

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD HANSHAW,

Defendant-Appellant.

UNPUBLISHED
February 15, 2005

No. 251309
Wayne Circuit Court
LC No. 03-003309-01

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

MEMORANDUM.

Defendant appeals as of right his jury convictions for delivery of less than five kilograms of marijuana and possession with intent to deliver less than five kilograms of marijuana. MCL 333.7401(2)(d)(iii). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied the effective assistance of counsel where counsel failed to move to dismiss the charges based on entrapment and failed to move for a new trial on great weight of the evidence grounds.

To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. A defendant is considered entrapped if 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). There is no evidence that the police engaged in impermissible conduct. Police received a narcotics complaint identifying defendant's residence. The police observed several suspected narcotics transactions over the course of two days. There is no showing that the police engaged in conduct that induced defendant to commit the crime. See *id.* Trial counsel was not ineffective in failing to raise an issue that lacked merit.

A trial court may grant a motion for new trial based on the great weight of the evidence only if the evidence preponderates so heavily against the verdict that it would be a miscarriage of

justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

This issue was not preserved because defense counsel failed to move for a new trial on this ground. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Trial counsel was not ineffective in failing to make such a motion. The sole basis advanced on appeal is that a police officer's testimony that he found the toolbox containing marijuana under defendant's bed was false because a defense witness testified that the toolbox would not fit under the bed. The trial court was only presented with conflicting testimony of two witnesses, and there was no basis for concluding that defendant's witness was more credible than the officer. This discrepancy is insufficient to show that the verdict was a miscarriage of justice. Counsel was not ineffective in failing to make a motion that lacked the possibility of success. See *Carbin, supra*.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen