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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v ORLANDO ADRIEL JACKSON, Defendant-Appellant.	UNPUBLISHED September 17, 2026 11:30 AM Nos. 370997; 373973 St. Clair Circuit Court LC No. 23-002068-FH

Before: GADOLA, C.J., and BOONSTRA and CAMERON, JJ.

PER CURIAM.

Defendant was convicted after a jury trial of first-degree home invasion, MCL 750.110a(2), felonious assault, MCL 750.82, felon in possession of a firearm (felon-in-possession), MCL 750.224f, delivery of a controlled substance (less than 50 grams), MCL 333.7401(2)(a)(*iv*), assault, MCL 750.81, unlawful imprisonment, MCL 750.349b, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. In Docket No. 370997, defendant appeals as of right trial court's April 22, 2024 judgment of sentence. In Docket No. 373973, defendant appeals the trial court's June 10, 2024 amended judgment of sentence.[1] We affirm.

I. FACTS

This case arises from defendant's invasion of the home of his daughter and son-in-law, Kayla McCoy and Jacob White, in Port Huron, Michigan on September 23, 2023, during which White was brutally beaten. The day before, defendant attended McCoy's birthday party at her home. When defendant became confrontational with others at the party, McCoy asked him to leave the party. Defendant continued to instigate fights with the other guests until he was physically forced into his car by McCoy's brother.

[1] This Court consolidated the appeals. *People v Jackson*, unpublished order of the Court of Appeals, entered February 12, 2025 (Docket Nos. 370997; 373973).

The following night in the late evening hours, McCoy answered a knock on the door believing it to be her brother. Instead, defendant, his friends, James Johnson and "Tez," and several others forced their way into McCoy's home. McCoy testified that she told defendant to leave, but instead defendant, Johnson, and Tez entered the bedroom where White was watching movies with three of the couple's children. One of the children in the bedroom, JS, McCoy's minor son, testified that he saw his "papa" (defendant) enter the bedroom with his friends, one of whom, later identified as Johnson, was carrying a black handgun. JS testified that defendant pushed White onto the bed and punched him repeatedly in the face. Johnson then beat White in the head with the butt of the gun. While this was occurring, Tez blocked the door so that neither White nor the three children could leave the bedroom.

McCoy testified that when defendant, Johnson, and Tez entered the bedroom, an unidentified woman who had entered the home with defendant restrained McCoy and refused to allow her access to the bedroom to protect her children. While this transpired, two unidentified men stood inside the front door of the home. McCoy's other son, JM, witnessed McCoy being held against her will and also identified defendant as one of the individuals who invaded the family's home.

McCoy eventually freed herself from the woman restraining her. She testified that as she looked into the bedroom through the partially blocked doorway, she saw Johnson holding a black handgun pointed in the direction of White and the children. McCoy called 911, and defendant and his accomplices then left the home.

White was seriously injured on the left side of his face and was bleeding profusely. When law enforcement and emergency medical services (EMS) arrived, White was uncooperative but ultimately agreed to be transported to a hospital for treatment. Meanwhile, police located defendant as he arrived at the home of a family member. Defendant was wearing a white shirt matching the description of defendant McCoy gave to police, and the shirt was covered with blood. Police were unable to confirm whether White was the source of the blood on defendant's shirt because White refused to cooperate with the investigation. Police did not find a gun in defendant's vehicle but did find five bags of cocaine.

Defendant was charged with first-degree home invasion, felonious assault, felon in possession, delivery of a controlled substance, assault, unlawful imprisonment, three counts of felony-firearm, and as a fourth offense habitual offender. The trial court appointed counsel to represent defendant. At the final pretrial, defendant requested that the trial court appoint new counsel to represent him because he disagreed with his attorney, who was urging him to accept an offered plea agreement. The trial court denied defendant's request for substitute counsel.

The prosecution initially named White as a witness, but before trial sought to remove White from its witness list because the prosecution could not locate White. McCoy informed law enforcement that White had left the state and did not have a forwarding address. The trial court permitted White to be removed from the prosecution's witness list, determining that the prosecution exercised due diligence to locate White, who apparently was unwilling to testify. At the hearing on the motion, defendant again asked the trial court to appoint new defense counsel, and the trial court again denied the request. The trial court also denied defendant's request for an adjournment to permit defendant time to locate White.

At the conclusion of the trial, defendant was convicted of the charges. Because an error[2] occurred during defendant's April 22, 2024 sentencing, the trial court resentenced defendant on June 10, 2024, as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 23 to 40 years' imprisonment for his first-degree home invasion conviction, 5 to 15 years' imprisonment for his felonious assault conviction, 4 to 25 years for his felon-in-possession conviction, 46 months to 40 years' imprisonment for his delivery of a controlled substance (less than 50 grams) conviction, 93 days in jail for his assault conviction, and 15 to 30 years' imprisonment for his unlawful imprisonment conviction, to be served consecutively to a mandatory two-year term for each of his three felony-firearm convictions. Defendant appeals as of right challenging his convictions and his sentences.

II. DISCUSSION

A. SUBSTITUTION OF COUNSEL

Defendant contends that the trial court abused its discretion by denying his request for substitution of counsel. We disagree.

We review for an abuse of discretion a trial court's decision regarding a request for substitution of counsel. *People v McFall*, 309 Mich App 377, 382; 873 NW2d 112 (2015). A trial court abuses its discretion when it selects an outcome outside the range of reasonable and principled outcomes, and also when it makes an error of law. *People v Brown*, 351 Mich App 356, 376; 35 NW3d 669 (2024) (quotation marks and citation omitted).

An indigent criminal defendant is guaranteed the right to counsel but is not entitled to have the counsel of his choice appointed simply by requesting the replacement of appointed counsel. *McFall*, 309 Mich App at 382. A trial court may substitute appointed counsel when the defendant demonstrates good cause and when the substitution will not unreasonably disrupt the judicial process. *Id*. at 382-383. "Good cause may exist when a legitimate difference of opinion develops between a defendant and his appointed counsel as to a fundamental trial tactic, when there is a destruction of communication and a breakdown in the attorney-client relationship, or when counsel shows a lack of diligence or interest." *Id*. at 383 (quotation marks and citation omitted). A defendant's general unhappiness with his counsel's representation or lack of confidence in his counsel is not sufficient to demonstrate good cause. *Id*. Similarly, disagreements regarding professional judgment do not require appointment of substitute counsel. *People v Strickland*, 293 Mich App 393, 398; 810 NW2d 660 (2011). For example, counsel's decision regarding whether to file motions is a matter of trial strategy that does not warrant substitution of counsel. *People v Traylor*, 245 Mich App 460, 463; 628 NW2d 120 (2001).

In this case, at the final pretrial conference held eight days before trial, defendant informed the trial court that he and his appointed defense counsel disagreed regarding whether defendant should accept the prosecution's offered plea agreement. Defendant explained that trial counsel

[2] At the first sentencing, the trial court and the parties mistakenly considered unlawful imprisonment as a predicate offense for the 25-year mandatory minimum sentence for first-degree home invasion.

recently had visited him in jail and "came . . . with this plea out of nowhere." Defendant did not otherwise assert that trial counsel's representation of him was deficient. Defense counsel informed the trial court that he visited defendant on multiple occasions the prior week at the county jail and had discussed the plea agreement with defendant. During the hearing held four days later on the prosecution's motion to remove a witness from its list, defendant again requested substitution of counsel, informing the trial court that his counsel had not filed any motions on his behalf or otherwise investigated the case.

We are not persuaded that the trial court abused its discretion by denying defendant's request for substitution of counsel. Defendant informed the trial court that he lacked confidence in his counsel but did not support his complaints with substantial reasons or specific instances. Defendant's general unhappiness with counsel's representation or lack of confidence in his attorney, unsupported by a substantial reason, did not establish good cause. In responding to defendant's request, the trial court explained that defendant's trial date was approaching, appropriately considering that substitution of counsel would unreasonably disrupt the judicial process. Accordingly, we are not persuaded that the trial court's decision to deny defendant's request for substitution of counsel fell outside the range of principled outcomes.

B. REMOVAL OF WITNESS FROM WITNESS LIST

Defendant contends that the trial court abused its discretion by permitting the prosecution to remove White from its witness list, by failing to provide the "missing witness" instruction to the jury, and by denying defendant's motion to adjourn the trial to enable the defense to locate White. We disagree.

We review for an abuse of discretion the trial court's determination that the prosecution exercised due diligence to secure the presence of a witness at trial, as well as the trial court's decision whether to provide a "missing witness" instruction. *People v Eccles*, 260 Mich App 379, 389; 677 NW2d 76 (2004). We similarly review for an abuse of discretion the trial court's decision regarding a request for an adjournment. *People v Daniels*, 311 Mich App 257, 264-265; 874 NW2d 732 (2015).

Under MCL 767.40a, the prosecution in a criminal case is required to disclose all known res gestae witnesses and to provide the names of the witnesses the prosecution intends to call at trial. *People v Butsinas*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 364778); slip op at 4. The prosecution must exercise due diligence to produce at trial the witnesses endorsed by the prosecution. *Id*. "Due diligence" is "the attempt to do everything reasonable, not everything possible, to obtain the presence of a witness." *Brown*, 351 Mich App at 377 (quotation marks and citation omitted). However, the list of endorsed witnesses "is by no means set in stone nor is it a guarantee that a witness will be produced at trial." *People v Everett*, 318 Mich App 511, 521; 899 NW2d 94 (2017). The prosecution may seek to remove a witness from its witness list by demonstrating good cause or by obtaining the defendant's stipulation. *Id*., citing MCL 767.40a(4).

In addition, the prosecution's failure to exercise due diligence to produce an endorsed witness does not result in automatic reversal. If the prosecution fails to exercise due diligence to produce a witness, the trial court then must determine whether the defendant was prejudiced by the absence of the missing witness. *Butsinas*, ___ Mich App at ___; slip op at 4. The defendant

bears the burden of demonstrating that, based upon the record, he or she is prejudiced by the prosecution's failure to produce the witness. *Id*.

In this case, the prosecution initially listed White as a witness, but before trial moved to remove White from its witness list because the prosecution had been unable to locate White. At the hearing on the motion, the prosecution advised the trial court of its efforts to locate White. Investigator Don McIntyre with the prosecutor's office testified that he attempted to locate White by searching a law enforcement database called CLEAR, and also the Secretary of State's database. He obtained an address for White in Port Huron, which he later learned was McCoy's address. White's vehicle registration indicated the same address. He also obtained three phone numbers associated with White. McIntyre testified that he called the three phone numbers; two had been deactivated and his call to the third phone number went to voicemail, with a recording stating that it was Kayla's phone.

Emily Benedict, a cadet with the Port Huron Police Department, testified that she attempted to serve White with a subpoena on two occasions at the Port Huron address belonging to McCoy and listed in the databases as White's address. On February 2, 2024, when she attempted to serve White, McCoy advised Benedict that she had told White to move out and he no longer lived at that address. A white van was in the driveway and White was one of its registered owners. Five days later, on February 7, 2024, Benedict attempted three times to serve White at that address, but no one answered the door and no vehicles were in the driveway. She did not see the white van in the vicinity.

Rebecca Larson, a cadet with the Port Huron Police Department, testified that she attempted to serve White with a subpoena on February 13, 2024, at the same address, but there was no answer when she knocked. She testified that a white van was in the driveway and that dispatch informed her that White was registered as the owner of the van, but no one appeared to be in the home. Thereafter, a Port Huron police officer made a fourth attempt to serve White with a subpoena at the same address; the officer reported that there were lights on in the house and people were present but no one answered the door.

The trial court determined that the prosecution made reasonable efforts to serve White with a subpoena and therefore had exercised due diligence to produce White for trial. The trial court permitted the prosecution to remove White from its witness list. The trial court denied defendant's request for an adjournment, noting that the case had been pending for some time and that it was unlikely that defense counsel would be successful in producing White for trial.

On appeal, defendant argues that the prosecutor did not exercise due diligence because the efforts made in this case are not similar to the efforts found to constitute due diligence in other cases, such as *People v Bean*, 457 Mich 677; 580 NW2d 390 (1998), *People v Dye*, 431 Mich 58; 427 NW2d 501 (1988), and *People v James (After Remand)*, 192 Mich App 568; 481 NW2d 715 (1992). We observe that what efforts constitute due diligence may vary from case to case depending upon the facts of each case. See *Dye*, 431 Mich at 99 (BOYLE, J., dissenting) ("[W]hat efforts will actually constitute due diligence cannot be set out in a hard and fast list, given the many variables possible in a given case").

Moreover, the removal of a witness from a witness list, as occurred in this case, presents different considerations than a scenario in which the prosecution seeks to admit the prior testimony of an unavailable witness, which implicates the hearsay rule and the defendant's right to confront the witnesses testifying against him or her. *Everett*, 318 Mich App at 525 n 7 (While the cases of *Bean*, *Dye*, and *James* discuss "the prosecution's exercise of due diligence in producing a witness, the discussions took place in the context of the Confrontation Clause and whether the prosecutor could introduce prior testimony of the respective witnesses under MRE 804(b)(1). In other words, while the witness did not appear, the jury was presented with past testimony from the witness and left unable to assess the witness's demeanor first-hand. This did not occur in this case."). Again, in this case the prosecution did not attempt to introduce the prior testimony of an unavailable witness. We conclude that the efforts exerted by the prosecution in this case were sufficiently diligent that the trial court's finding of due diligence was not an abuse of the trial court's discretion.

In addition, defendant in this case did not demonstrate that he was prejudiced by the removal of White from the prosecution's witness list. As discussed, even when the prosecution has not made reasonable efforts to produce an endorsed witness, a defendant is not entitled to a new trial unless the defendant demonstrates that he or she was prejudiced by the absence of the witness. Here, defendant did not demonstrate that White would have provided testimony favorable to defendant. While White likely could testify about some aspects of what occurred on the night in question, it is unlikely that White could testify regarding what occurred in the home outside of the bedroom where he was being beaten. Moreover, defendant himself testified that he entered the home on the night in question and punched White in the face repeatedly. Thus, even if White were to testify consistently with defendant's testimony, there is no indication that White's testimony would exculpate defendant.

Moreover, other witnesses also testified that defendant entered the home on the night in question accompanied by others and punched White repeatedly. McCoy testified that defendant and a group of other individuals entered her home without her consent and that defendant immediately went into the bedroom where White was watching movies with their children. McCoy testified that when she looked inside the bedroom she observed defendant's friend, Johnson, holding a gun pointed toward White and the children. McCoy also stated that White emerged from the bedroom covered in blood. JS testified that he saw defendant punch White repeatedly and that one of the individuals that accompanied defendant into the bedroom was carrying a gun. The jury was shown photographs of defendant's white shirt that he was found wearing in the hours after these offenses, which was blood-spattered. Given the ample evidence that inculpated defendant in these offenses, defendant did not satisfy his burden of demonstrating that he was prejudiced by the prosecution's failure to produce White as a witness. See *Butsinas*, ___ Mich App at ___; slip op at 4.

We similarly reject defendant's contention that the trial court abused its discretion by failing to read the missing witness instruction to the jury. Because the trial court did not abuse its

discretion by finding that the prosecutor exercised due diligence, the missing witness instruction was not warranted.[3] See *Eccles*, 260 Mich App at 391.

We also reject defendant's contention that the trial court abused its discretion by denying his request for an adjournment, which defendant claims undermined his ability to present a defense. Before the trial court's discretion to grant an adjournment can be invoked, a defendant is required to show good cause. *People v Coy*, 258 Mich App 1, 18; 669 NW2d 831 (2003); MCR 2.503(B)(1), (C). When a motion to adjourn is made based on the unavailability of a witness, the trial court may grant the motion only if the court finds that the evidence is material. See MCR 2.503(C)(2). Even when a defendant demonstrates good cause, however, the trial court's decision to deny an adjournment will not be disturbed unless the defendant also demonstrates prejudice. *Coy*, 258 Mich at 18-19. A defendant asserting that he was deprived of the ability to present evidence in his defense must show that the evidence was both material and favorable to the defense. *People v Orlewicz*, 293 Mich App 96, 101; 809 NW2d 194 (2011). Because defendant in this case did not demonstrate that White's testimony would be beneficial to the defense, the trial court did not abuse its discretion by denying defendant's motion to adjourn.

C. SUFFICIENCY OF THE EVIDENCE

Defendant contends that the prosecution did not present sufficient evidence to support his convictions of felon-in-possession and felony-firearm, and contends in his Standard 4[4] brief that the prosecution did not present sufficient evidence to support his conviction of unlawful imprisonment. We disagree.

We review de novo a challenge to the sufficiency of the evidence. *People v Prude*, 513 Mich 377, 384; 15 NW3d 249 (2024). In doing so, we review the evidence in the light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt, and we draw all reasonable inferences and make credibility choices in support of the jury's verdict. *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018). Circumstantial evidence and the reasonable inferences drawn from the evidence can constitute satisfactory proof of the elements of the crime. *Id*. Further, the prosecution "is not obligated to disprove every reasonable theory consistent with innocence to discharge its responsibility; it need only convince the jury in the face of whatever contradictory evidence the defendant may provide." *People v Bailey*, 310 Mich App 703, 713; 873 NW2d 855 (2015) (quotation marks and citation omitted).

1. FELON-IN-POSSESSION

Defendant was convicted of being a felon in possession of a firearm in violation of MCL 750.224f(1). To establish a violation of that provision, the prosecution must establish that the

[3] We observe that defendant did not request the missing witness instruction before the trial court.

[4] A criminal defendant on appeal may file a Standard 4 brief to supplement the arguments made by the defendant's appellate counsel. See Administrative Order No. 2004-6, 471 Mich c, cii (2004).

defendant possessed a firearm when he was ineligible to do so due to a prior felony conviction. *People v Bass*, 317 Mich App 241, 267-268; 893 NW2d 140 (2016). For purposes of MCL 750.224f(1), the element of a possession of a firearm may be satisfied by actual or constructive possession. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). A defendant has constructive possession of a firearm if the defendant has proximity to the gun and indicia of control, or in other words, the defendant knows the location of the weapon and the weapon is reasonably accessible to the defendant. *Id*. at 470-471. In addition, "[w]hether actual or constructive, possession may be joint as well as exclusive," when the evidence supports that two or more defendants acted in concert. *Id*. at 470.

In this case, the evidence supported that defendant had constructive possession of a firearm during the invasion of McCoy's home and the attack on White. Surveillance evidence demonstrated that defendant and Johnson traveled together to the home with the others in three vehicles. McCoy testified that defendant entered her home against her wishes in the late evening hours of September 23, 2023, and was accompanied by several people, including Johnson and Tez, who were friends of defendant. Once in the house, defendant led Johnson and Tez into the bedroom where White was watching television with the children. McCoy testified that when she looked into the bedroom, she saw defendant and also Johnson, who was holding a gun "cocked towards" White and the children. JS testified that defendant entered the bedroom first and pushed White onto the bed, and that the men "started punching [White]" in succession. JS testified that after defendant punched White, one of the men standing nearby took the gun from his waistband and hit White in the head two or three times with the butt of the gun. Defendant stood by and did not look surprised nor ask the man with the gun to stop or to put the gun away.

The evidence established that defendant was aware of the location of the gun and in close proximity to the firearm and therefore the gun was reasonably accessible to defendant. The evidence thus supports that defendant had constructive possession of the gun and possessed the gun jointly with Johnson. See *Hill*, 433 Mich at 470-471.

2. FELONY-FIREARM

Defendant was convicted of felony-firearm under an aiding and abetting theory. The felony-firearm statute, MCL 750.227b(1), prohibits a person from having a firearm in his or her possession while committing or attempting to commit a felony. *People v Moore*, 470 Mich 56, 62; 679 NW2d 41 (2004). The aiding and abetting statute, MCL 767.39, provides:

> Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.

Thus, a defendant is guilty of felony-firearm if the defendant "procures, counsels, aids, or abets" another in carrying or having possession of a firearm during the commission or attempted commission of a felony, which "requires proof that a violation of the felony-firearm statute was committed by the defendant or some other person, that the defendant performed acts or gave encouragement that assisted in the commission of the felony-firearm violation, and that the defendant intended the commission of the felony-firearm violation or had knowledge that the

principal intended its commission at the time that the defendant gave aid and encouragement." *Moore*, 470 Mich at 70-71.

In this case, the evidence established that Johnson was in possession of a gun when he entered McCoy's home without her permission and while he and defendant beat White. Witness testimony established that defendant and Johnson walked into the bedroom together; Johnson stood waiting while defendant first beat White and then defendant observed while Johnson used the gun to beat White, supporting the conclusion that defendant intended the commission of the crime and gave Johnson aid and encouragement. The evidence thus supports a finding that defendant aided and abetted Johnson in carrying or having in his possession a gun while Johnson attempted to commit or committed a felony.

3. UNLAWFUL IMPRISONMENT

In his Standard 4 brief, defendant argues that his conviction of unlawful imprisonment with regard to McCoy is not supported by sufficient evidence, arguing that the evidence does not support a conclusion that he encouraged or ordered the unidentified woman to forcibly restrain McCoy. However, the amended felony information charged defendant with unlawful imprisonment regarding the three children in the bedroom "and/or . . . McCoy . . . ." to facilitate the offense of first-degree home invasion "and/or" assault with a dangerous weapon. In any event, the prosecution presented sufficient evidence to support defendant's conviction of unlawful imprisonment of McCoy under an aiding and abetting theory. MCL 750.349b(1) provides, in pertinent part:

> (1) A person commits the crime of unlawful imprisonment if he or she knowingly restrains another person under any of the following circumstances:
>
> * * *
>
> (c) The person was restrained to facilitate the commission of another felony or to facilitate flight after commission of another felony.

McCoy testified that when defendant first entered her home, he was accompanied by Johnson, Tez, "two white guys," and two women. McCoy also testified that as defendant entered the bedroom, she was "gripped by this other woman," who "bear hugged" her from behind as McCoy attempted to reach the bedroom. Based on the evidence, a reasonable juror could conclude that the unidentified woman unlawfully imprisoned McCoy, and that defendant, by forcing himself into the home together with the unidentified woman, assisted in the commission of the crime and intended its commission. See *People v Carines*, 460 Mich 750, 769;597 NW2d 130 (1999).

Defendant also was charged with unlawful imprisonment under the alternative theory that White and the children were held in the bedroom against their will while defendant and Johnson attacked White. JS testified that defendant led his friends into the bedroom and that defendant's

friends then blocked the door.[5] McCoy testified that when she tried to enter the bedroom she was only able to look through an 18-inch gap in the door. From this evidence, a reasonable juror could conclude that the man blocking the door unlawfully imprisoned White and the three children, and that defendant, who assaulted White while the bedroom door was blocked, performed acts and encouraged the commission of the crime, and also intended the commission of the crime when he aided and encouraged its commission.

D. SUBJECT-MATTER JURISDICTION

In his Standard 4 brief, defendant contends that the trial court lacked subject-matter jurisdiction over the proceedings in this case. We disagree.

"Subject-matter jurisdiction is a legal term of art that concerns a court's authority to hear and determine a case," and depends "on the character or class of the case pending." *People v Washington*, 508 Mich 107, 121; 972 NW2d 767 (2021). In Michigan, courts "derive their subject-matter jurisdiction from our constitutional and statutory provisions." *People v Johnson*, 345 Mich App 51, 58; 3 NW3d 846 (2022). Under Const 1963, art VI, § 13, circuit courts have original jurisdiction " 'in all matters not prohibited by law.' " Further, it is well-settled that the circuit courts have subject-matter jurisdiction over felony proceedings. *Washington*, 508 Mich at 121-122. We review de novo whether the trial court lacked subject-matter jurisdiction. *Johnson*, 345 Mich App at 58.

Defendant argues that he is part of the sovereign state of Michigan and therefore cannot be prosecuted for his official acts. Under the doctrine of sovereign immunity, the state, because it created the courts, is not subject to the jurisdiction of the courts. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 598; 363 NW2d 641 (1984), superseded in part on other grounds by MCL 691.1407. According to defendant's reasoning, he is an "original sovereign" and therefore he is not a person who can be prosecuted under Michigan law. In support of this contention, defendant cites MCL 8.3*l*, which states that "[t]he word 'person' may extend and be applied to bodies politic and corporate, as well as individuals." Defendant also asserts that he cannot be prosecuted because he is a public official in a state office of trust and that his crimes are attributed to the state. However, nothing in the record supports defendant's claim that he has become "an enacting sovereign" and part of the state of Michigan. Rather, defendant is an individual contemplated by MCL 8.3*l*, and like the rest of the populus, is subject to the laws of this state, and his claim to the contrary is unsupported.

We similarly reject defendant's claim that the Michigan Compiled Laws are only a compilation of laws, rather than the law itself. Const 1963, art 4, § 36, provides that "[t]he legislature may provide for a compilation of the laws in force, arranged without alteration, under appropriate heads and titles." Contrary to defendant's argument, *People v Dettenhaler*, 118 Mich

[5] The term "restrain" as used in the unlawful imprisonment statute does not require the use of physical force or violence. *People v Jarrell*, 344 Mich App 464, 479; 1 NW3d 359 (2022), lv app held in abeyance 32 NW3d 62 (2026).

595; 77 NW 450 (1898), does not support his position that the Michigan Compiled Laws do not embody the law of the state of Michigan.

We also reject defendant's assertion that the trial court lacked territorial jurisdiction over the proceedings, and that "Michigan is an idea, nothing more." While the authority of a tribunal is restricted by the territorial limits of the state in which it was created, *People v Gayheart*, 285 Mich App 202, 208; 776 NW2d 330 (2009), the record in this case is replete with evidence establishing that defendant committed several criminal offenses within the territorial boundaries of Michigan on September 23, 2023.

E. INEFFECTIVE ASSISTANCE OF COUNSEL

In his Standard 4 brief, defendant also claims that he was deprived of the effective assistance of counsel at trial. We disagree.

We note initially that this issue is unpreserved because defendant failed to move for a new trial in the trial court or to move in this Court for remand to the trial court for a *Ginther*[6] hearing. See *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020). We note that defendant's request for a remand in his Standard 4 brief on appeal was not supported with an "affidavit or offer of proof regarding the facts to be established at a hearing" as required by MCR 7.211(C)(1)(a). Our review of this issue therefore is limited to errors apparent on the record. *Abcumby-Blair*, 335 Mich App at 227.

To establish a claim of ineffective assistance of counsel, a defendant must establish that (1) trial counsel's performance fell below an objective standard of reasonableness, and (2) the defendant incurred prejudice. For purposes of the ineffective assistance of counsel analysis, a defendant suffers prejudice when there is a reasonable probability that, but for trial counsel's errors, the result of the lower court proceedings would have been different. *People v Randolph*, 502 Mich 1, 9; 917 NW2d 249 (2018). A reasonable probability is one that is sufficient to undermine confidence in the outcome of the lower court proceedings. *Id*. In determining whether trial counsel's performance was reasonable, we make an objective inquiry regarding whether, considering the particular circumstances, the alleged acts or omissions fell outside the range of professionally competent assistance. *People v Vaughn*, 491 Mich 642, 670; 821 NW2d 288 (2012). There is a strong presumption that trial counsel's performance was effective, and the defendant bears the onus of overcoming this presumption. *People v Haynes*, 338 Mich App 392, 429; 980 NW2d 66 (2021).

Defendant contends that trial counsel was ineffective because he did not perform an adequate cross-examination of McCoy at trial, failed to introduce into evidence the recording of McCoy's 911 call to police, and also failed to introduce the Presentence Investigation Report (PSIR). Defendant argues that effective cross-examination and admission of the 911 recording would have demonstrated that, during a police interview, McCoy appeared surprised when told that an individual who entered her home on the night in question possessed a gun. Defendant

[6] *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973).

argues that admission of the PSIR would have revealed that McCoy stated that defendant was the person holding the gun.

Our review of the record reveals that during direct and cross-examination, McCoy repeatedly and clearly testified that she saw Johnson with a gun in his hand and the gun was pointed toward White and the three children in the bedroom. During cross-examination, trial counsel asked McCoy if she had seen where the gun had come from before it was in Johnson's hand, and she responded, "No, it was out already." Trial counsel also questioned McCoy during cross-examination regarding which individual in the bedroom she saw holding a gun. We find no support for defendant's theory that defense counsel failed adequately to cross-examine McCoy.

Regarding the recording of the 911 call, our review of the record reveals that the recording was admitted into evidence as a prosecution exhibit and was played for the jury. Regarding the PSIR, that document would not have been prepared before defendant was convicted, and therefore it was not possible for trial counsel to seek its admission into evidence at trial. Accordingly, the existing record does not support that trial counsel's performance fell below an objective standard of reasonableness.

We similarly reject defendant's assertion that trial counsel conceded defendant's guilt to first-degree home invasion during closing arguments. Instead, the record reflects that trial counsel was simply illustrating to the jury its options depending on its determination regarding the credibility of the evidence. Again, defendant has not demonstrated that trial counsel's performance fell below an objective standard of reasonableness.[7]

Defendant also asserts in his Standard 4 brief that the court reporter "modified" the transcript to omit reference to trial counsel's concession of defendant's guilt. To overcome the presumption that the transcript of a trial is accurate, a petition must

> (1) seasonably seek relief; (2) assert with specificity the alleged inaccuracy; (3) provide some independent corroboration of the asserted inaccuracy; (4) describe how the claimed inaccuracy in transcription has adversely affected the ability to secure postconviction relief pursuant to subchapters 7.200 and 7.300 of our court rules. [*People v Abdella*, 200 Mich App 474, 475; 505 NW2d 18 (1993).]

[7] Defendant also suggests that trial counsel's performance was deficient because trial counsel mistakenly believed that defendant was subject to a 25-year mandatory minimum sentence for a conviction of first-degree home invasion. However, the record reflects that defendant was well able to present his theory of the defense to the jury, namely, that he was lawfully in the home of McCoy and White, that he was unaccompanied, that he was not carrying a gun or controlled substances, and that he only punched White because he had observed cocaine in the bedroom of White and McCoy the previous evening.

Here, the record does not support defendant's allegation that trial counsel conceded defendant's guilt to the crime of home invasion, and defendant has not offered this Court any proof corroborating his allegation that the transcript of the jury trial was altered.

Affirmed.

/s/ Michael F. Gadola
/s/ Mark T. Boonstra
/s/ Thomas C. Cameron