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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 20, 2026 11:07 AM
v	No. 364203 Kent Circuit Court
KENNETH LAWRENCE THOMAS, Defendant-Appellant.	LC No. 22-001437-FC

Before: BOONSTRA, P.J., and YOUNG and KOROBKIN, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(f) (personal injury). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

At the age of 15, LF ran away from home one night in March 2021 and encountered defendant at a bus stop. According to LF, defendant told her that she needed to go with him because he had a gun. They went to a party store, where defendant purchased alcohol, and LF purchased marijuana and vape pens with her mother's credit card. Surveillance cameras from the party store recorded defendant and LF; the footage did not reflect any obvious injuries to LF at the time. Defendant then took LF to his tent in a nearby park. Defendant made LF swallow what she described as a bag containing white powder, which caused her to feel "loopy." Defendant undressed LF, held her down, and engaged in digital penetration. Later that night, defendant undressed LF again and engaged in penile penetration. Defendant "gripped" her, put his hands around her neck and "choked [her] out" during the assault.

The next morning, defendant and LF went to a highway underpass, where defendant got into an argument with his girlfriend. Defendant told LF to get a gun out of his backpack. LF saw the gun in the backpack but refused to take it out. Afterward, defendant and LF took a bus to the mall. They ate at IHOP and then purchased clothing at Macy's with the LF's mother's credit card. LF's family had been searching for her and traced the credit-card transactions to the mall, so LF's grandfather and father went to the mall. LF started to run away when she saw her grandfather, but LF's father saw her outside the mall and restrained her until the police arrived. Defendant left the

scene. LF disclosed the sexual assaults to law enforcement, and an ambulance transported her to the hospital, where she underwent a sexual-assault nurse examination (SANE). Photographs showed that LF had bruises on her arms and neck. Although the police did not test LF's underwear to confirm the presence of seminal fluid, testing demonstrated that defendant's DNA was present on the swabs that the nurse took of her vulva.

In contrast to LF's version of events, defendant testified that he had helped LF find her credit card at the bus stop. LF insisted on rewarding defendant, so they went to the party store, where defendant bought alcohol for himself and LF bought marijuana for defendant and vapes for herself. Next, they went to the tent because LF was cold, and defendant was worried about LF becoming a victim of human trafficking. Defendant denied having a gun or threatening LF with a gun. He also denied having sex with LF or giving her any drugs, and he explained that his DNA was present throughout the tent. Defendant claimed that he saw bruises on LF's body when she was changing her clothes and that she told him that she had gotten into a fight with her boyfriend.

The prosecution charged defendant with two counts of CSC-I. During a status conference before the trial court scheduled a trial date, defense counsel sought to withdraw as counsel.[1] Defense counsel told the trial court that it "may be in [defendant's] interest to appoint new counsel" and said "I believe that we've reached an impasse." Defense counsel stated that this was a request on behalf of both himself and defendant. When the trial court asked for a brief explanation, defense counsel stated that he and defendant disagreed about the evidence and how to proceed in the case. The trial court told defendant that defense counsel was "a very good attorney" and that defense attorneys had difficult jobs. Further, defendant might not like what his attorney was telling him, but his attorney was "using his experience and his legal training to try and guide" defendant. The trial court stated that it would not replace defense counsel "at this point in time." Defendant asked if the trial court could appoint another attorney who was representing defendant in another matter to represent him in this case, and the trial court denied the request and told defendant that he could retain someone if he wanted to. Defendant then stated that he had not received his discovery packet, and the trial court told defendant that defense counsel would turn over that information whenever he received it. As the trial court spoke, defendant attempted to bring to the trial court's attention the deadline for receiving his discovery packet, but the trial court told defendant to listen to the court. Defendant then asked about having a speedy trial, and the trial court told him that it would set the trial and ended the hearing. The prosecution later filed an amended information, adding two counts of third-degree CSC, MCL 750.520d(1)(a) (victim between 13 and 15 years old).

Before jury selection on the first day of trial, the prosecution moved to exclude evidence of LF's prior sexual history, including that she had made a previous sexual-assault allegation against another person, on the basis that defense counsel had not provided the required notice under the rape-shield statute, MCL 750.520j. Defense counsel responded: "Your Honor, the defense

[1] Defense counsel later testified that a few hours before the hearing, he had emailed to the trial court's staff a one-sentence written motion seeking to withdraw "due to an extreme breakdown in communication." But the motion does not appear in the trial court's file, and there was no indication at the status conference that the trial court had reviewed it.

doesn't intend to ask any questions related to any specific incident of sexual conduct. We only seek to impeach that she had lied about similar charges in the past." Defense counsel stated that LF's parents had reported that the previous allegation was false. The trial court stated that the parents were not the fact-finders and excluded the evidence.

As part of its opening jury instructions, the trial court handed out and explained a document that contained the elements of the charged offenses and certain instructions, including instructions on the presumption of innocence, burden of proof, reasonable doubt, and circumstantial evidence. On the third day of trial, defendant refused to change out of his jail clothes even after the trial court informed him of his right to wear civilian clothing so that the jury would not realize that he was incarcerated. After the prosecution had rested and the jury was in recess, defense counsel moved for a directed verdict, but the trial court denied the motion. Defense counsel also asked the trial court to confirm for defendant's benefit that police reports were not admissible evidence because defendant did not believe defense counsel's statement on that matter. The trial court confirmed that police reports were inadmissible and encouraged defendant to listen to his attorney.

After defendant's testimony but before closing arguments, the trial court referred to the instruction handout from the day before and confirmed that the four crimes stated in that handout were the crimes on which the jury would decide. It also passed out and explained the verdict form, which listed a guilty option followed by a not-guilty option for each count. After closing arguments, the trial court gave its final instructions and again referred to the handout and the verdict form. The trial court told the jury that it should inform the trial court if it determined that it needed any of the oral instructions in written form. After the jury exited, the attorneys confirmed that they did not have objections to the instructions.

The jury found defendant guilty of two counts of CSC-I and two counts of CSC-III, and the trial court sentenced him. But the court later vacated the CSC-III convictions when the parties stipulated that those counts were intended to be charged as an alternative to the CSC-I offenses, not in addition to them. The court resentenced defendant to 450 months to 70 years' imprisonment for each count of CSC-I.

Defendant appealed his CSC-I convictions[2] and moved for a remand to the trial court, arguing that defendant received ineffective assistance of counsel and that the trial court erred by

[2] Defendant initially filed an appellate brief that raised, among other arguments, the issue whether his sentence was proportionate. Defendant's appellate counsel was later substituted for another attorney, and defendant moved to withdraw the previous counsel's brief and replace it with a new brief. This Court granted the motion. *People v Thomas*, unpublished order of the Court of Appeals, entered December 19, 2023 (Docket No. 364203). Defendant filed a replacement brief that does not challenge defendant's sentence. Because the issue of proportionate sentencing is no longer before this Court, we do not address it.

Defendant also appealed the judgment of sentence in a separate docket, but he later withdrew the appeal. *People v Thomas*, unpublished order of the Court of Appeals, entered March 6, 2026 (Docket No. 379308). Defendant's sentence is not at issue in this appeal.

denying defense counsel's motion to withdraw. This Court granted the motion.[3] Accordingly, in the lower court, defendant moved for a new trial and evidentiary hearing on the basis of ineffective assistance of counsel and the trial court's failure to grant defense counsel's motion to withdraw.

During the evidentiary hearing, defense counsel explained that he could not effectively communicate with defendant and that defendant did not trust him. For example, defense counsel testified that he and defendant disagreed about trial strategy and the evidence and that defendant "would often yell" at him. This impacted his representation of defendant, although defense counsel was still able to present a defense. Defense counsel testified that his failure to object to the trial court's manner of instructing the jury was an oversight. He also acknowledged that he did not make a strong record when arguing that the trial court should permit evidence about LF's previous sexual-assault allegations, although the parties had engaged in more discussion about the issue in chambers. Defense counsel also did not believe that "prior false allegations" fell under the rape-shield statute.

The trial court denied defendant's motion for a new trial, and this appeal followed.

II. MOTION TO WITHDRAW

Defendant first argues that the trial court erred by denying defense counsel's motion to withdraw. We disagree.

A. STANDARD OF REVIEW

We review for an abuse of discretion a trial court's decision regarding substitution of counsel. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). A trial court abuses its discretion when it makes a decision that falls outside the range of reasonable and principled outcomes. *People v Rogers*, 338 Mich App 312, 320; 979 NW2d 747 (2021). "When a trial court makes an error of law, it necessarily abuses its discretion." *Id*.

B. ANALYSIS

The Sixth Amendment guarantees that the accused in a criminal prosecution has the right to counsel. US Const, Am VI. An indigent defendant is not entitled to the appointed attorney of his or her choosing, but the defendant may "become entitled to have his assigned lawyer replaced upon a showing of adequate cause." *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973). "Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process." *Mack*, 190 Mich App at 14.

"The circumstances that would justify good cause rest on the individual facts in each case." *People v Buie*, 298 Mich App 50, 67; 825 NW2d 361 (2012). "A complete breakdown of the attorney-client relationship or disagreement over whether a particular line of defense should be

[3] *People v Thomas*, unpublished order of the Court of Appeals, entered June 26, 2024 (Docket No. 364203) (granting the motion); *People v Thomas*, unpublished order of the Court of Appeals, entered July 22, 2024 (Docket No. 364203) (clarifying the scope of the evidentiary hearing).

pursued may justify appointing new counsel." *People v O'Brien*, 89 Mich App 704, 708; 282 NW2d 190 (1979). However, "decisions about defense strategy, including what evidence to present and what arguments to make, are matters of trial strategy, and disagreements with regard to trial strategy or professional judgment do not warrant appointment of substitute counsel." *People v Strickland*, 293 Mich App 393, 398; 810 NW2d 660 (2011) (footnotes omittted).

In this case, the trial court did not err by denying defense counsel's motion to withdraw. At the hearing, defendant did not allege that defense counsel was incompetent or ineffective. See *Buie*, 298 Mich App at 68. Defense counsel noted only that they had "reached an impasse" and that they had a disagreement relating to the evidence "and how to proceed." These statements "lacked specificity," *Strickland*, 293 Mich App at 398, vaguely alluded to disagreements about strategy (which do not amount to good cause), see *id*., and did not place the trial court on notice that defense counsel was unable or unwilling to provide defendant with representation at a level of effectiveness and competence required by the Sixth Amendment. Therefore, neither defense counsel nor defendant established good cause for substitution of counsel. See *People v Morgan*, 144 Mich App 399, 402; 375 NW2d 757 (1985) (holding no abuse of discretion in denying counsel's motion to withdraw where there was "no showing of a breakdown in the attorney-client relationship").

Defendant relies, in part, on *People v Wilson*, 43 Mich App 459, 462-463; 204 NW2d 269 (1972), in which this Court held that the trial court abused its discretion by denying a defendant's request for a new attorney. The defendant in that case had raised specific allegations of instances in which his attorney's performance was deficient, and he requested appointment of new counsel. *Id*. at 461. The defendant had also informed the trial court that communications between himself and his counsel "had ceased." *Id.* The trial court, rather than address the merits of the defendant's complaints, merely asserted that the defendant "had been appointed competent counsel and . . . had no right to an attorney of his choice." *Id.* This Court, on appeal, described the allegations as "serious" and explained that the trial court's "conclusion that [the] appointed counsel was competent was unresponsive to [the] defendant's allegation regarding the inadequacy of [the] counsel's performance and the destruction of communication and confidence between the parties." *Id*. at 461-462. This Court also noted that although an indigent defendant had no right to appointed counsel of his choice, "defendant's request was merely to obtain a substitution, not a substitution of a particular attorney acceptable to him." *Id*. at 462.

Defendant argues that this case is similar to *Wilson* in that the trial court failed to investigate and respond to the reasons for the motion to withdraw. But the record shows that the trial court asked whether defense counsel or defendant was making the request, asked for the reasons behind the request, and allowed defendant to briefly speak when he asked to say something on the matter.[4]

[4] The trial court determined that it would not appoint new counsel before defendant asked to speak on the matter. Although the court is required to offer the opportunity to demonstrate good cause for withdrawal and consider the allegations raised in connection with the motion to withdraw, see *Buie*, 298 Mich App at 67, there is no binding caselaw to suggest that the trial court must independently inquire of the defendant himself regarding the justification for withdrawal when, as in this case, the defense counsel and the defendant agreed on the reasons for the withdrawal and

In other words, both defense counsel and defendant had an opportunity to be heard on the motion. Defense counsel referred vaguely to an "impasse" and a "disagreement," and defendant requested appointment of a particular attorney who had been representing him in another matter. Notably, unlike in *Wilson*, neither defense counsel nor defendant stated that "communications between [them] had ceased." *Id*. at 461. Therefore, under the facts of this case,[5] the trial court's responses to their statements—assuring defendant of his counsel's competence , and informing defendant that he would not be appointed the attorney of his choice but that he had the option to retain someone—did not fall outside the range of reasonable and principled outcomes.

Because defense counsel and defendant failed to show a good cause for the substitution of counsel, the trial court did not abuse its discretion when it denied the motion to withdraw after it adequately inquired about and responded to the reasons for the motion. See *Mack*, 190 Mich App at 14. And because the trial court did not abuse its discretion by denying the motion, it also did not abuse its discretion by refusing to grant defendant a new trial on that basis.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant also argues that he was denied the effective assistance of counsel for various reasons. We disagree.

A. STANDARD OF REVIEW

"Whether a defendant has been denied the effective assistance of counsel is a mixed question of fact and constitutional law." *People v Solloway*, 316 Mich App 174, 187; 891 NW2d 255 (2016). "[T]his Court reviews for clear error a trial court's findings of fact and reviews de novo questions of constitutional law." *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012).

Defendant's right to counsel is guaranteed by the United States and Michigan Constitutions. See US Const, Am VI; Const 1963, art 1, § 20. This right includes the right to the effective assistance of counsel. *People v Cline*, 276 Mich App 634, 637; 741 NW2d 563 (2007). To establish a claim of ineffective assistance of counsel, a defendant must show that: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defense. *People v Taylor*, 275 Mich App 177, 186; 737 NW2d 790 (2007). Defense counsel's performance is deficient if it fell below an objective standard of professional reasonableness. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). This Court does not substitute its judgment on matters of trial strategy or assess counsel's competence with the benefit of hindsight. *People v*

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the defendant never alleged that the defense counsel could not adequately represent him for the purpose of arguing the motion to withdraw.

[5] At the *Ginther* hearing, defense counsel testified that communication between himself and defendant had, in fact, broken down significantly. But the question before us is whether the trial court abused its discretion *at the time of the hearing* by not allowing counsel to withdraw. The trial court inquired as to the reasons for the request and did not respond unreasonably to the statements that were made.

Unger, 278 Mich App 210, 242-243; 749 NW2d 272 (2008). Prejudice exists if there is "a reasonably probability that, but for counsel's error, the result of the proceeding would have been different." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). A defendant bears a heavy burden to show that counsel made errors so serious that counsel was not performing as guaranteed by the Sixth Amendment, and a defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Id*. at 599-600. A defendant must establish the factual predicate for his or her claims of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

B. JURY INSTRUCTIONS

Defendant first argues that defense counsel was ineffective for failing to object to the trial court's failure to read the full instructions to the jury before deliberations and failing to provide a complete set of written instructions to the jury.

MCR 2.513(N)(1) provides that "[a]fter closing arguments are made or waived, the court must orally instruct the jury as required and appropriate, but at the discretion of the court, and on notice to the parties, the court may orally instruct the jury before the parties make closing arguments." See also *People v Traver*, 502 Mich 23, 43; 917 NW2d 260 (2018) ("Michigan court rules *require* that jury instructions be provided orally."). MCR 2.513(N)(3) also requires the trial court to "provide a written copy of the final jury instructions to take into the jury room for deliberation."

Just before closing arguments, the trial court referred to (but did not read aloud) the handout that it had provided the day before, which included several instructions and the elements of the charges. After closing arguments, the trial court orally recited its final instructions and again referred to the elements stated in the handout and instructed the jury to find defendant not guilty of a crime if it found "that one of those elements is not proven," but it did not read the elements aloud. It also told the jury, "If you feel you need any of my oral instructions in written form, please have your foreperson write a note and we'll try and get that to you." This implies that the only written instructions that the jury received was the handout listing the elements of the crimes and other select instructions, not the full instructions given after closing arguments. This approach to jury instructions violated both MCR 2.513(N)(1) and (3).

Defense counsel stated that he had no objection to the instructions. During the *Ginther* hearing, defense counsel testified that he "didn't catch" the error, which was an "oversight" that he attributed in part to the breakdown of the attorney-client relationship. But even if the strained relationship with defendant was "distracting" as defense counsel described, he still had plenty of time to realize the error and object. The trial court stated that it "had a chance over the course of the beginning of this trial, during the trial, and just before closing arguments to talk to the attorneys about instructions," and it had distributed the handout the day before final instructions. Defense counsel had two days to identify and raise any issues with those instructions, yet he failed to do so. There was no sound trial strategy for defense counsel's failure to object to the instructional issues, and his performance fell below an objective standard of reasonableness in that regard.

But reversal is not required because defendant has not shown that but for the error, the result of the proceeding would have been different. See *Jordan*, 275 Mich App at 667. Although

the jury received the final instructions in an improper mix of oral and written forms, the trial court made clear that it was to consider and follow all its instructions, and neither party alleges that the jury was confused, that any of its members were unable to understand instructions given exclusively in written or oral form,[6] or that any instructions were missing entirely. See *Traver*, 502 Mich at 40 n 7 ("[T]he jury here received instructions in some form or another on the elements of *all* of the offenses—it is only the *manner* in which the instructions were presented that renders them imperfect."). See also *People v Zitka*, 335 Mich App 324, 348; 966 NW2d 786 (2020) ("Jurors are presumed to follow their instructions.") (quotation marks and citation omitted). And even if the jury had been properly instructed, the testimonial, audiovisual, and DNA evidence in this case was so overwhelming that the outcome likely would have been the same. Because defendant has failed to demonstrate that defense counsel's deficient performance prejudiced his defense, he has not shown that defense counsel was ineffective on the basis of his failure to object to the form of jury instructions.

C. VERDICT FORM

Defendant next argues that defense counsel was ineffective for failing to object to the verdict form, which listed the "Guilty" option before the "Not Guilty" option for each count.

The verdict form is treated as part of the jury instructions. See *People v Eisen*, 296 Mich App 326, 330; 820 NW2d 229 (2012). This Court considers jury instructions in their entirety to determine whether reversal is required. *Id*. "[A] criminal defendant is deprived of his constitutional right to a jury trial when the jury is not given the opportunity to return a general verdict of not guilty." *People v Wade*, 283 Mich App 462, 467; 771 NW2d 447 (2009). In *Wade*, this Court vacated a defendant's conviction when the verdict form presented checkboxes labeled "Not Guilty" and "Guilty" for first-degree murder but only "Guilty" checkboxes for the lesser offenses of second-degree murder and involuntary manslaughter. *Id*. at 468. This Court noted that the form would not have been defective if the jury had had the option to find defendant not guilty of the lesser offenses. *Id*. In this case, however, each count included an option of "Guilty" and "Not Guilty," so a general verdict of not guilty was still possible. Accordingly, the verdict form fairly presented the issues for the jury's consideration. See *People v Kowalski*, 489 Mich 488, 501-502; 803 NW2d 200 (2011) (explaining that even "an imperfect instruction is not grounds for setting aside a conviction if the instruction fairly presented the issues to be tried and adequately protected the defendant's rights").

There is no statutory or common-law requirement that the verdict form list "Not Guilty" first. Defendant notes that M Crim JI 3.24 through 3.33 are standard verdict forms that all list "Not Guilty" before "Guilty" under the "Possible Verdicts." But a "model jury instruction does not have the force and effect of a court rule." MCR 2.512(D)(1). Defendant argues that the order of the options violated his right to the presumption of innocence, but any improper inferences that

[6] We note that the trial court did read the instructions in the handout aloud when it distributed the document to the jury during its initial instructions. Therefore, the handout instructions were given in both oral and written form at different points in the proceeding, and the other oral instructions were made available in written form upon request.

could be drawn from the verdict form was cured by the jury's instruction on the presumption of innocence, which was included in the written handouts that the jury brought into deliberation. See *Zitka*, 335 Mich App at 348 ("[J]ury instructions are presumed to cure most errors.") (quotation marks and citation omitted). The verdict form adequately presented the jury's options of conviction or acquittal on each count, and it did not deprive defendant of the presumption of innocence. Therefore, defense counsel was not ineffective for objecting to the verdict form, and the trial court did not abuse its discretion by refusing to grant a new trial on that basis. *See People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010) ("Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel.").

D. PRIOR ALLEGATION

According to defendant, defense counsel was ineffective for failing to properly litigate the admissibility of LF's allegedly false prior allegation of sexual assault.

The rape-shield statute, MCL 750.520j, prohibits the admission of evidence of a victim's sexual conduct, except that evidence about the victim's past sexual conduct with the defendant or evidence about the source of semen, pregnancy, or disease may be admissible if it is material and its prejudicial nature does not outweigh its probative value. See also MRE 404(a)(2)(C). To offer evidence that falls into one of those two exceptions, the defendant must file a written motion and offer of proof within 10 days after his arraignment, after which the trial court may order an *in camera* meeting to determine whether the evidence is admissible. MCL 750.520j(2). Defense counsel testified during the *Ginther* hearing that he did not follow the rape-shield statute's notice requirements because he believed that the statute did not apply to the allegedly false prior allegation of sexual assault. We agree that the rape-shield statute does not apply because evidence "of a prior false allegation of sexual abuse does not constitute evidence of the victim's 'sexual conduct.' " *People v Jackson*, 475 Mich 909, 910; 717 NW2d 871 (2006). Defense counsel was therefore not ineffective for failing to follow the procedures for admitting evidence under MCL 750.520j.

Evidence of a previous false allegation may be admissible for other purposes, such as to show an ulterior motive for making a false charge. *People v Hackett*, 421 Mich 338, 348; 365 NW2d 120 (1984). See also MRE 404(b)(2) (allowing evidence of other crimes, wrongs, or acts to prove motive). Our Supreme Court has dictated the procedure for admitting such evidence:

> [B]efore admitting evidence of a prior false allegation, the circuit court must first determine whether defense counsel has a good-faith basis to present evidence regarding the alleged prior false accusation. If the court determines that defense counsel has a good-faith basis, it must then determine whether the evidence of the alleged prior false accusation is being used for credibility purposes or for a proper purpose under MRE 404(b). Evidence that is admitted for credibility must be admitted in a manner that is consistent with MRE 608(b), which permits this type of specific conduct to be 'inquired into on cross-examination of the witness' but does not permit the specific conduct to be 'proved by extrinsic evidence.' Evidence that is admitted for a proper purpose under MRE 404(b) can be proved by relevant extrinsic evidence. [*Jackson*, 475 Mich at 910.]

In this case, defendant informed defense counsel that LF had previously made a false allegation of sexual assault against another person. Defense counsel then found information in a police report that LF's parents had indicated to a police officer that LF had previously made a false allegation. Defense counsel engaged his office's investigator to look into the incident and submit requests for any related documentation under the Freedom of Information Act, MCL 15.231 *et seq*., but that investigation did not yield any additional information. The police report gave defense counsel a good-faith basis to present evidence regarding the alleged prior false accusation, and he informed the trial court that he intended to use that evidence only for impeachment purposes and that he did not intend to ask any questions about a specific incident of sexual conduct that might otherwise trigger the rape-shield statute. Defense counsel's argument was unsuccessful not because defense counsel's performance was deficient, but because the trial court excluded the evidence—prohibiting defense counsel from referring to the allegation even under cross-examination—without considering whether it could have been admitted consistently with MRE 608(b) and other applicable rules of evidence such as MRE 403 (exclusion of evidence if probative value is substantially outweighed by danger of unfair prejudice).

But we do not need to determine whether the trial court should have allowed defense counsel to impeach LF with the prior allegation because even if the evidence was erroneously excluded, the error was harmless. First, the information that defense counsel had about the prior allegation would not have been very effective at impeaching LF's credibility because the only evidence that the allegation was actually false was a statement that LF's parents made to the police. Even if defense counsel somehow managed to avoid the obvious hearsay issues, LF could have denied knowledge of the statement or explained that her parents were lying or mistaken, all without compromising her own credibility. And even if the jury believed that she had made a false allegation in the past, there was overwhelming testimonial and physical evidence to corroborate LF's testimony in this trial, including evidence of defendant's DNA in her genital area. The outcome of the proceedings would be no different had the trial court allowed defense counsel to inquire about the previous allegation, so defense counsel was not ineffective, and any potential error in excluding the evidence was harmless.

E. MOOT ISSUES

Defendant also argues that defense counsel was ineffective for failing to object to the prosecution's decision to amend the felony information to add two counts of CSC-III without seeking leave from the trial court. This issue is moot because the trial court has already vacated defendant's two CSC-III convictions on other grounds. See *People v Richmond*, 486 Mich 29, 35; 782 NW2d 187 (2010), amended 784 NW2d 204 (Mich, 2010). This Court will not decide moot issues, and this case does not fall into the narrow realm of exceptions for issues of public significance that are likely to recur yet evade judicial review. See *id*. at 34.

Similarly, defendant's argument that defense counsel was ineffective for failing to adequately explain the basis for his motion for a directed verdict is also moot. Defendant concedes that LF alleged two sexual penetrations that would support convictions for either CSC-I or CSC-III if believed by the jury. He argues only that the CSC-I and CSC-III counts were meant to be charged in the alternative and that there was insufficient evidence to support the CSC-III convictions separately from the CSC-I convictions, and that defense counsel was ineffective for failing to explain that issue to the trial court. Because defendant's CSC-III convictions were

vacated and defendant does not allege error in defense counsel's motion for a directed verdict with respect to the CSC-I convictions, there is nothing left for this Court to review on the issue. See *id*. at 34-35.

F. STANDARD 4 BRIEF[7]

In his Standard 4 brief, defendant first argues that defense counsel was ineffective for failing to investigate the cause of the victim's bruises, suggesting that they could have come from physical abuse within LF's family instead of defendant. In particular, he argues that defense counsel should have obtained an expert to examine the age and cause of the bruises. But even if defense counsel's failure to more fully investigate the history of the victim's bruises fell below an objective standard of reasonableness, there is no reasonable probability that the failure affected the outcome of the proceedings. See *Carbin*, 463 Mich at 600. The surveillance footage from the party store showed that LF did not have bruises at that time, but the bruises were present when she underwent the SANE examination on the day that she was found with defendant. This physical evidence was consistent with LF's testimony that the sexual assault occurred after leaving the party store. Further investigation into the bruises likely would not have affected the outcome of defendant's trial, especially when considering the DNA evidence.

Next, defendant argues that defense counsel was ineffective for failing to challenge the manner in which law enforcement obtained LF's medical records relating to the sexual assault, which he alleges was an unconstitutional search and seizure. "The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Rodriguez*, 327 Mich App 573, 583; 935 NW2d 51 (2019) (quotation marks and citation omitted). See US Const, Am IV; Const 1963, art 1, § 11. "However, this right is personal and may not be invoked by third parties. For an individual to assert standing to challenge a search, the individual must have had a legitimate expectation of privacy in the place or location searched, which society recognizes as reasonable." *People v Brown*, 279 Mich App 116, 130; 755 NW2d 664 (2008) (citation omitted). Defendant has not demonstrated that he had an expectation of privacy in LF's medical records. He therefore had no standing to challenge the constitutionality of the search or seizure of those records. See *id*. Defense counsel was not ineffective for failing to raise an argument that defendant had no standing to make. See *Ericksen*, 288 Mich App at 201.

Finally, defendant argues that defense counsel was ineffective for failing to investigate the possibility of entering a plea of not guilty by reason of insanity or otherwise pursuing an insanity defense. MCL 768.21a(1) provides as follows:

> It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense. An individual is legally insane if, as a result of mental illness . . . , that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness

[7] See Administrative Order No. 2004-6, 471 Mich ci, cii (2004).

of his or her conduct or to conform his or her conduct to the requirements of the law.

A defendant must establish the factual predicate for his or her claims of ineffective assistance of counsel. *Hoag*, 460 Mich at 6. Defendant points to nothing in the record that would demonstrate that he was legally insane at the time of the offense. Defendant claims that he "had no recollection of the alleged crime," that he suffered from several disorders, including bipolar disorder, psychosis, PTSD, anxiety, suicidal ideation, and substance-abuse disorders, and that he had a prescription for an antipsychotic medication. Defendant has not presented evidence of these illnesses or any history of him experiencing psychosis. His presentence investigation report stated that he had been diagnosed with anxiety, depression, and bipolar disorder, was prescribed medications for treatment, and had been hospitalized in 2018 for mental-health concerns. But there was no evidence indicating how those mental illnesses affected defendant's behavior or his understanding of his actions. Without that evidence, defendant's diagnoses alone are insufficient to establish an insanity defense. See MCL 768.21a(1).

Moreover, defendant testified that he did not have sex with the victim, not that he could not remember the offense. Defendant only claimed at trial that he had forgotten some minor details because he was intoxicated at the time. Although defendant testified that he had a mental illness, he credited his lack of memory to being "pretty toasted" from smoking and drinking. Voluntary intoxication alone is not a basis for an insanity defense. MCL 768.21a(2). Because defendant has failed to demonstrate that an insanity defense could have been viable, he has likewise failed to demonstrate that defense counsel was ineffective for failing to raise the defense.

IV. CONCLUSION

Defendant failed to demonstrate a good cause for the substitution of counsel, so the trial court did not abuse its discretion when it denied defense counsel's motion to withdraw from representation. Defendant has also failed to demonstrate that his defense counsel was ineffective in any manner. Given that his arguments were without merit even after exploring the matters in a *Ginther* hearing, the trial court did not abuse its discretion by refusing to grant defendant's motion for a new trial.

Affirmed.

/s/ Mark T. Boonstra
/s/ Adrienne N. Young
/s/ Daniel S. Korobkin