

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 16, 2012

v

QUINTEN RENARDO LATIMER,
Defendant-Appellant.

No. 307050
Lake Circuit Court
LC No. 11-004906-FH

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of delivering less than 50 grams of a mixture containing the controlled substance cocaine, MCL 333.7401(2)(a)(iv), and was sentenced to 11 months in jail with credit for time served and two years' probation. He appeals as of right. We affirm because defendant's trial counsel was not ineffective.

This prosecution stems from a controlled buy of cocaine witnessed by officers on the scene. Defendant alleged on appeal that he had been prejudiced at trial by ineffective assistance of counsel by a failure to object to hearsay testimony offered by Officer Harold Nichols. Nichols arrived at the scene where defendant was apprehended after fleeing from the scene of the buy, and recovered money found lying on the ground near where defendant had been handcuffed by authorities. Defendant challenged the following testimony (highlighted) by Nichols:

I—Officer—Or, Undersheriff Perrin, at this point, he—him and Denny Robinson, I believe, and possibly Ken Kreiner, Deputy Kreiner, were securing the subject with handcuffs. *There was some money on the ground that was indicated to me came from the suspect.*

I picked up the money. Officer Bennett arrived. *I confirmed the serial numbers on the money as being the money used in the buy. . . .*

“Whether a person 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). The trial court's findings of fact are reviewed for clear error, and the question of law is reviewed de novo. *Id.* No evidentiary hearing was held, so review is limited to mistakes apparent on the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000).

In *People v Pickens*, 446 Mich 298, 318; 521 NW2d 797 (1994), the Michigan Supreme Court adopted the test set forth *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984) as the appropriate test for a claim of ineffective assistance of counsel. The test requires the defendant to demonstrate that “counsel’s performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial.” *Pickens*, 446 Mich at 303; see also *Strickland*, 466 US at 687. However, the defense counsel’s performance is presumed to have been effective and to have been sound trial strategy. *People v Mitchell*, 454 Mich 145, 156; 460 NW2d 600 (1997); *People v Johnson*, 293 Mich App 79, 90; 808 NW2d 815 (2011).

“‘Hearsay’ is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” MRE 801(c). The first statement was not offered to prove that the money had fallen from defendant’s lap. Rather, it was offered to explain that Nichols recovered evidence from the scene of the arrest and why he recovered this particular evidence. See *People v Chambers*, 277 Mich App 1, 11; 742 NW2d 610 (2007) (“[A] statement offered to show why police officers acted as they did is not hearsay.”).

Defendant characterizes Nichols’s second statement as indicating that Deputy Bennett “confirmed the serial numbers on the money as being used in the buy.” This is a mischaracterization of the excerpted testimony. What Nichols stated was that he, Nichols, “confirmed the serial numbers on the money as being the money used in the buy.” However, later on Nichols explained that “[t]he only reason I knew it was our money because it was . . . confirmed by Officer Bennett that it was the buy money used.” This latter statement (not cited by defendant) is also not hearsay. Later in his testimony, Nichols explained that the serial numbers on the money he recovered matched the serial numbers on a photograph of the bills used for the buy. “I believe I was shown this [the photograph] at the scene by Officer Bennett,” Nichols testified. This testimony also was explaining Nichols’s actions. He recovered the money because it matched the money used in the buy. Further, Nichols’s testimony that he confirmed the serial numbers means that he had “personal knowledge of the matter.” MRE 602. If neither statement was hearsay, then defense counsel’s lack of objection was not ineffective assistance because counsel is not obligated to make an objection that is without merit. *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).

Moreover, even if the statements were hearsay we would not find ineffective assistance of counsel. Defense counsel’s failure to object is presumed to be part of sound trial strategy. See *Johnson*, 293 Mich App at 90. Defendant must overcome this presumption by showing that the failure to object did not meet an objective standard of reasonableness and denied the defendant a fair trial. See *People v Wilson*, 242 Mich App 350, 354; 619 NW2d 413 (2000). It is possible that counsel did not want to draw the jury’s attention to the testimony through an objection, and this would be a reasonable approach for counsel to take. Further, the lack of objection for these statements alone would not deny defendant a fair trial, which is “a trial whose result is reliable.” *Strickland*, 466 US at 687. Photographs of the money provided for the controlled purchase and of the money recovered at the scene of the arrest were admitted into evidence, allowing the jury to reach its own conclusion even without the statements from Nichols. Deputy Kreiner had already testified about the money being on the ground when

defendant was arrested, and if there was truly a question about the serial numbers, Bennett could have been re-called to testify about the bills matching.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen Fort Hood
/s/ Douglas B. Shapiro