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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v NOEL DELALUS SAGATAW, Defendant-Appellant.	UNPUBLISHED September 25, 2026 8:52 AM No. 374207 Delta Circuit Court LC No. 2023-011056-FH

Before: MARIANI, P.J., and FEENEY and TREBILCOCK, JJ.

PER CURIAM.

Defendant was convicted by a jury of three counts of resisting and obstructing a police officer, MCL 750.81d(1), and one count of simple assault, MCL 750.81. He now appeals those convictions by right, arguing that his trial counsel's assistance was unconstitutionally ineffective because (1) counsel failed to make use of certain evidence in his defense, and (2) counsel did not call additional witnesses at trial. We affirm.

I. BACKGROUND

Defendant worked as a bouncer at a bar in Escanaba. On September 30, 2023, a fight broke out inside the bar amongst five or six patrons. Eventually, the fight moved outside. As it did, the victim of the charged assault, who was a bartender, saw defendant "standing there with his left hand in [the] face" of a female coworker of the victim's, "screaming nasty things" at her. To the victim, it appeared that defendant was about to smack the coworker's face. The victim had learned earlier that day that her coworker was 20 weeks pregnant, which prompted the victim to intervene. The victim put her coworker behind her, and defendant then "got in [the victim's] face" and smacked her across her face.

Sergeant Samuel Carr witnessed defendant strike the victim. Carr had been dispatched in response to the fight that had broken out inside of the bar. After he arrived, Carr saw defendant, who was being held back by an unknown individual, screaming at the victim and ordered them to "knock it off." Defendant then struck the victim, and Carr told defendant he was under arrest and ordered him to place his hands behind his back. Defendant, walking backwards from Carr while making direct eye contact, did not comply despite further orders from Carr to stop. Defendant

then turned around and ran down an alley behind the bar. Carr attempted to give chase, but another unknown individual grabbed Carr; Carr then arrested that other individual.

Officers Trevor Codere and Aaron Young responded to the scene shortly after Carr arrived. Carr informed Codere and Young that he had placed an individual—i.e., defendant—under arrest but the individual had run down the alleyway. Codere and Young pursued defendant; they identified themselves as law enforcement and repeatedly ordered defendant to stop, but to no avail. Ultimately, the officers were able to detain defendant after he ran into a dead end.

As a result of this incident, defendant was charged with one misdemeanor count of assault for his altercation with the victim, MCL 750.81, and three felony counts of resisting and obstructing a police officer for failing to comply with the orders from Carr, Codere, and Young, MCL 750.81d(1); defendant's felony charges carried with them a fourth-offense habitual offender enhancement, MCL 769.12.[1] During the two-day jury trial that followed, the victim, Carr, Codere, and Young all testified as described above.

Through cross-examination of these witnesses, defense counsel elicited testimony regarding the victim's level of intoxication on the evening in question. The victim testified that she had not consumed alcohol or other illicit substances that evening, but she nevertheless received a minor-in-possession citation from Carr—which she paid simply to resolve the matter. Carr, meanwhile, testified that the victim expressly told him that evening that she was drunk and that she was underage. Even so, he averred that he could not tell if the victim was, in fact, drunk given that she was "hysterical" when he interviewed her after the altercation with defendant. Defendant's sole witness—Officer Jordan Ladouce—testified that he also interacted with the victim after the incident. Ladouce stated that he observed the victim to be intoxicated as he could "smell[ ] the odor of intoxication" and "could see it in her eyes." He also said her speech was slurred. That said, neither Carr nor Ladouce administered a breathalyzer test or any sort of field sobriety tests.

Defense counsel also questioned the victim as to whether she pushed or otherwise touched defendant that evening. The victim said she did not. During his testimony, however, Ladouce recalled that the victim had stated that "she had pushed [defendant] away from [another] person inside of the bar."

The defense produced no additional witnesses. During closing arguments, defense counsel impugned the credibility of the victim's testimony regarding her alcohol consumption, and reminded the jury that defendant was a bouncer at a bar where a brawl had broken out and that he had been physically pushed. Counsel pressed the jury to question whether, under those circumstances, defendant's slap of the victim amounted to an assault and battery and, if not, whether the commands from law enforcement to stop were lawful.

[1] Defendant was initially charged with a second misdemeanor count of assault, but this charge was dismissed after the trial court granted the prosecution's nolle prosequi motion.

After deliberating for roughly an hour, the jury convicted defendant as charged. Defendant was thereafter sentenced as described above.

This appeal followed.

II. STANDARDS OF REVIEW

As noted, defendant's appeal raises two claims of ineffective assistance of counsel. "A claim of ineffective assistance of counsel presents a mixed question of fact and constitutional law." *People v Spears*, 346 Mich App 494, 502; 13 NW3d 20 (2023) (quotation marks and citation omitted). "[T]his Court reviews for clear error the trial court's findings of fact and reviews de novo questions of constitutional law." *People v Thigpen*, 349 Mich App 437, 446; 27 NW3d 647 (2023) (quotation marks and citation omitted). "Because [defendant] did not preserve this claim by moving for a new trial or an evidentiary hearing, our review is limited to errors apparent from the record." *People v Smith*, 351 Mich App 1, 27; 34 NW3d 593 (2024).

Both the Michigan and United States Constitutions guarantee a criminal defendant's right to receive effective assistance of counsel at trial. Const 1963, art 1, § 20; U.S. Const Am VI. "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." *Smith*, 351 Mich App at 27 (quotation marks and citation omitted). "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).

It is defendant's burden to establish the factual predicate for his claims of ineffective assistance. *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014). We presume that trial counsel was effective, *Smith*, 351 Mich App at 27 (quotation marks and citation omitted), and that counsel's performance at trial was the product of sound trial strategy, *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). Defendant bears a heavy burden of showing otherwise. *Id.*; *Smith*, 351 Mich App at 27. Even so, "counsel's strategic decisions must be objectively reasonable." *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023). "Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel." *People v Zitka*, 335 Mich App 324, 341; 966 NW2d 786 (2020) (quotation marks and citation omitted).

III. ANALYSIS

Defendant first argues that counsel was ineffective for failing to make use of certain evidence regarding an "attack and injury" that defendant claims he suffered on the night of the events at issue in this case. In support, defendant offers two documents. The first is a police report regarding a complaint made by defendant on October 4, 2023—a few days after the events at issue in this case. According to the report, defendant stated to the reporting officer that, on the same night of the events at issue, an unknown individual hit him in the head, knocking him to the ground, and then another individual kicked him in the head. As a result, defendant reported, he lost consciousness shortly before the events at issue in this case; he did "not remember anything from that point" forward and later "woke up in the rear of a police car." The police report also indicates

that, when the reporting officer contacted the individual defendant identified as having kicked him in the head, the individual stated that he did not know who defendant was and denied any assault. Under "Status," the police report states, "Closed." The second document is an "After Visit Summary" reflecting an October 3, 2023, emergency room visit by defendant for a head injury; the document includes a listed diagnosis of "[c]oncussion with loss of consciousness of 30 minutes or less, initial encounter."

According to defendant, "[t]he only defense that [he] had in this case" in light of the prosecution's evidence "was that he lacked intent and was not criminally responsible for his actions," and trial counsel was ineffective for not using these two documents regarding his "attack and injury" to mount such a defense—namely, by "request[ing] a criminal responsibility exam" or a "jury instruction for intent." Defendant's argument to this effect, however, lacks any meaningful development or support, and falls well short of demonstrating that trial counsel performed ineffectively as to this evidence.

To start, defendant has provided nothing to support his assertion that the documents discussed above would have provided a colorable basis for requesting a criminal responsibility exam, let alone one that would have inured in favor of any defense on his part. In fact, defendant does not even identify what defense he believes such an exam would have supported in this case. Ordinarily, a criminal responsibility exam is a prerequisite for an insanity defense. MCL 768.20a(2); see also *People v Dobben*, 440 Mich 679, 693-694; 488 NW2d 726 (1992); *People v Wright*, 431 Mich 282, 286; 430 NW2d 133 (1988). But defendant has made no attempt to explain how an insanity defense might have been viable under the law and facts of this case, or how the proffered documents would have enabled him to mount a meritorious defense in that regard. Nor has defendant attempted to make any such showing, legally or factually, with respect to any other theory of defense.[2]

Equally lacking is defendant's suggestion that the proffered documents would have been sufficient to warrant a jury instruction regarding intent. Here too, defendant has offered no meaningful support for his argument, legally or factually; he simply posits that counsel should have requested an "instruction for intent" without providing any insight into what he believes that jury instruction should have stated, for instance, or how the proffered documents, along with the evidence presented a trial, would have adequately supported it. See *People v Geary*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 371889); slip op at 3 ("Defense counsel is not ineffective for failing to request a jury instruction if there was insufficient evidence that the jury instruction would apply to the defendant's case.").

[2] In this vein, we note the recent decision of our Supreme Court reviving the availability of a diminished-capacity defense under Michigan law. See *People v Madison*, ___ Mich ___; ___ NW3d ___ (2026) (Docket No. 167120). At the time of defendant's trial, this defense was still foreclosed under *People v Carpenter*, 464 Mich 223, 241; 627 NW2d 276 (2001). Defendant makes no mention of the possibility of a diminished-capacity defense in this case. Nor does he offer anything to suggest that such a defense would have been availing in this case or that counsel was unconstitutionally ineffective for failing to attempt to pursue it despite the then-controlling precedent foreclosing it.

And as for prejudice, defendant has offered nothing more than the conclusory assertion that a jury likely would have acquitted him had it only known of this alleged assault on him and his concussion. As discussed, defendant has made no effort to substantively explain how this evidence would have enabled counsel to present a successful defense at trial, nor has he attempted to explain how, had counsel sought to make use of this evidence, it is reasonably probable that the outcome of his trial would have been different—particularly in light of the other, overwhelming evidence of his guilt that was presented at trial. See *Smith*, 351 Mich App at 27.

Simply put, defendant bears the burden of demonstrating counsel's ineffectiveness as to this evidence—which includes establishing the factual predicate of that claim and overcoming the presumption that counsel performed effectively. See *Douglas*, 496 Mich at 592; *Smith*, 351 Mich App at 27-28. Defendant has plainly failed to carry that burden here, and we see no grounds for awarding him relief as to this claim.

The same holds true for defendant's second claim of ineffective assistance: that counsel performed ineffectively by failing to call additional witnesses at trial. Defendant notes that various other individuals were also present for and witnessed the events at issue in this case, but he has not made any effort to identify who those individuals are, nor has he provided affidavits or any other offer of proof that such witnesses would have testified in his favor. Instead, he merely offers cursory and unsubstantiated speculation that such testimony could not have made matters worse for his case, and might have been to his benefit. "Without some indication that a witness would have testified favorably, a defendant cannot establish that counsel's failure to call the witness would have affected the outcome of his or her trial." *People v Wade*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 369106); slip op at 13 (quotation marks and citation omitted). And to the extent defendant's claim comprises any suggestion that counsel inadequately investigated these witnesses, that suggestion is likewise wholly unsupported and undeveloped. We thus see no basis for relief as to this claim, either.

Affirmed.

/s/ Philip P. Mariani
/s/ Kathleen A. Feeney
/s/ Christopher M. Trebilcock