STATE OF MINNESOTA
IN COURT OF APPEALS
A09-121

State of Minnesota,
Respondent,

vs.

Ronald Lee Schlangen,
Appellant.

Filed December 29, 2009
Affirmed in part and reversed in part
Hudson, Judge

Stearns County District Court
File No. 73-K7-06-003757

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2134; and

Janelle Kendall, Stearns County Attorney, Administration Center, Room 448, 705 Courthouse Square, St. Cloud, Minnesota 56303 (for respondent)

Marie Wolf, Interim Chief Public Defender, Michael F. Cromett, Assistant Public Defender, 540 North Fairview Avenue, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Shumaker, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On direct appeal from his convictions of multiple counts of controlled-substance crime, appellant argues that (1) the circumstantial evidence was insufficient to establish possession; (2) the district court abused its discretion by denying his motion for a mistrial; (3) his trial counsel was ineffective; (4) his convictions for possession of methamphetamine violate the constitutional protections against double jeopardy; and (5) the district court erroneously sentenced him on several counts that constitute a single behavioral incident. Appellant makes additional arguments in a pro se supplemental brief. Because the evidence is sufficient to support appellant's convictions, because the district court did not abuse its discretion by denying appellant's motion for a mistrial, because appellant's trial counsel was not ineffective, because appellant did not raise the double-jeopardy issue in district court, because his two convictions of methamphetamine possession do not constitute a single behavioral incident, and because his pro se arguments are without merit, we affirm in part. But because appellant's possession of ecstasy was part of the same behavioral incident as his possession of cocaine, we reverse in part, vacating his sentence for fifth-degree controlled-substance crime for possession of ecstasy.

FACTS

Appellant Ronald Lee Schlangen was charged with six counts of controlled-substance crime for possession of substances found in a vehicle and in an apartment.

Before trial, appellant moved the district court for an order prohibiting the state or its witnesses from identifying the vehicle or apartment as belonging to appellant until adequate foundation had been established. At the pretrial hearing on July 29, 2008, the district court granted appellant's motion.

Also at the pretrial hearing, appellant's trial counsel stated that he had faxed a list of additional witnesses to the prosecutor "after hours" on Friday, July 25. Appellant's trial counsel admitted that this notice was untimely, but explained that he had notified the state as soon as possible, given that the witnesses were "in the nature of rebuttal witnesses and . . . hard to find." The prosecutor objected, arguing that there had been adequate time for appellant to find and disclose the witnesses.[1] The prosecutor also argued that the testimony of the additional witnesses might trigger certain procedural hurdles. The district court decided:

> [A]bsent some additional showing by the defense I'm not going to allow the additional witnesses to testify based on lack of timeliness, the inability of the state to in any way prepare for those witnesses, not to mention the last issue mentioned by [the prosecutor] which we don't really know about at this point . . . since no one has actually spoken to these potential witnesses.

At the jury trial, the state presented the testimony of three witnesses: Investigators Steven Noetzel, Brent Fair, and Kellan Hemmesch of the Central Minnesota Drug Task Force. On August 2, 2006, the officers had participated in the surveillance of a St. Cloud apartment building (the building). The officers established a perimeter while they waited

[1] Nearly two years had elapsed since the August 2, 2006, offenses.

for a warrant to search Apartment 103 (the apartment). It is undisputed that the officers had probable cause to arrest appellant for controlled-substance crime.

Investigator Fair monitored the building's rear door from an unmarked car. He saw appellant exit the building and walk to a 2006 Hyundai Tiburon (the vehicle), which was parked in the lot behind the building. Appellant entered the vehicle and sat in the driver's seat.

Investigator Fair turned on his car's emergency lights and pulled up behind the vehicle, preventing it from leaving. Investigators Fair and Noetzel approached the vehicle on foot. The vehicle's engine was "revving" loudly and its reverse lights were going on and off. The officers attempted to open the vehicle's locked doors, pounded on the windows, shouted at appellant that he was under arrest, and ordered appellant to raise his hands and shut off the engine. Appellant raised his hands but did not shut off the engine. Appellant's hands had been out of the officers' sight for approximately ten seconds before he raised them. Eventually appellant, who was the vehicle's sole occupant, unlocked the doors and was arrested.

The officers found a clear plastic baggie under the driver's seat of the vehicle. The baggie contained a total of 55.5 grams of methamphetamine, in eight individually wrapped packages. A Florida identification card in appellant's name was found inside the vehicle's center console.

Investigator Fair testified that he had been advised that the vehicle belonged to appellant. Appellant's trial counsel objected, citing the pretrial order involving ownership of the apartment and vehicle. The district court noted the objection and

characterized Investigator Fair's statement as a "fairly quick[] passing reference" and "an easy mistake to make." The district court also noted that appellant's trial counsel had made a similar reference to the ownership of the vehicle. Appellant's trial counsel conceded that he had referred to the vehicle as being appellant's and stated that he would ask for a mistrial if another such reference was made.

Investigator Hemmesch testified about law enforcement's search of the apartment once the search warrant had arrived and after appellant had been arrested. Police entered the apartment using a key. The apartment consisted of a single room, measuring approximately ten feet by ten feet. It was furnished with a bed, refrigerator, and microwave. No one was in the apartment when police entered.

Inside the apartment, police found a bag containing 124 grams of methamphetamine. The methamphetamine was not divided into smaller packages. Police also found MDMA (ecstasy) pills, 4.3 grams of cocaine, a digital scale, and plastic packaging materials. Investigator Hemmesch testified that digital scales and plastic packaging materials are used to divide narcotics for sale.

Evidence that linked appellant and the vehicle to the apartment was presented to the jury. A set of keys to the vehicle hung on one of the apartment's walls. Several photographs of the vehicle were mounted on a wall. Appellant appeared in some of these photographs, including one in which he appeared to be "preparing to wash the vehicle." Police also found the "window sticker" for the vehicle, a copy of the vehicle's title (appellant was not the registered owner), several sales receipts in appellant's name, and a notice from the State of Florida regarding appellant's driving license.

Investigator Hemmesch testified that, at the time of the offenses, the value of the methamphetamine found in the apartment was approximately $4,000. The value of the methamphetamine found in the vehicle was $4,000 or $5,000. Investigator Hemmesch also testified that it is common for individuals who sell narcotics to live in multiple residences and to use multiple vehicles, especially those not registered to them.

Before closing arguments, and out of the presence of the jury, appellant's trial counsel made the following statement:

> In [an unrelated June 9, 2006 stop of a vehicle driven by appellant,] the reports indicate that [appellant] was identified using a Florida ID. It is our position that the Florida ID was taken into police custody [on June 9]. . . . It would be our position that the Florida ID, having been seized on June 9, was still in the possession of the St. Cloud Police Department [when appellant was arrested on August 2]. . . . [W]e had a chambers discussion about this and . . . if [appellant] is found guilty and if I do through pursuing this line find that the ID card was still in the possession—or at least the chain of custody shows that it was still in the possession of the St. Cloud Police Department, I would intend to bring the matter on for a motion for a mistrial.

Appellant's trial counsel then requested a mistrial based "on the repeated comments about the vehicle and the apartment being [appellant's]." The district court denied the motion:

> While I would agree that there was a technical violation of the Court's order, I don't think it was of the magnitude to justify a mistrial and I don't think it's of a magnitude that would sway the jury sufficiently to make a difference in the outcome of the case.

After the jury found appellant guilty of all charges, appellant's trial counsel reiterated that he intended to bring a motion with respect to the Florida identification card

and requested that a motion hearing be scheduled before sentencing. No such motion appears to have been made or heard.

Appellant was sentenced to 98 months for Count 1 (first-degree controlled-substance crime for possession with intent to sell methamphetamine found in the vehicle); 122 months for Count 3 (first-degree controlled-substance crime for possession with intent to sell methamphetamine found in the apartment); 51 months for Count 5 (third-degree controlled-substance crime for possession of cocaine found in the apartment); and 24 months for Count 6 (fifth-degree controlled-substance crime for possession of ecstasy found in the apartment). The district court vacated appellant's convictions for Counts 2 and 4, which were "lesser-included or alternative theories."

This appeal follows.

D E C I S I O N

I

Appellant argues that there is insufficient evidence to show that he had either physical or constructive possession of the controlled substances found in the vehicle and in the apartment. We disagree.

In considering a challenge to the sufficiency of the evidence, we "must make a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in the light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *State v. Pendleton*, 706 N.W.2d 500, 511 (Minn. 2005). While a verdict based entirely on circumstantial evidence warrants stricter scrutiny than one based in part on direct evidence, circumstantial evidence is to be given

the same weight as direct evidence. *See State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999); *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. The jury is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

"A person is guilty of possession of a controlled substance if [he] knew the nature of the substance and either physically or constructively possessed it."[2] *State v. Denison*, 607 N.W.2d 796, 799 (Minn. App. 2000), *review denied* (Minn. June 13, 2000). Because no evidence of physical possession was presented to the jury, we examine whether there is sufficient evidence of constructive possession to support appellant's convictions. *See State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000) (stating that doctrine of constructive possession "permits a conviction where the state cannot prove actual possession, but the inference is strong that the defendant physically possessed the item at one time and did not abandon his possessory interest in it"), *review denied* (Minn. Jan. 16, 2001).

> To prove constructive possession, the state must prove that: (1) the police found the item in a place under the defendant's exclusive control to which other people did not normally have access, or (2) if the police found it in a place to which others had access, that there is a strong probability, inferable from the evidence, that the defendant was, at the time, consciously exercising dominion and control over it.

[2] Appellant does not dispute that he knew the nature of the substances.

State v. Lee, 683 N.W.2d 309, 316 n.7 (Minn. 2004). "We look to the totality of the circumstances in assessing whether or not constructive possession has been proved." *Denison*, 607 N.W.2d at 800.

The vehicle

There is sufficient evidence from which the jury could conclude that the vehicle was under appellant's exclusive control. Appellant started the vehicle using a key. His identification card was found inside the vehicle's center console, indicating that the card was stored in the vehicle. Photographs recovered from the apartment showed appellant with the vehicle. One photograph depicted appellant preparing to wash the vehicle. The vehicle's window sticker and a copy of the vehicle's title were recovered from the apartment. Although the vehicle was registered to someone other than appellant, the jury heard testimony that people involved in the sale of controlled substances often use vehicles that are not registered to them. The jury also heard testimony that the methamphetamine found in the vehicle was worth $4,000 or $5,000; it is a logical inference that whoever possessed the methamphetamine found in the vehicle would not have left the substance in the vehicle while another person used the vehicle. There was sufficient evidence for the jury to conclude that other people did not normally have access to the vehicle, despite the fact that appellant was not the registered owner. *See* Minn. Stat. § 152.028, subd. 2 (2006) ("The presence of a controlled substance in a passenger automobile permits the factfinder to infer knowing possession of the controlled

substance by the driver or person in control of the automobile when the controlled substance was in the automobile.").

The evidence is also sufficient to show that appellant was consciously exercising dominion and control over the methamphetamine in the vehicle. Police saw appellant enter the vehicle and start the engine. No one else was in or near the vehicle. Appellant had time to place the methamphetamine beneath the driver's seat before police approached the vehicle. The methamphetamine was within appellant's reach while he sat in the driver's seat. And police testified that appellant was attempting to flee in the vehicle when they approached and that appellant did not shut off the engine. *See State v. Maldonado*, 322 N.W.2d 349, 353 (Minn. 1982) (stating that appellant was connected to controlled substance by testimony that he started to flee when police approached, by his presence in the driver's seat, and by a controlled substance found "sticking out from under the driver's seat").

The apartment

There is sufficient evidence from which the jury could conclude that the apartment was under appellant's exclusive control. When police entered the apartment, it was locked and no one else was inside. The apartment consisted of one room, furnished with one bed. Photographs of appellant were on the wall. And police found correspondence addressed to appellant and sales receipts in appellant's name in the apartment. From this evidence, the jury could have made several inferences: (1) because of its small size and sparse furnishings, the apartment was in the control of one person; (2) because of the photographs of appellant, the correspondence addressed to him, and the receipts in his

name, the person in control of the apartment was appellant; and (3) when he was observed leaving the building, appellant had just come from the apartment, locking it on his way out. There is sufficient evidence that appellant constructively possessed the controlled substances found both in the vehicle and the apartment.

II

Appellant argues that the district court abused its discretion by denying his motion for a mistrial on the ground that the state's witnesses deliberately and repeatedly violated the pretrial order not to refer to the vehicle or the apartment as belonging to appellant unless a proper foundation had been established. *See State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003) (reviewing denial of motion for mistrial for abuse of discretion). We disagree.

Appellant claims that the following three statements by state witnesses violated the pretrial order: (1) Investigator Fair's testimony that he had been advised that the vehicle belonged to appellant, (2) Investigator Hemmesch's testimony that he had found evidence in the apartment that showed appellant had been in the apartment, and (3) Investigator Hemmesch's testimony that the registered owner of the vehicle was a friend of appellant's. The district court sustained the objections of appellant's trial counsel to the latter two statements for lack of foundation.

Of these three statements, only the first violated the pretrial order. The district court ordered that no one refer to the vehicle or the apartment as belonging to appellant without proper foundation. But the second statement was that appellant had "been in" the apartment. And the third statement was that appellant was friends with the vehicle's

registered owner. While this testimony was related to the ownership of the vehicle and the apartment, neither the second nor the third statement violated the pretrial order.

Because there was only one violation of the order, because appellant's trial counsel made a similar mistake, and because there was abundant evidence that appellant exercised exclusive control over both the vehicle and the apartment, the district court did not abuse its discretion by denying appellant's motion for a mistrial.

III

Appellant argues that his trial counsel was ineffective because he failed to make a timely disclosure of witnesses to the state and failed to present to the jury the issue of whether appellant's Florida identification had been planted by law enforcement. We disagree.

Timely notice of witnesses

Appellant argues that his trial counsel's performance was deficient because he did not comply with the procedure for the timely disclosure of three witnesses. Appellant contends that his trial counsel had nearly two years to find and disclose these witnesses and that the untimely disclosure of the witnesses prevented them from providing exculpatory testimony.

We review a claim of ineffective assistance of counsel de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004). "Ineffective assistance of counsel claims require proof of two elements: objective deficiency of counsel and actual prejudice." *Johnson v. State*, 673 N.W.2d 144, 148 (Minn. 2004) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). To prevail, appellant must "affirmatively prove that

his counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *See Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quotation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068.

There is no evidence in the record that appellant's trial counsel is responsible for the untimely disclosure of the witnesses. Appellant's trial counsel told the district court that he disclosed the additional witnesses as soon as he learned of their existence. While appellant appears to allege that his trial counsel knew or should have known about these witnesses at some earlier date, there is no evidence to support this assertion. Appellant has therefore failed to prove the first prong of the ineffective-assistance test.

Appellant has also failed to prove the second prong of the test because he failed to make an offer of proof that the uncalled witnesses would have provided exculpatory testimony. We do not presume error on appeal. *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997).

Florida identification card

Appellant argues that his trial counsel failed to notice a "critical inconsistency" in the state's evidence until near the end of trial, failed to investigate this inconsistency, and failed to present it to the jury.

Appellant is correct that his trial counsel failed to notice a possible inconsistency in the state's evidence with regard to the Florida identification card. But there is nothing in this record to indicate that police confiscated the card in June 2006. Appellant's trial

counsel stated to the district court that police reports from June 2006 indicated that appellant had been identified during a traffic stop by means of a Florida identification card. Appellant's trial counsel then stated that it was "our position" that the card had been seized by police at that time, but that he did not know if this had actually occurred. The district court file does not include the June 2006 police reports mentioned by appellant in his principal brief. On this record, appellant has failed to show that an inconsistency exists as to the discovery of the Florida identification card in the vehicle. Therefore, he cannot show that his trial counsel was ineffective in failing to investigate this possible inconsistency and in failing to present it to the jury.

IV

Appellant argues that his two convictions of first-degree methamphetamine possession arose from a "single act" and therefore violated the state and federal constitutional protections against double jeopardy. Appellant did not raise this issue in the district court.[3] We therefore decline to consider this issue. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that this court will generally not decide issues not raised in district court).

V

Appellant challenges his sentences, arguing that Counts 1 and 3 constitute a single behavioral incident and that Counts 5 and 6 constitute a single behavioral incident.

[3] Appellant also asserts that his trial counsel's failure to raise a double-jeopardy objection constitutes ineffective assistance of counsel. Because appellant has not adequately briefed this argument, we decline to consider it. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issue in absence of adequate briefing).

Whether offenses are part of a single behavioral incident is a fact determination that we review for clear error. *State v. Carr*, 692 N.W.2d 98, 101 (Minn. App. 2005).

Counts 1 and 3

Appellant argues that the conduct underlying Counts 1 and 3 (possession of methamphetamine with intent to sell) constituted a single behavioral incident because the intent for both crimes was "the intent to sell." We disagree.

Minnesota law "allows multiple convictions for different incidents (counts) arising out of a single behavioral incident, but prohibits multiple sentences for conduct that is part of a single behavioral incident." *State v. Papadakis*, 643 N.W.2d 349, 357 (Minn. App. 2002) (quotation marks omitted); *see also* Minn. Stat. § 609.035, subd. 1 (2006). "When a single behavioral incident results in the violation of multiple criminal statutes, the offender may be punished only for the most severe offense." *State v. Suhon*, 742 N.W.2d 16, 24 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

"The determination of whether multiple offenses are part of a single behavioral act . . . involves an examination of all the facts and circumstances." *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). When conducting a single-behavioral-incident analysis for two intentional crimes,[4] Minnesota courts consider (1) whether the conduct shares a unity of time and place and (2) whether the conduct was "motivated by an effort to obtain a single criminal objective." *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000); *Soto*, 562 N.W.2d at 304.

[4] Possession of a controlled substance with the intent to sell is an intentional crime. *See* Minn. Stat. §§ 152.01, subd. 15a; .021, subds. 1, 2 (2006).

Here, there was no unity of time and place for appellant's possession of the two packages of methamphetamine. One package was found in the vehicle, another was found in the apartment. Nor was appellant's conduct motivated by an effort to obtain a single criminal objective. *See State v. Gould*, 562 N.W.2d 518, 521 (Minn. 1997) (holding that motivation of selling drugs to relieve financial hardship is "too broad an objective to constitute a single criminal goal"). Appellant's overarching goal may have been to sell methamphetamine, but the evidence supports the conclusion that the methamphetamine in the vehicle (which had been individually packaged) was to be sold at a different time than the methamphetamine in the apartment (which had not been divided into individual packages). *Cf. State v. Barnes*, 618 N.W.2d 805, 813 (Minn. App. 2000) (noting that two possession-with-intent-to-sell offenses constituted a single behavioral incident when there was no evidence that the two substances, found in the same place and both packaged for sale, were to be sold at different times or different places), *review denied* (Minn. Jan. 16, 2001).

We therefore uphold appellant's sentences for Counts 1 and 3.

Counts 5 and 6

Appellant argues that the conduct underlying Counts 5 and 6 (possession of cocaine and ecstasy, respectively) constitutes a single behavioral incident because the intent for both crimes was to use the drugs personally and the drugs were found at the same time and place. Appellant's argument is well supported by caselaw. *See Papadakis*, 643 N.W.2d at 357 ("Possession of two controlled substances at the same time and place, for personal use, is a single behavioral incident."); *see also Barnes*, 618

N.W.2d at 813 (same). We therefore affirm appellant's sentence for third-degree possession of cocaine (Count 5) and vacate his sentence for fifth-degree possession of ecstasy (Count 6). *See* Minn. Stat. § 244.11, subd. 2(b) (2006) (granting this court the power to vacate a sentence that is inconsistent with statutory requirements).

VI

Appellant raises several arguments in a pro se supplemental brief. We address each of these issues in turn.

Vehicle search

Appellant argues that the search of the vehicle was illegal because (1) the officers had no search warrant for the vehicle, and (2) the methamphetamine and the identification card found in the vehicle were not in plain view. Appellant also appears to argue that the search of the vehicle was illegal because it occurred after he had been handcuffed and arrested.

Appellant did not challenge the search of the vehicle in the district court. *See Roby*, 547 N.W.2d at 357 (stating that an appellate court generally will not consider matters not argued to and considered by the district court). Furthermore, a warrantless search of a vehicle, incident to arrest, is valid "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Arizona v. Gant*, 129 S. Ct. 1710, 1719 (2009) (quotation omitted). Here, the officers had probable cause to arrest appellant for controlled-substance crime, and they had reason to believe that appellant could have hidden controlled substances in the vehicle because his hands were out of

sight once he entered the vehicle. Appellant's challenge to the search of the vehicle is without merit.

Exhibit 2

Appellant argues that Exhibit 2, a photograph depicting the driver's seat and the baggie of methamphetamine, misled the jury and the district court as to the original location of evidence. Appellant asserts that the photograph was taken after law enforcement tampered with the evidence.

When Exhibit 2 was published to the jury, appellant's trial counsel asked Investigator Noetzel if the exhibit accurately depicted the initial location of the baggie. Investigator Noetzel explained that he had pulled the baggie from beneath the driver's seat, looked at the baggie, and then replaced the baggie within "a couple inches" of its original location before the photograph was taken.

There is no evidence that Investigator Noetzel tampered with the evidence. He testified that he found the baggie, visually inspected it, and replaced it "as close as possible" to its original position. Appellant's argument that Exhibit 2 misled the jury as to the baggie's original location is also untenable: Investigator Noetzel clearly explained that the baggie had been moved.

Apartment search

Appellant appears to challenge the validity of the search of the apartment on the ground that the search warrant did not specify a room number in the building. Appellant challenged the validity of the search warrant in the district court. The search warrant, which is not in the district court file, was based upon information provided by a

confidential informant. The district court conducted an in camera review of reports and records submitted by the state and found "no material discrepancies, omissions or misrepresentations in the search warrant affidavit on which this charge is based." The search-warrant application specifies an apartment number. There is no evidence in the record to support appellant's assertion that the search warrant failed to specify a room number in the building. Appellant's challenge to the search of the apartment is therefore without merit. *See White*, 567 N.W.2d at 734 (stating that error is never presumed on appeal).

Speedy-trial waiver

Appellant asserts that his trial counsel waived appellant's right to a speedy trial without appellant being present at the hearing. There is no document in the district court file that mentions appellant's waiver of his right to a speedy trial, whether in person or through his trial counsel. The record is therefore inadequate for us to review this issue. *See Wintz*, 588 N.W.2d at 480 (declining to reach issue in absence of adequate briefing).

Omnibus hearing

Appellant appears to argue that his trial counsel was ineffective because he did not request an omnibus hearing on certain unspecified issues. Because this issue has not been adequately briefed, and because we do not presume error on appeal, we do not reach the merits of this issue. *Id.*

Alleged medication of trial counsel

In an apparent ineffective-assistance argument, appellant asserts that his trial counsel was taking medication for a back injury during trial. Appellant argues that the

effects of this medication made his trial counsel ineffective. But there is nothing in the record to support this assertion. And, as addressed above, there is no indication that the conduct of appellant's trial counsel was objectively ineffective or that appellant was actually prejudiced by such conduct.

Affirmed in part and reversed in part.