

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MOISES CRUZ,

Defendant-Appellee.

UNPUBLISHED

April 25, 1997

No. 195739

Recorder's Court

LC No. 92-013988

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

The people appeal by leave granted from an order granting defendant a new trial. The trial court found defendant guilty in a bench trial of possession with intent to deliver marijuana, formerly MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), and sentenced him to probation for one year. Defendant did not appeal his conviction, but later moved for a new trial on the ground that he was denied the effective assistance of counsel. The trial court granted the motion. We reverse and reinstate defendant's conviction.

On July 8, 1992, Livonia police officers executed a search warrant on a storage unit at EZ Storage in Taylor, Michigan, and discovered a cedar chest containing marijuana. In a photo identification procedure and at trial, the manager identified defendant as the person who rented the locker. Defendant denied renting the storage locker and disclaimed ownership of the marijuana. The trial court found that the manager of the storage facility was a credible witness, and on the basis of her testimony, found defendant guilty of the charged offense. Upon defendant's motion, however, the court granted defendant a new trial on the ground that he was denied the effective assistance of counsel by trial counsel's failure to move to suppress the marijuana seized in the search and "maybe" counsel's failure to object to evidence and the prosecutor's questions and comments.

The people contend that the trial court abused its discretion in granting defendant a new trial on the ground that he was denied the effective assistance of counsel. We agree. The decision whether to grant a new trial is within the trial court's discretion and will not be disturbed on appeal absent an abuse of that discretion. *People v Legrone*, 205 Mich App 77, 79; 517 NW2d 270 (1994). The court may

order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. MCR 6.431(B). In some cases, trial counsel's performance may so undermine defendant's right to effective assistance of counsel so as to justify reversal of an otherwise valid conviction. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). In order to demonstrate that the defendant was denied the effective assistance of counsel, counsel's performance must fall below an objective standard of reasonableness, and the defendant must have been prejudiced by the representation. *Id.* With respect to the second requirement, the defendant must show that there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *People v Johnson*, 451 Mich 115, 122; 545 NW2d 637 (1996).

We agree with the people that counsel's failure to move to suppress the marijuana did not constitute ineffective assistance of counsel. The Michigan Constitution provides no greater constitutional protection than the Fourth Amendment of the United States Constitution. *People v Toohey*, 438 Mich 265, 271; 475 NW2d 16 (1991). Under both constitutions, a defendant does not have automatic standing to argue the suppression of evidence. *United States v Salvucci*, 448 US 83, 95; 100 S Ct 2547; 65 L Ed 2d 619 (1980); *People v Smith*, 420 Mich 1, 13-20; 360 NW2d 841 (1984). Rather, the defendant bears the burden of proving standing as a result of a personal expectation of privacy. *People v Lombardo*, 216 Mich App 500, 505; 549 NW2d 596 (1996). The defendant must first demonstrate that, under the totality of the circumstances, he had a legitimate personal expectation of privacy in the area searched. Secondly, the expectation of privacy must be one that society accepts as reasonable. *Id.* at 504-505.

Here, defendant denied renting the storage locker and disclaimed ownership of the marijuana. He did not assert a possessory or proprietary interest in the locker, and made no showing of any legitimate expectation of privacy. Thus, defendant does not have standing to challenge the legality of the search. Cf. *People v Armendarez*, 188 Mich App 61, 71; 468 NW2d 893 (1991). Because the motion to suppress would have been futile, trial counsel was not obligated to pursue the matter. See *People v Daniel*, 207 Mich App 47, 59; 523 NW2d 830 (1994).

With respect to defendant's other assertions of error, trial counsel's failure to object to the admission of certain evidence and the prosecutor's remarks was harmless because defendant was tried by the court, not a jury. In a bench trial, the judge is presumed to understand the difference between admissible and inadmissible evidence or statements of counsel. *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). Therefore, defendant cannot demonstrate that he was sufficiently prejudiced by counsel's alleged errors to deny him the effective assistance of counsel. See *Johnson*, *supra* at 122. Accordingly, the trial court abused its discretion in granting defendant a new trial because defendant was not denied the effective assistance of counsel.

Reversed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh