

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHELLE LEE KITTO,

Defendant-Appellant.

UNPUBLISHED

July 17, 2026

9:12 AM

No. 367953

Gogebic Circuit Court

LC No. 2023-000017-FH

Before: ACKERMAN, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

Defendant appeals as of right her jury-trial convictions of possession with intent to deliver methamphetamine, MCL 333.7401(2)(b)(i), two counts of possession of methamphetamine within 1,000 feet of a school or library, MCL 333.7403(2)(b)(i) and MCL 333.7410(4), conspiracy to commit possession with intent to deliver methamphetamine, MCL 333.7401(2)(b)(i), and maintaining a drug house, MCL 333.7405(1)(d). The trial court imposed sentences of time served for the drug-house conviction, and terms of imprisonment of 8 to 20 years for each of the remaining convictions. For the reasons set forth in this opinion, we affirm.

I. FACTS

In November 2022, defendant and her boyfriend, John Wodie, became suspects in an investigation by the Gogebic Iron Area Narcotics Team (GIANT), a multi-jurisdictional task force that investigates the delivery, possession, and use of controlled substances in Iron County, Wisconsin, and Gogebic County, Michigan. GIANT received information from a confidential informant that defendant and Wodie were selling methamphetamine out of their home in Ironwood, Michigan. With the use of a GPS unit, GIANT members learned that defendant and Wodie routinely obtained large amounts of methamphetamine from Nick Lull in Superior, Wisconsin. In December 2022, GIANT members stopped defendant and Wodie as they returned from Wisconsin, and a search of their vehicle revealed approximately 42 grams of methamphetamine within a cooler in the trunk. Following the stop, defendant admitted to helping Wodie purchase methamphetamine and also to selling methamphetamine.

As defendant and defense counsel prepared for trial, defendant suggested that Wodie and Lull be called as witnesses. After unsuccessfully moving to require that the prosecution subpoena Wodie and Lull, defense counsel informed the trial court that he did not intend to call either person to the stand. The trial court denied defendant's request for an adjournment to retain a new attorney, and the trial proceeded without the defense calling witnesses. The jury learned of evidence of drug trafficking discovered in defendant's home, heard the recording of a police interview in which defendant admitted some involvement with drug selling and using, and also heard testimony from several GIANT members regarding the methamphetamine found in the vehicle. Also in evidence were a message defendant sent from jail and a letter defendant sent to the trial court, both of which acknowledged her guilt. Ultimately, the jury returned a verdict of guilty on all five of defendant's charges.

Defendant filed a postjudgment motion for a new trial, asserting that defense counsel was ineffective by failing to call Wodie and Lull as witnesses. Defendant argued that a reasonable attorney would have called both because each would have testified that defendant had little to do with purchasing or selling methamphetamine. The trial court denied the motion, finding that the proposed testimony from Wodie and Lull would have fallen short of definitive proof that defendant was not involved in the sale of methamphetamine. The court further found that trial counsel had performed reasonably, explaining that counsel wanted to avoid opening the door to further evidence against defendant, such as that defendant shared her vehicle and home with Wodie. While this appeal was pending, defendant filed a motion in this Court for a remand, again asserting that defense counsel should have called Wodie and Lull, and now providing an affidavit from Wodie. This Court denied the motion. *People v Kitto*, unpublished order of the Court of Appeals, entered September 29, 2025 (Docket No. 367953).

II. STANDARDS OF REVIEW

Claims of ineffective assistance of counsel present mixed questions of fact and law. *People v Head*, 323 Mich App 526, 539; 917 NW2d 752 (2018). Findings of fact are reviewed for clear error, while questions of law are reviewed de novo. *Id.* However, when, as in this case, the trial court did not conduct an evidentiary hearing to develop the issue, our review is limited to mistakes apparent on the existing record. *People v Fyda*, 288 Mich App 446, 450; 793 NW2d 712 (2010). "To establish ineffective assistance of counsel, a defendant must show (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Shaw*, 315 Mich App 668, 672; 892 NW2d 15 (2016). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *People v Randolph*, 502 Mich 1, 9; 917 NW2d 249 (2018) (quotation marks and citation omitted).

III. ANALYSIS

Defendant's sole issue on appeal is that trial counsel was ineffective for failing to present Wodie and Lull at trial, on the ground that those witnesses would have provided exculpatory testimony. We disagree.

The United States and Michigan Constitutions guarantee criminal defendants the right to effective assistance of counsel. *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023), citing US Const, Am VI; Const 1963, art 1, § 20; *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984). This Court presumes counsel was effective, and the defendant carries a heavy burden to overcome this presumption. *Head*, 323 Mich App at 539. We will not deem an attorney's performance as falling below an objective standard of reasonableness if we can conceive of a "legitimate strategic reason" for the attorney's decision. *People v Clark*, 330 Mich App 392, 427; 948 NW2d 604 (2019).

Trial counsel has "wide discretion in matters of trial strategy" *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). Decisions regarding the evidence to present, whether to call witnesses, and how to question witnesses are presumed to be matters of trial strategy. *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008). We will not substitute our judgment for that of trial counsel with respect to matters of trial strategy. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Ultimately, the burden is on the defendant to establish the factual basis for an ineffective-assistance claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

In this case, the record reflects that defense counsel had genuine concerns about having Wodie and Lull testify. Specifically, counsel expressed concern about the prejudicial effect that references to Wodie's criminal record, or his statements to law enforcement, might have, and he explained that he declined to call Wodie and Lull as witnesses because doing so would have risked providing the prosecution with additional evidence of defendant's guilt. Defense counsel explained that calling Wodie would have allowed the prosecution to elicit information only Wodie would have had about the alleged conspiracy to possess with intent to deliver methamphetamine.

Further, although defendant asserts that Wodie and Lull would have testified that she was not involved in any drug transactions, we note, as an initial matter, that any such exculpatory testimony would have required Wodie and Lull to admit to their own illegal conduct, and that defendant fails to acknowledge their privilege against self-incrimination. See US Const, Am V; Const 1963, art 1, § 17. Specifically, Wodie would have to testify that he alone purchased and sold methamphetamine, within 1,000 feet of a school and library, and maintained a drug house. Similarly, for Lull could not have testified that he dealt methamphetamine to Wodie to the exclusion of defendant without nonetheless admitting to trafficking in methamphetamine in the first instance.

Moreover, even if Wodie and Lull were willing to waive the privilege against self-incrimination, the record does not suggest that their testimony would have exonerated defendant. Defendant argues that Wodie would have provided exculpatory testimony because he established in his statements during the traffic stop and his affidavit that defendant was not involved in the purchase or sale of methamphetamine. But, although Wodie did tell law enforcement during the traffic stop that everything in the vehicle belonged to him, he later stated that he found the methamphetamine within the cooler on the side of the road. Wodie also told officers that he and defendant were methamphetamine addicts transporting the substance only to support their own habits. And, although Wodie attested in his affidavit that he told law enforcement that everything in the vehicle belonged to him, that assertion fell short of exonerating defendant. Wodie and defendant assert that Wodie's assertion in the affidavit that he continued to buy and sell methamphetamine while on medical furlough without defendant's knowledge established that

Wodie alone was responsible for such operations, but even assuming the truth of those particulars would not rule out the possibility that defendant and Wodie jointly engaged in trafficking methamphetamine before their arrest. Accordingly, Wodie's prior statements and affidavit did not clearly establish that his testimony at trial would have exonerated defendant.

Defendant also fails to offer factual support for her claim that Lull would have provided exculpatory testimony. The only support for defendant's assertion was a Wisconsin police report in which Lull repeatedly stated that he sold controlled substances to Wodie, without mentioning defendant. But, as appellate counsel later acknowledged, Lull admitted in the same police report to selling controlled substances to both Wodie and defendant. Further, had Lull testified that he sold methamphetamine to Wodie only, the prosecution could have impeached him with the latter statement, and otherwise questioned him about defendant's presence during Wodie's routine trips to Wisconsin to purchase methamphetamine. For these reasons, defendant has failed to provide factual support for her claim of ineffective assistance of counsel.

Before jury selection began, defense counsel informed the trial court that he would not call Wodie or Lull, and he explained that doing so would risk weakening defendant's position. Defense counsel believed the prosecution lacked sufficient evidence to establish that defendant committed each of the charged offenses, and he was concerned that calling Wodie could allow the prosecution to elicit information only Wodie would have about the alleged conspiracy to possess with intent to deliver methamphetamine. Had Wodie testified that the methamphetamine in the vehicle belonged exclusively to him, the prosecution could have impeached him with the inconsistency of his statements to law enforcement, or shown that such testimony was inconsistent with the evidence gathered by GIANT. The prosecution also could have questioned Wodie about defendant's presence during his trips to Wisconsin, and while he sold methamphetamine from their home. Similarly, testimony from Lull would have allowed the prosecution to question Lull about how frequently defendant accompanied Wodie when he purchased methamphetamine and how involved defendant was in the process.

For these reasons, we conclude that the record indicates that Wodie and Lull could very well have asserted their rights against self-incrimination. Additionally, if they did testify, any statements they offered would have been weighed against the very substantial evidence against defendant indicated above, including her own multiple admissions that demonstrated her culpability as to all charges for which the jury convicted. The testimony of Wodie and Lull would have been of little value to the defense while opening the door to prosecutorial opportunities to add even more evidence of guilt of defendant. Accordingly, we agree with the trial court that defense counsel had a legitimate strategic reason for not calling either witness.

There being no merit to defendant's assertion that she was denied the effective representation of counsel, we affirm.

/s/ Matthew S. Ackerman
/s/ James Robert Redford
/s/ Kathleen A. Feeney