlled substances are kept, sold, or used is indicative of control. *Bartlett*, *supra* at 156.

Here, Lynde testified that defendant told her that he had lived at the house for approximately eight months. Defendant's expired driver's license was found in the house in a safe containing cocaine. Marijuana, Ziploc baggies, and a scale were found in a bedroom used by defendant. Additionally, a large quantity of cocaine was found in a basement safe along with items connected to defendant. According to Lynde, Mattie Madison told her that defendant paid $200 a month in rent to live at the house. Under these circumstances, the prosecutor sufficiently proved defendant's guilt under MCL 333.7405(d). See *Bartlett*, *supra* at 143-155. No error occurred.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter