S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 21, 2013
V LAWRENCE EUGENE LITHERLAND, Defendant-Appellant.	No. 310642 Cass Circuit Court LC No. 11-010066-FH

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of operating a motor vehicle while intoxicated, MCL 257.625(1); possession of marijuana, MCL 333.7403(2)(d); open intoxicant in a vehicle, MCL 257.624a; bringing a controlled substance into a jail facility, MCL 801.263(1); and two counts of resisting a police officer causing injury, MCL 750.81d(1). Defendant was sentenced to concurrent jail terms of 120 days for bringing a controlled substance into the jail facility and 120 days for each count of resisting a police officer causing injury, 120 days for possession of marijuana, 93 days for driving while intoxicated, and 90 days for having an open intoxicant in a vehicle. Because we conclude that there was sufficient evidence to support defendant's convictions and because defendant has not demonstrated ineffective assistance of counsel, we affirm.

On March 3, 2011, defendant was stopped for speeding and was subsequently arrested for operating a motor vehicle while intoxicated. An open bottle of whiskey was also discovered in defendant's vehicle. Before defendant was brought to the Cass County jail, he was patted down for weapons and none were discovered. Defendant denied having any weapons or drugs in his possession. Defendant's blood alcohol level when he reached the jail was .19.

Before defendant was searched at the jail, he requested to go to the bathroom, and he remained silent when he was asked for a second time if he possessed any drugs. Two bags of marijuana were later found on defendant's person. Two officers testified that defendant's disposition changed once the marijuana was discovered. Defendant stated that he would no longer cooperate and called one of the officers "a trained monkey for the government." When an officer attempted to take defendant to a holding cell, defendant resisted, and it took two officers to subdue him. Both officers sought medical attention as a result of the altercation, and one of the officers was not able to return to work for one week because of his injuries.

During trial, defendant testified that his service in the United States Marine Corp left him with "side effects" that sometimes caused him to lose sleep and black out. Defendant admitted that he is an alcoholic and unsuccessfully self-medicates with alcohol. On the day of his arrest, defendant had not slept or eaten in four days; but he had consumed a substantial amount of alcohol. Defendant claimed that he blacked out after the marijuana was found, and he did not recall assaulting the officers.

Before trial, the defense filed a notice of intent to raise an insanity defense based on defendant's diagnosis of Post Traumatic Stress Disorder (PTSD). Defendant had two criminal responsibility evaluations. The lower court record reflects that the first evaluation did not support the defense of insanity. The results of the second evaluation were not part of the lower court record, but defendant attaches them on appeal. They do not support the existence of a meritorious insanity defense.[1] Defense counsel successfully moved to adjourn the trial three times during the investigation of the potential defense. Ultimately, the defense did not raise an insanity defense during trial. Instead, the defense argued that defendant blacked out due to the "side effects" of his military service and, therefore, did not have the requisite intent to be convicted of the charged crimes. The jury convicted defendant of all the charged crimes.

On appeal, defendant first challenges the sufficiency of the evidence supporting his conviction for bringing a controlled substance into a jail facility. MCL 801.263(1). In reviewing a challenge to the sufficiency of the evidence, this Court reviews the record de novo and, viewing both the direct and circumstantial evidence in a light most favorable to the prosecution, determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The reviewing court defers to the fact-finder's weighing of the evidence and assessment of the credibility of the witnesses; credibility issues are not revisited on appeal. *Id.* at 514-515. All conflicts in the evidence must be resolved in favor of the prosecution. *Id.* at 515.

MCL 801.263(1) provides that "a person shall not bring into a jail . . . any alcoholic liquor or controlled substance." A "controlled substance" includes marijuana. MCL 801.261(b); MCL 333.7212(1)(c)-(d). Defendant does not dispute that the Cass County jail is a jail, that marijuana is a controlled substance, or that he possessed marijuana when he entered the jail. Defendant only disputes the sufficiency of the evidence supporting the finding that he "knew" he possessed the marijuana when he entered the jail. Defendant's challenge to the sufficiency of the evidence has no merit.

The jury was instructed that, in order to convict defendant of bringing contraband into a jail, it needed to find that defendant "knew" he was doing so. We find that there was sufficient evidence to support this finding. Intent can be inferred from defendant's acts and from

[1] An expansion of the record on review is impermissible. *People v Powell*, 235 Mich App 557, n 4; 599 NW2d 499 (1999). The second evaluation is improperly before this Court on appeal, but we nevertheless find that it illustrates the lack of merit to defendant's claim of ineffective assistance of counsel, as discussed *infra*.

surrounding circumstances. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). The record supports that defendant acquired 27.582 grams of marijuana on the day before the arrest and stored portions in his pant pocket and sock. Defendant was asked twice if he had drugs in his possession and did not let police know about his possession. He thereafter became uncooperative and violent once the marijuana was discovered. Based on defendant's acts and the surrounding circumstances, a reasonable jury could conclude that defendant knew he possessed marijuana when he entered the jail facility. Although defendant denied knowledge, it is up to the jury to determine credibility. *Wolfe*, 440 Mich at 514-515.

Defendant also argues that the evidence concerning his level of intoxication would put reasonable doubt into the mind of any juror. However, the affirmative defense of voluntary intoxication is not available to defendant because he consumed alcohol, a substance that he knew would cause him to become intoxicated. MCL 768.37(2). Defendant also makes a cursory argument that the government should take responsibility for failing to discover the marijuana before defendant was brought into the jail. However, defendant does not cite any authority to support his argument that the government's alleged shortcomings would constitute a defense to the crime. Accordingly, the issue is abandoned. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) ("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 with little or no citation of supporting authority.").

Defendant next argues that he was not provided effective assistance of counsel. Specifically, he maintains that defense counsel's failure to present a defense of insanity during trial constituted ineffective assistance of counsel.

No evidentiary hearing was held in regard to defendant's claims of ineffective assistance of counsel in either case; accordingly, our review of defendant's claims is limited to errors apparent on the record. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). In order to prevail on an ineffective assistance of counsel claim, the burden is on the defendant to demonstrate that defense counsel's performance fell below an objective standard of reasonableness, and that the deficiency so prejudiced defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Prejudice occurs if there is a reasonable probability that, but for defense counsel's error, the result of the proceedings would have been different. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

"A criminal defendant is denied effective assistance of counsel by his attorney's failure to properly prepare a meritorious insanity defense." *People v Newton*, 179 Mich App 484, 490; 446 NW2d 487 (1989). In this case, the record reflects that defense counsel actively investigated defendant's mental health and initially pursued an insanity defense. His actions in doing so were not objectively unreasonable. While defense counsel ultimately did not present the defense, his actions in this regard were not objectively unreasonable. Counsel is not ineffective for failing to advance a meritless position. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). The record supports that defendant did not have a viable insanity defense and thus, defense counsel's ultimate decision not to present such a defense was not objectively unreasonable.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause