

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICARDO ALEXANDER BUCCILLI,

Defendant-Appellant.

UNPUBLISHED

July 27, 2006

No. 261514

Oakland Circuit Court

LC No. 03-190712-FH

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession with intent to deliver methamphetamine, MCL 333.7401(2)(b)(i), and possession of marijuana, MCL 333.7403(2)(d). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he was denied effective assistance of counsel. Whether a defendant has been denied effective assistance of counsel is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review for clear error the trial court's findings of fact. *Id.* We review de novo questions of constitutional law. *Id.*

To establish ineffective assistance of counsel, defendant must show that his trial counsel's performance fell below an objective standard of reasonableness and that defendant was so prejudiced that he was denied a fair trial, i.e., that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *People v Walker*, 265 Mich App 530, 545; 697 NW2d 159 (2005). Defendant must overcome a strong presumption that defense counsel's action constituted trial strategy. *Id.*

Defendant first argues that counsel was ineffective for failing to challenge the voluntariness of his statement to the police. Defendant maintains that he and his wife, Dorothy Buccilli, relied on false promises of leniency that if Dorothy cooperated, police would refrain from charging defendant or their son with any crimes. During the execution of the search warrant of the Buccilli's residence, after being advised her of her *Miranda*¹ rights, Dorothy

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

revealed the location of the narcotics to the police. At the police station, Dorothy was again advised of her *Miranda* rights and agreed to give a written statement. Days later, defendant voluntarily went to the police station and spoke with a detective. He was informed that he was not under arrest and could leave at any time. Defendant then gave a written statement. The detective testified that he did not make any threats or promises to induce defendant to make his statement.

At the preliminary examination, counsel attempted to elicit testimony that the police induced the Buccillis to give their statements in exchange for false promises of leniency. However, the only indication of any such promises appears in Dorothy's post-judgment affidavit. Because counsel is not required to advocate a meritless position, *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000), defense counsel was not ineffective for failing to challenge the voluntariness of defendant's statement at trial.

Defendant next argues that counsel was ineffective for failing to challenge the validity of the search warrant. However, defense counsel moved to suppress the evidence obtained as a result of the search warrant, and the trial court denied the motion on the basis that the search warrant was valid.

Defendant next argues that counsel was ineffective for failing to object to the admission of evidence that the search warrant listed cocaine as an object for the search; that marijuana and money was found in defendant's son's room; and that a gun was found in defendant's safe. However, the strongest evidence against defendant consisted of the drugs found in his house pursuant to the validly executed search warrant and defendant's own written statement to the police. Counsel's decision to refrain from objecting to every piece of evidence proffered at trial was a matter of strategy that is presumed reasonable. *Walker, supra* at 545.

Defendant next argues that counsel was ineffective for failing to call Dorothy to testify on his behalf and for failing to present a defense. However, it appears that counsel had a lengthy discussion with defendant regarding whether to call Dorothy as a witness and decided it was in defendant's best interest not to call her. Decisions regarding whether to call or question witnesses are presumed to be matters of trial strategy, which we will not second-guess with the benefit of hindsight. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Further, defense counsel presented a theory of the case that Dorothy had a drug problem and turned to selling drugs to support her habit; that defendant urged Dorothy to flush the drugs and did not know she was trying to sell drugs; and that the quantity of drugs was not consistent with an intent to deliver. In denying defendant's motion for a new trial or *Ginther* hearing, the trial court specifically found that counsel did everything she could to present a defense. The evidence shows that counsel's performance did not fall below an objective standard of reasonableness, and that defendant was not denied a fair trial.

We affirm.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra