

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
December 13, 2011

v

DARINDA LENISE BRUMFIELD,  
Defendant-Appellant.

No. 300993  
St. Joseph Circuit Court  
LC No. 10-016413-FH

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Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by right her conviction, following a jury trial, of delivery of less than 50 grams cocaine, MCL 333.7401(2)(a)(iv). Defendant was sentenced as a second drug offender, MCL 333.7413, to 2 to 40 years' imprisonment. We affirm.

Defendant claims that the trial court erred in failing to sua sponte dismiss her case because of entrapment or instruct the jury on entrapment. She also claims she was denied the effective assistance of counsel because her trial counsel failed to advise her on an entrapment defense, failed to request an entrapment hearing, and failed to request a jury instruction on entrapment. With respect to the trial court, defendant's claims are unpreserved and are reviewed only for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Additionally, a hearing required by *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973) has not been conducted with respect to defendant's claim of ineffective assistance; therefore, our review is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).<sup>1</sup> To demonstrate ineffective assistance of counsel, a defendant must present evidence that counsel's performance was deficient and that the deficiency prejudiced the defendant. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984). This requires a defendant to "show that (1) counsel's performance was below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, if not for counsel's errors, the result would

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<sup>1</sup> This Court has already considered and denied defendant's earlier motion to remand this case for an evidentiary hearing. *People v Brumfield*, unpublished order of the Court of Appeals, entered April 15, 2011 (Docket No. 300993). We decline to reconsider that decision.

have been different and the result that did occur was fundamentally unfair or unreliable.” *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). Reviewing courts “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance” and the defendant bears the burden of overcoming that presumption. *Strickland*, 466 US at 689; *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002).

Michigan analyzes claims of entrapment under an objective test. *People v Juillet*, 439 Mich 34, 53; 475 NW2d 786 (1991). The defendant bears the burden of establishing by a preponderance of the evidence that “either (1) the police engaged in impermissible conduct that would induce a law-abiding person to commit a crime in similar circumstances or (2) the police engaged in conduct so reprehensible that it cannot be tolerated.” *People v Johnson*, 466 Mich 491, 498; 647 NW2d 480 (2002). A number of factors are considered in evaluating whether the government activity at issue would induce criminal behavior, including whether there was an appeal to the defendant’s sympathy as a friend, whether the defendant was known to have previously committed the charged crime, whether excessive consideration was offered, whether government pressure was exerted, and whether the police had control over any informant. *Id.* at 498-499.

The record in this case does not support defendant’s argument that police entrapped her by exploiting her friendship and personal history with the informant. The evidence indicates that defendant and the informant were merely acquaintances. Before the sale for which defendant was convicted, defendant and the informant knew each other for less than a year, and their interactions consisted solely of defendant’s sale of drugs to the informant and the informant’s repair of defendant’s car in exchange for money and drugs. No evidence was presented that either the informant or the police placed excessive pressure on defendant, that the informant made any type of emotional plea to induce defendant to engage in the criminal activity, or that a friendship between defendant and the informant was otherwise exploited to induce defendant to commit the crime. Further, no excessive consideration was provided to defendant. There is nothing on the record to indicate that a law-abiding person, in similar circumstances, would be induced to commit a crime. Rather, the facts support a finding that defendant was simply offered an opportunity to commit the crime. “[W]here law enforcement officials present nothing more than an opportunity to commit the crime, entrapment does not exist.” *Id.* at 498.

We disagree with defendant’s contention that police failed to properly supervise the informant’s activities. The police chose the target of the investigation, selected the location of the purchase, met with the informant both immediately before and after the purchase, and monitored the entire transaction, which was recorded and played for the jury. Defendant’s assertion that there was no evidence that defendant sold drugs to anyone other than the informant does not change our analysis. The informant testified that defendant had previously sold him cocaine, that she was known as a dealer and that she had sold to other people in the area. In addition, defendant was previously convicted for delivery of cocaine. As a result, police had ample reason to believe that defendant was ready and willing to commit the crime. See *People v Nixten*, 160 Mich App 203, 207-208; 408 NW2d 77 (1987) (finding no entrapment when the police knew that the defendant had sold cocaine to an informant, but did not know whether the defendant had sold to anyone else). This case is unlike *People v Killian*, 117 Mich App 220, 223; 323 NW2d 660 (1982), where the police knew that the defendant sold marijuana and used marijuana and cocaine, but “had good reason to believe that [the] defendant was not involved in

cocaine sales.” This Court found entrapment in part “because the sale of large quantities of cocaine is an offense of a different order than the use of cocaine or the sale of marijuana” and noted that “police were not gathering evidence of crimes which they had any reason to suspect defendant had committed or would commit in the future.” *Id.*

Because the evidence does not support defendant’s entrapment claim, the trial court did not commit an obvious error by failing to sua sponte address the issue. Further, any failure by defense counsel, either in failing to advise defendant about the claim or in failing to advance entrapment as a defense, does not constitute ineffective assistance. “Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel.” *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

We affirm.

/s/ Jane E. Markey  
/s/ E. Thomas Fitzgerald  
/s/ Stephen L. Borrello