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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 17, 2026 11:27 AM
v	No. 371815 Wayne Circuit Court
DELANO JERMAINE REEDER, Defendant-Appellant.	LC No. 21-003611-01-FH

Before: LETICA, P.J., and O'BRIEN and REDFORD, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b, felon in possession of a firearm (felon-in-possession), MCL 750.224f, and carrying a concealed weapon (CCW), MCL 750.227. Defendant was sentenced to two years' imprisonment for the felony-firearm conviction and four years' probation for each of the other two convictions. We remand for entry of an amended order of probation reducing defendant's probation term to three years, and we affirm in all other respects.

I. BACKGROUND

This case arises out of defendant's possession of a firearm on a side street in Detroit at around 12:12 a.m. on September 20, 2020. While on patrol in a police vehicle, three officers, including Detroit Police Officer Tylerscott Alleyne[1] and Detroit Police Officer Sequoia Turner, turned onto Carrie Street from East Outer Drive. Officer Alleyne saw people and vehicles on Carrie. Defendant was walking from a vehicle toward the officers' vehicle. Officer Alleyne saw an extended black magazine or clip in defendant's right waistband, while the rest of the firearm, including the barrel, was concealed by defendant's clothes. According to Officer Alleyne, defendant changed directions, moved toward a sidewalk and grassy area off the street, and "took flight," going from walking to "more . . . of a run." As defendant "took flight," the officers got

[1] We will refer to this witness as Officer Alleyne because he was a police officer at the time relevant to this case, although he was no longer a police officer at the time of trial.

out of their vehicle. Officer Alleyne described defendant's flight as unprovoked, noting that defendant took flight as Officer Alleyne "was getting ready to exit the vehicle . . . ." Officer Alleyne saw defendant remove the firearm from his waistband and discard it by tossing it into the darkness. Officer Alleyne then heard a "clunking noise." Officer Turner detained defendant, and Officer Alleyne recovered the firearm from the ground. Defendant did not have a concealed pistol license (CPL).

Officer Turner's testimony was mostly similar to that of Officer Alleyne. Officer Turner saw defendant grab a black object from his waistband. Officer Turner then heard a loud clunking noise. He saw that the discarded object was a firearm after it landed on a concrete sidewalk near a grassy area. Officer Turner did not see defendant run but stated that defendant walked away from Officer Alleyne after being ordered to stop.

Dash cam and body camera video footage of the incident was admitted into evidence. Due to the darkness, angles, distance, and speed with which the officers' interaction with defendant took place, some of the disputed aspects of the interaction are not shown or are impossible to make out.

Defendant testified that he was using his car to give a "boost" to another car's battery. Defendant claimed that he did not possess a firearm or hear any police commands to stop. He did not remember why he was reaching into his pocket, but he suggested that he may have been reaching for his phone or, more likely, a lighter for his cigarette. Defendant's cousin testified that he did not see any weapon or protruding magazine on defendant's person.

After being convicted and sentenced, defendant filed a motion for new trial. He argued that the prosecutor had failed to disclose material impeachment evidence regarding Officer Alleyne in violation of *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963). Defendant further argued that his trial counsel was ineffective for failing to move to suppress the firearm as the fruit of an unconstitutional seizure. He also claimed that the verdict was against the great weight of the evidence. The trial court denied the motion. Defendant then filed a motion seeking a review of additional records regarding Officer Alleyne or reconsideration of the order denying his motion for a new trial. The trial court denied that motion as well. This appeal followed.

II. FAILURE TO DISCLOSE EVIDENCE

Defendant argues that he is entitled to a new trial because of a *Brady* violation arising from the prosecution's failure to disclose evidence that could have been used to impeach Officer Alleyne. In the alternative, defendant argues that the case should be remanded for further factual development and the release of Officer Alleyne's personnel records.

Whether a *Brady* violation occurred presents a question of law, reviewed de novo. *People v Dimambro*, 318 Mich App 204, 212; 897 NW2d 233 (2016).

To establish a *Brady* violation, a defendant must show that "(1) the prosecution has suppressed evidence; (2) that is favorable to the accused; and (3) that is material." *People v Chenault*, 495 Mich 142, 150; 845 NW2d 731 (2014). See also *People v Schumacher*, 276 Mich App 165, 177; 740 NW2d 534 (2007) (recognizing that the defendant has the burden of

establishing the elements of a *Brady* claim). "The government is held responsible for evidence within its control, even evidence unknown to the prosecution, without regard to the prosecution's good or bad faith." *Chenault*, 495 Mich at 150 (citations omitted). "Evidence is favorable to the defense when it is either exculpatory or impeaching." *Id*. Evidence is material if the defendant shows that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id*. (quotation marks and citation omitted). "The question is whether, in the absence of the suppressed evidence, the defendant received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Id*. at 150-151 (quotation marks and citation omitted). In assessing materiality, a court is to consider the suppressed evidence collectively, not piecemeal. *Id*. at 151.

Defendant has not established the second prong of his *Brady* claim, i.e., that the evidence was favorable to him. Defendant does not argue that the suppressed evidence was exculpatory, and any such argument would be meritless—the evidence did not pertain to the present case but concerned Officer Alleyne's employment history and alleged misconduct or false statements in other cases. Defendant argues that this evidence could have been used to impeach Officer Alleyne. We disagree.

Defendant identifies five categories of suppressed evidence that he claims are favorable to him because they could be used for impeachment. We will summarize these categories and explain why the suppressed evidence could not have been used for impeachment.

The first category concerns eight sustained police department findings of misconduct on the part of Officer Alleyne in three incidents unrelated to this case. The prosecutor agreed below that there were eight sustained findings of misconduct but noted that the misconduct did not involve lying by Officer Alleyne or indicate a character for untruthfulness. Rather, the findings of misconduct included: two electronic equipment violations, apparently for failing to turn on his body-worn camera at the appropriate time; failing to properly investigate on three occasions; refusing to identify himself to a suspect; failing to document contact during a traffic stop; and being loud and yelling.

The second category of suppressed evidence identified by defendant concerns Officer Alleyne's deposition testimony in an unrelated civil case, *Pride v Detroit*, United States District Court for the Eastern District of Michigan, Docket No. 23-cv-10243. Defendant claims that Officer Alleyne admitted making false statements during that deposition. But a fair reading of the deposition transcript does not reveal any intentional deception by Officer Alleyne.

Defendant says that Officer Alleyne testified in the deposition that the plaintiff " 'desperately' jumped into a random car, first trying the back door, which was locked, then jumping into the front seat." Defendant asserts that Officer Alleyne then "recanted, stating that he had no recollection of the back door being locked or if [the plaintiff] tried to open it." Defendant thus contends that Officer Alleyne made a false statement. But a fair reading of the transcript indicates that Officer Alleyne inferred that the back door was locked because the plaintiff made a motion toward the back door, did not succeed in opening the back door, and then got into the front passenger side of the vehicle. Upon further questioning, Officer Alleyne seemed to suggest that he did not know that the back door was locked but that he "didn't know it was wrong" for him to express his belief on that point even if it was not an established fact. Although Officer Alleyne's

testimony was perhaps somewhat unclear, defendant's suggestion that Officer Alleyne admitted to engaging in a deliberate deception is an unfair interpretation.

Defendant also asserts that Officer Alleyne admitted in the deposition that he regularly conducted pretextual stops. In the portion of the transcript cited by defendant, Officer Alleyne was asked if he stopped vehicles for "an informational encounter." Officer Alleyne responded that he "would never stop a vehicle to just have an informational encounter. They would have to have some type of infraction." He stated as an example that it is an infraction for people to walk in the middle of the street when a sidewalk is available. He continued, "Now that opens me up to investigate you, and now I am investigating you, and from there 9 times out of 10 I have discovered they had a firearm on them, they didn't have a CPL, and they go to jail." Defendant fails to elaborate why he believes this testimony contains an admission of making pretextual stops. But regardless of how the testimony reflects on Officer Alleyne's behavior, it does not contain an admission of making any false statements.

Defendant also asserts that Officer Alleyne admitted "that testimony he provided during the deposition was false because 'all of [his] reports are—most of the time are one and the same, minus smaller detail.' " (Alteration in defendant's appellate brief.) Defendant's characterization of this testimony unfairly ignores the relevant context. After being shown body-worn footage of the incident underlying the *Pride* lawsuit, Officer Alleyne realized that he had been testifying throughout the deposition about a different incident than the one underlying the lawsuit. After being shown the video, he explained:

> I don't recall this at all whatsoever. So in recollection of, like I stated, because I have asked for body cam footage this entire deposition, because the report that I read is similar to another report that I had, another deposition, on the same street, with the same circumstance. I don't—I don't recall this whatsoever. I don't even recall who this gentleman [i.e., the plaintiff in *Pride*] is.

Officer Alleyne continued:

> From the—from the video. Because it would have been June, I think the 23rd or the 25th, a same/similar arrest, but it was dark outside, and it was on Manistique, and that's when I was working with [two other officers], and writing my reports, all of my reports are—most of the time are one and the same, minus smaller detail. But, yeah, I don't recall this whatsoever.

Officer Alleyne's testimony thus indicates that his false testimony resulted from an honest mistake or miscommunication rather than any deliberate deception. His reference to the similarity of his reports was part of his explanation of why he had earlier been testifying about a different incident.

The third category of suppressed evidence is Officer Alleyne's placement on a police department list of high-risk officers. Relying on news media reporting, defendant says that the risk score for this list "was generated by the officer's number of citizen complaints, discipline, how often they use force, are [sic] involved in vehicle chases and vehicle accidents over the span of their career." None of these factors necessarily reflect lying or a character for untruthfulness that would allow a basis for impeachment.

The fourth category of evidence identified by defendant is that Officer Alleyne was allegedly monitored by police department command staff. Relying on news media reporting again, defendant says that officers on the high-risk list are placed in "a monitoring program that may have included a sit-down meeting with the chief, random checks of body worn camera footage, and accompaniment by a sergeant on runs." But such monitoring fails to demonstrate lying or a character for untruthfulness that would allow impeachment.

The fifth category of suppressed evidence identified by defendant concerns the details of Officer Alleyne's resignation from the police force. Defendant speculates that Officer Alleyne's "resignation was connected to [the high-risk-officer] list or allegations filed against him" and says that such "information should have been turned over to" defendant. Defendant presents no evidence that the allegations or list constituted the reason for the resignation, however. At his deposition in the *Pride* lawsuit, Officer Alleyne testified that he resigned to take a better-paying job that did not put his life at risk. But even if the misconduct allegations or placement on the high-risk-officer list played a role in the resignation, defendant has not demonstrated that any of these matters pertained to lying or a character for untruthfulness.

The Michigan Rules of Evidence define the manner by which a witness may be impeached. MRE 608(a) provides, "A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character." MRE 608(b) states:

> Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
>
> (1) the witness; or
>
> (2) another witness whose character the witness being cross-examined has testified about.

Defendant has failed to demonstrate that the misconduct allegations pertain to Officer Alleyne's character for truthfulness or untruthfulness. Nor has defendant provided a basis to conclude that Officer Alleyne lied under oath in the *Pride* deposition, as opposed to making honest mistakes. The suppressed evidence thus did not provide a basis for impeachment under MRE 608(a) or (b).

MRE 609 governs the manner of "attacking a witness's character for truthfulness by evidence of a criminal conviction." No indication exists that Officer Alleyne was convicted of a crime as a result of any of the alleged misconduct. MRE 609 thus offers no basis for impeachment.

MRE 613(a) governs the examination of a witness about the witness's prior statement. MRE 613(b) addresses the admissibility of extrinsic evidence of a witness's prior inconsistent statement. "The purpose of extrinsic impeachment evidence is to prove that a witness made a prior inconsistent statement—not to prove the contents of the statement." *People v Jenkins*, 450 Mich 249, 256; 537 NW2d 828 (1995). Defendant has not identified any trial testimony of Officer

Alleyne that is inconsistent with a prior statement he made. The suppressed evidence concerns his employment history and other cases unrelated to the instant case.

MRE 707 provides for impeachment of an expert witness with a statement contained in a published treatise, periodical, or pamphlet. Officer Alleyne did not testify as an expert witness.

Defendant has therefore failed to demonstrate that the suppressed evidence could be used for impeachment of Officer Alleyne. Hence, defendant has not satisfied the second element of his *Brady* claim, i.e., that the suppressed evidence was favorable to him. His *Brady* claim thus fails.

It is therefore unnecessary for this Court to reach the third element of the *Brady* claim, i.e., materiality. We will nonetheless address that element.

As explained, evidence is material if the defendant shows that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Chenault*, 495 Mich at 150 (quotation marks and citation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. (quotation marks and citation omitted). Defendant has not shown a reasonable probability that the result of the proceeding would have been different. Even if the evidence regarding other cases and events unrelated to the instant case could have been used at trial to undermine Officer Alleyne's credibility, that evidence would not have impeached Officer Turner, whose testimony largely corroborated that of Officer Alleyne in relevant respects.

Officer Turner testified that he saw defendant grab a black object that was in his waistband, although Officer Turner could not yet discern what the object was. Officer Turner then "heard a loud clunk noise that sounded like metal hitting a hard object." He saw that the discarded object was a firearm after it landed on a concrete sidewalk near a grassy area. Officer Turner detained defendant. Officer Turner pointed out where the weapon had landed and directed Officer Alleyne to grab it. Officer Alleyne "went to where the firearm landed on the concrete." Officer Alleyne recovered the firearm, and it was placed in evidence. Defendant stated that he did not have a CPL; Officer Turner confirmed this on a law-enforcement database.

On cross-examination, Officer Turner testified that he did not see defendant run or take flight during the incident. But defendant did not stop when ordered to do so by Officer Alleyne; defendant instead continued walking in the opposite direction. On further inquiry about whether defendant was chased, Officer Turner answered: "We did pursue him. He did not stop when he was asked to stop, he continued walking around the vehicle and we did run to him. He did stop when I got there. So if you're referring to that being a chase, then, yes." On further questioning on this point, Officer Turner again explained that defendant "did not stop when he was ordered to stop, he continued walking away from Officer Alleyne. So if you're specified [sic] that being a chase, then that would be very accurate."

Officer Turner's testimony was therefore consistent with that of Officer Alleyne in most relevant respects. It is true that, unlike Officer Alleyne, Officer Turner could not discern that the black object that defendant pulled from his waistband was a firearm before defendant discarded it on the ground, but like Officer Alleyne, Officer Turner heard a clunking sound. Officer Turner then saw the firearm on the ground. Officer Turner's testimony was also not the exact same as

Officer Alleyne's testimony that defendant "took flight" and went from walking to "more . . . of a run." But Officer Turner described evasive action by defendant that resulted in what Officer Turner agreed could be described as a chase. Overall, Officer Turner's testimony corroborated that of Officer Alleyne. And because the suppressed evidence afforded no basis to impeach Officer Turner, defendant has failed to show that the suppressed evidence was material, i.e., that there was a reasonable probability of a different outcome if the suppressed evidence had been disclosed.

Defendant's alternative request for a remand is denied. He says the case should be remanded for further factual development pursuant to MCR 7.211(C). He wants this Court to order the prosecution to disclose records in Officer Alleyne's personnel file or to order the trial court to conduct an *in camera* review to determine if the prosecution withheld any evidence it was required to disclose. But defendant has already had a full and fair opportunity to litigate the *Brady* issue. He raised the *Brady* issue in a motion for a new trial. The trial court held two hearings and denied the motion. Defendant later filed a motion for reconsideration and requested additional records or an *in-camera* review. The court denied that motion. Defendant provides no support for the notion that any documents he wants are exculpatory or impeaching. A remand is not needed.

III. JUDICIAL IMPARTIALITY

Defendant argues that the trial judge pierced the veil of judicial impartiality in various ways. We disagree.

To preserve an issue of judicial misconduct, a defendant must object on that basis in the trial court. *People v Sardy*, 216 Mich App 111, 117-118; 549 NW2d 23 (1996). Defendant did not raise this issue below, and it is thus unpreserved. Defendant concedes that most of the issue is unpreserved but says that he preserved a challenge to the trial judge's response to a question posed by the jury during deliberation. Although defense counsel expressed some disagreement with the way in which the judge answered the jury's question (as will be explained), defense counsel did not object on the ground that the judge pierced the veil of judicial impartiality. An objection on one ground is insufficient to preserve an appellate challenge on another ground. *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). The entire issue is thus unpreserved.

Unpreserved issues of judicial misconduct are reviewed under the plain-error standard. *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011). To be entitled to relief under the plain-error standard, a defendant must show that (1) an error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the error was prejudicial, i.e., it affected the outcome of the proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

"A defendant must overcome a heavy presumption of judicial impartiality when claiming judicial bias." *People v Biddles*, 316 Mich App 148, 152; 896 NW2d 461 (2016) (quotation marks and citation omitted). Our Supreme Court has explained:

> A trial judge's conduct deprives a party of a fair trial if the conduct pierces the veil of judicial impartiality. A judge's conduct pierces this veil and violates the constitutional guarantee of a fair trial when, considering the totality of the circumstances, it is reasonably likely that the judge's conduct improperly influenced the jury by creating the appearance of advocacy or partiality against a

> party. In evaluating the totality of the circumstances, the reviewing court should inquire into a variety of factors including, but not limited to, the nature of the trial judge's conduct, the tone and demeanor of the judge, the scope of the judicial conduct in the context of the length and complexity of the trial and issues therein, the extent to which the judge's conduct was directed at one side more than the other, and the presence of any curative instructions, either at the time of an inappropriate occurrence or at the end of trial. [*People v Stevens*, 498 Mich 162, 164; 869 NW2d 233 (2015).]

The inquiry is fact-specific, and the cumulative effect of any errors should be considered. *Biddles*, 316 Mich App at 152. "A single instance of misconduct generally does not result in the appearance that a trial judge is biased, unless the instance is 'so egregious that it pierces the veil of impartiality.' " *Id*., quoting *Stevens*, 498 Mich at 171.

"It is well established that the trial court has a duty to control trial proceedings in the courtroom and has wide discretion and power in fulfilling that duty." *Biddles*, 316 Mich App at 153. Although the constitutional right of confrontation includes the right to cross-examine witnesses, "a court has wide latitude to impose reasonable limits on cross-examination to ensure relevancy or because of concerns regarding such matters as harassment, prejudice, confusion of the issues, and repetitiveness." *Id*. To that end, MRE 611(a) provides:

> The court must exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
>
> (1) make those procedures effective for determining the truth;
>
> (2) avoid wasting time; and
>
> (3) protect witnesses from harassment or undue embarrassment.

Generally, "a trial judge's comment that is critical of or hostile to a party or his or her counsel is not sufficient to pierce the veil of judicial impartiality." *People v Willis*, 322 Mich App 579, 590; 914 NW2d 384 (2018). "A trial judge's rulings or opinions do not pierce the veil of judicial impartiality unless there is a deep-seated favoritism or antagonism such that the exercise of fair judgment is impossible." *Id*. (quotation marks and citation omitted).

Defendant makes multiple claims concerning the trial judge's conduct. Defendant first complains about comments the trial judge made after the prosecutor objected to defense counsel's questioning of Officer Alleyne regarding whether the video evidence supported his testimony. Video evidence was displayed multiple times throughout Officer Alleyne's testimony. Near the end of defense counsel's cross-examination, counsel played a video again while questioning Officer Alleyne about when he believed defendant was starting to run, and the following exchange ensued:

> *Q*. And you stated, one more time, let me know when you see my client start to run.
>
> (Video played in open court)

A. Right there.

Q. Okay. So it is 40 second mark. That was really quick?

A. Yeah, it was. You see the white t-shirt of your client and everything right there. Pay attention to that general area and you will see it.

Q. Okay.

A. Right there (indicating).

Mr. *Wilhite* [prosecutor]: Your Honor, I'm going to object. We have gone over this many times.

The Court: Well, we have and, Mr. Docks [defense counsel], the Witness was there, we're looking at a very dark video of—the video we're looking at might not be what he actually saw is portrayed in the video is not necessarily what he saw [sic] and I think we have been through this several times now.

Mr. *Docks*: Your Honor, over my objection I would like to see in seconds where my client ran from. The best evidence will come—

The Court: I think that's sufficient.

Defendant says that the judge's comment in this exchange mimicked an earlier comment the judge made during a similar line of questioning. In particular, during an earlier part of the cross-examination, defense counsel questioned Officer Alleyne about whether the extended magazine in defendant's waistband could be seen in the video. After the video was played, Officer Alleyne indicated that the video was blurry but that he observed the extended magazine in defendant's waistband at the time of the incident. Defense counsel then questioned Officer Alleyne about whether most guns come with extended magazines or clips, Officer Alleyne answered, defense counsel continued this line of questioning, and the following exchange ensued:

Mr. *Wilhite*: Well, objection, Your Honor. Asked and answered.

Mr. *Docks*: Your Honor, the Witness is saying the clip is in my client's waistband, so therefore, you should be able to see the gun in his crotch, the L-shape, but—

The Court: You can see it in the video, you can see it in real life.

Mr. *Docks*: You can see in my client's crotch from the video.

The Witness: Not in the video, but I see the extended magazine but the extended magazine doesn't go north and south, it goes east and west.

Defendant argues that the trial judge improperly commented on disputed factual issues, which eliminated his impartiality. We disagree and conclude that the judge was appropriately

managing the trial and ruling on objections. In the instances cited by defendant, the judge imposed reasonable limits on repetitive questioning related to the video evidence. The judge's comments merely reflected that what can be seen in a video might differ from what was observed by a witness who was present at the scene at the time of the incident. The judge did not express an opinion regarding the accuracy of Officer Alleyne's testimony. The judge did not make any comments displaying a deep-seated favoritism or antagonism that would render fair judgment impossible.

Defendant next asserts that the trial judge made a snide remark by stating that defendant was making his closing argument during his testimony. The judge's comment came when ruling on the prosecutor's objection that defendant's testimony was nonresponsive to a question posed by the prosecutor on cross-examination. Defendant testified that he did not discard the weapon and did not know how it ended up on the ground. Defendant denied seeing anyone else possess the weapon or place it on the ground. The prosecutor asked if defendant saw another individual who was at the scene throw the gun. Defendant then provided a narrative that went beyond a response to the question posed, testifying:

> To be honest, you can see it in the video, when they hop out of the car, it is dark until he shined his light. Like I say, as I'm coming around my vehicle after I popped my hood to give this guy a boost, I don't even remember who it was, I am walking around my vehicle. I didn't hear him tell me to stop. The first officer who claimed that he chased me actually ran past me. I was stopped right there. I don't know how long he was there but I'm smoking a cigarette watching the show—[.]

The prosecutor objected that defendant was "being nonresponsive," and the judge stated, "He's making his closing argument." The prosecutor then resumed questioning.

Defendant argues that the trial judge's "snide remark dismissed [defendant's] testimony as advocacy rather than evidence." But the judge's remark pertained to a single nonresponsive answer that evolved into a lengthy (and still nonresponsive) narrative. Defendant was essentially providing his theory of the case rather than responding to the specific and narrow question posed. Although it would have been better if the judge had limited his remarks to sustaining the prosecutor's objection, the judge's isolated passing remark did not rise to the level of improperly influencing the jury by creating an appearance of advocacy or partiality. See *Biddles*, 316 Mich App at 153 (concluding that a trial judge's "isolated and flippant statement," although "better left unsaid," did not, in context, rise to the level of influencing the jury).

Defendant next argues that the trial judge repeatedly interrupted defense counsel to vocalize frustration with his defense strategy. Defendant complains about a comment the judge made when defense counsel was questioning Officer Alleyne about the gun. Defense counsel elicited from Officer Alleyne that the gun was black. Defense counsel then asked Officer Alleyne if he remembered testifying at the preliminary examination that the gun was blue. Officer Alleyne denied stating that the gun was blue, explaining, "Blue steel automatic is not the color of a gun." Defense counsel's questioning of Officer Alleyne continued:

> *Q*. Okay. So when you were referring to the gun, you said nickel plated; is that correct?

A. Yes.

Q. So the question asked was, and I quote, what color was his weapon, was it blue or was it nickel plated or do you know? It is going to be a blue steel automatic but rarely do you get a nickel plated gun?

A. They didn't state it was blue.

Q. It said blue steel.

A. Yes, that's not a color of the gun.

On appeal, defendant concedes that his trial counsel "mistakenly believed that 'blue steel' was a description of color and questioned Alleyne about the color of the recovered firearm."

During redirect examination, the prosecutor questioned Officer Alleyne as follows:

Q. And now we made reference to the color of the handgun here and blue steel. Do you know what blue steel is?

A. Blue steel, it has to do with the makeup of the firearm. So like a revolver, you have a revolver that would be referenced as a blue steel automatic revolver.

Q. But it is not the color?

A. No, and it's not the color of the gun. As I stated, it is what the manufacturer of the firearm [sic].

On recross-examination, defense counsel further questioned Officer Alleyne on this subject:

Q. You mentioned the blue steel, what is the distinction between the blue steal [sic] and the regular solid gun? What's the difference? Is there a difference?

A. Well, I don't know if there is a difference.

Q. Why do you stay [sic] this is blue steel as opposed to any different kind of steel?

A. I'm not a firearms expert, I'm just, through my training and experience, understand that is it [sic] blue steel automatic which is a component of the manufacturer.

Q. I understand. So you haven't really analyzed whether it is blue steel or not, you're just saying from your understanding; is that correct?

A. Yes.

The Court: He described the gun was a blue steel automatic, they're either nickel plated or a blue steel. I mean, come on.

Defendant argues that the judge's comment reflected frustration and belittled defense counsel. But defense counsel's questioning regarding the makeup of the gun was becoming repetitive, and it was unclear why continued inquiry on this point was needed on recross-examination. The judge was properly acting in accordance with his discretion and power to control the proceedings. *Biddles*, 316 Mich App at 153-154. Even if criticism of defense counsel was implied, it was not enough to pierce the veil of judicial impartiality. *Willis*, 322 Mich App at 590.

Defendant argues that the trial judge interrupted defense counsel on other occasions. As an example, defendant discusses comments by the judge during defense counsel's questioning of Officer Turner regarding whether Officer Alleyne ordered defendant to stop. During defense counsel's cross-examination, Officer Turner testified that Officer Alleyne ordered defendant to stop. Officer Turner explained that defendant "didn't stop when he was ordered to do so, he continued walking in the opposite direction." Defense counsel asked if the body-camera footage would reflect that defendant was ordered to stop. Officer Turner responded, "You would have to play the video, but there is a good chance that the audio doesn't click on until 30 seconds after they're activated." After playing Officer Turner's body-camera video, defense counsel asked if anyone could be heard saying, "stop," and Officer Turner responded: "Half of the video didn't have audio until you hear that beep. That is the audio clicking on as it's recording. When he said stop, it was before that." On further questioning, Officer Turner again acknowledged that the word "stop" could not be heard in the video.

Later, during more questioning by defense counsel, Officer Turner again testified that defendant did not stop when Officer Alleyne ordered him to stop. The following exchange then occurred:

Q. And you did not observe [defendant] being chased, correct?

A. I'm sorry?

Q. You didn't see him fleeing or alluding [sic]; is that correct?

A. He did not stop when he was ordered to stop, he continued walking away from Officer Alleyne. So if you're specified [sic] that being a chase, then that would be very accurate.

Q. Well, you're assuming that my client heard it, correct?

A. As I expressed, it was a very loud "stop".

Q. But we can't hear that on the video, correct?

A. Considering that the video—

The Court: This is not a fleeing and alluding [sic] case anyway.

Mr. Docks: I understand that, Your Honor, but the chase is what it [sic] amounts to consciousness of guilt. So it is very relevant to the questioning.

The Court: He said the Defendant wouldn't stop when they asked him to stop.

Mr. Docks: Right, we're assuming that he heard him.

The Court: Whether you call it a chase or not, but anyway, it is what it is.

Defendant asserts that the trial judge improperly interrupted defense counsel "to argue the prosecution's case." Defendant further says that the judge "flippantly state[d] 'it is what it is' after arguing about witness testimony with counsel before the jury and cutting off further questioning about the issue." We conclude that the trial judge was properly exercising his role to control the trial proceedings. Given that defense counsel's questioning referred to fleeing and eluding, it was reasonable for the judge to observe that defendant was not charged with that offense. To the extent that defendant is complaining that the judge allegedly cut off defense counsel's line of questioning, it is notable that defense counsel had already elicited multiple admissions from Officer Turner that the word "stop" could not be heard in the video, which is the point defense counsel was again pursuing when the judge interceded. Also, the judge's use of the phrase "it is what it is" did not suggest any opinion about the facts of the case. Rather, the judge used that phrase after stating "[w]hether you call it a chase or not," thus reflecting that the judge was declining to express a view on whether a chase occurred. Hence, the judge's remarks were not of the nature that would improperly influence the jury.

In connection with his arguments about judicial interruptions, defendant notes that the trial testimony lasted less than a full day. It is true that "the scope of the judicial conduct in the context of the length and complexity of the trial and issues therein" is a relevant factor in assessing whether the veil of judicial impartiality was pierced. *Stevens*, 498 Mich at 164. But defendant has not established that any judicial interruptions were improper. The judge acted in accordance with his prerogative to control the proceedings. The short length of the trial does not alter this conclusion.

Defendant next argues that the trial judge pierced the veil of impartiality when answering a question from the jury. During deliberation, the jury sent the judge a note asking: "[D]id other officers in their testimony claim to see a magazine or gun before completing the turn onto Cary [sic] Street?" In discussing the jury's question with the attorneys outside the presence of the jury, the judge stated, "Well, obviously, I can't answer that." The prosecutor remarked, "I think the answer is they should rely on their memories." The judge agreed:

> Yes, they must rely on their collective memories and their notes. I can't answer a question like that. I wouldn't allow its importance because if the Jury believes that the officers saw the gun, then what difference does it make whether they saw it before or after the turn? But I'm not going to say that.
>
> All right, I'm going to bring them out and give them sort of a nonanswer to that question unless either one of you has any other suggestions.

Defense counsel stated, "I think the question needs to be flushed [sic] out more, Your Honor, and see if it's possible to do that." The judge responded, "I'm sorry?" Defense counsel repeated, "I think it needs to be flushed [sic] out in which it is impossible right now at this point to do that." The judge responded, "I can't answer that." Defense counsel agreed, "Right, we can't answer that."

After the jury was brought into the courtroom, the judge told the jury:

> All right, we have your note which reads, did either of the officers in their testimony claim to see the magazine or a gun before completing the turn onto Cary [sic]. I really can't answer that question for you, it is up to you to answer that question and you have to rely on your collective memories and the testimony of the officers and your notes, if you have notes. And then you should always when you have a difference about this, perhaps maybe not about this note, ask yourself whether or not it matters in deciding how you decide the case.

Defense counsel then asked, "Your Honor, can we have a sidebar?" The judge responded, "No." The judge then told the jury: "So I'm now going to send you back to the jury room to continue your deliberations. I can't fill in the gaps so fill them in yourself. Sorry."

After the jury was excused from the courtroom, the following exchange occurred:

> *The Court*: Now Mr. Docks.
>
> *Mr. Docks*: Your Honor, I just didn't want to go too much into it in front of the Jury, I thought it might have been a little bit too much into drawing a conclusion with them. So that's why I just wanted to kind of—well, it was almost—it was too much in my view.
>
> *The Court*: What I said to the Jury?
>
> *Mr. Docks*: Correct, was [sic] too much concern about—you almost got there but you did not. I don't know what the Prosecutor has to say.
>
> *The Court*: I follow what you're saying. You know, in the standard jury instructions when I tell them about whether you believe a witness or whether or not to believe a witness, one of the things I told them is to first of all, if they have any dispute about the evidence, first of all decide whether or not it's important to how you decide the case, right.
>
> *Mr. Docks*: Right.
>
> *The Court*: Does it matter or is it important to the case because if they have a differences [sic] in how they remember it, they have to decide first of all is it important to how you decide the case.
>
> *Mr. Docks*: Right.

The Court: I told them that. Because I don't know if it is or not and they can make the finding.

Mr. Docks: Well, I would just prefer the way that you're alluding to have them decide what the weight of that question was regarding the relation to their decision. Absolutely you're correct about that.

The Court: Mr. Wilhite, anything you want to say on this?

Mr. Wilhite: I am just going to defer to the Court.

The Court: All right, let's see what happens.

Defendant now argues that the judge displayed partiality and "effectively told the jury that its question about witness credibility did not matter . . . ." But the judge merely told the jurors to rely on their collective memories and noted generally that jurors should consider whether any differences among them mattered to their resolution of the case. The judge did not tell the jury that the question asked in the note did not matter. Rather, the judge indicated that it was for the jurors to consider whether any differences among them mattered. The judge did not improperly influence the jury by creating an appearance of bias or partiality.

Finally, the trial judge's instructions to the jury weigh against defendant's argument that the veil of judicial impartiality was pierced. The judge provided the following instruction before jury deliberation:

> [M]y comments, rulings, questions and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I'm not trying to influence your vote or express a personal opinion about [the] case. And if you believe I have an opinion about how you should decide the case, then pay no attention to that opinion. You are the only judges of the facts and you must decide this case only from the evidence.

"Jurors are presumed to follow their instructions, and it is presumed that instructions cure most errors." *People v Boshell*, 337 Mich App 322, 353; 975 NW2d 72 (2021) (quotation marks and citation omitted).

In sum, consideration of the totality of the circumstances leads to the conclusion that the trial judge did not pierce the veil of judicial impartiality. Defendant is thus not entitled to relief.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that his trial counsel was ineffective for failing to move to suppress the firearm that officers recovered on the ground next to defendant. He reasons that the officers lacked reasonable suspicion to stop him because they had no reason to believe that his possession of a firearm was illegal. He further asserts that seizing him without reasonable suspicion that he lacked a CPL violated the Second Amendment. Defendant's arguments are unconvincing.

Whether a defendant was denied the effective assistance of counsel presents a mixed question of fact and constitutional law. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012). Findings of fact are reviewed for clear error, and questions of law are reviewed de novo. *Id*. Because no *Ginther*[2] hearing was held, this Court's review is based on the existing record. *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020).

"To prove that his defense counsel was not effective, the defendant must show that (1) defense counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that counsel's deficient performance prejudiced the defendant." *People v Lane*, 308 Mich App 38, 68; 862 NW2d 446 (2014). "In examining whether defense counsel's performance fell below an objective standard of reasonableness, a defendant must overcome the strong presumption that counsel's performance was born from a sound trial strategy." *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). To establish prejudice—that is, "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"—the defendant need only demonstrate "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). A "defendant has the burden of establishing the factual predicate for his claim of ineffective assistance of counsel." *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

"Both the Michigan Constitution and United States Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Williams*, 351 Mich App 254, 262; 35 NW3d 638 (2024), citing Const 1963, art 1, § 11, and US Const, Am IV. "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *Williams*, 351 Mich App at 262 (quotation marks and citation omitted).

An established exception to the warrant requirement is an investigatory stop pursuant to *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), which is colloquially known as a *Terry* stop. *Williams*, 351 Mich App at 262. Under this exception, "police officers may make a valid investigatory stop if they possess reasonable suspicion that crime is afoot." *Id*. (quotation marks and citation omitted). "Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or hunch, but less than the level of suspicion required for probable cause." *Id*. at 262-263 (quotation marks and citations omitted). "[A]n officer must have had a particularized and objective basis for the suspicion of criminal activity." *People v Pagano*, 507 Mich 26, 32; 967 NW2d 590 (2021) (quotation marks and citation omitted).

"Whether an officer has reasonable and articulable suspicion to briefly detain an individual is a fact-specific inquiry that is determined on a case-by-case basis." *Id*. The determination is "based on commonsense judgments and inferences about human behavior." *Id*. (quotation marks and citation omitted). Officers may make reasonable inferences based on their training and experience, and this Court should defer to that experience. *People v Steele*, 292 Mich App 308, 315; 806 NW2d 753 (2011).

[2] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

This Court's opinion in *Williams* is instructive. In that case,

> three Detroit police officers observed defendant walking near the intersection of Monroe and Beaubien Streets in Greektown. The officers noticed a bulge resembling a handgun under defendant's T-shirt near his waistband. One officer claimed to see the butt of the gun above defendant's shirt. The officers approached defendant and asked if he possessed a CPL. Two of the officers asserted that defendant did not answer and continued walking; the third officer claimed defendant said he did not have a CPL before attempting to walk away. The officers stopped defendant and patted him down, discovering a loaded handgun. Defendant did not have a CPL, so the police arrested defendant . . . . [*Williams*, 351 Mich App at 257.]

The trial court granted the defendant's motion to suppress evidence of the firearm, opining "that an individual may decline to answer a police officer's question whether the person possessed a CPL." *Id*. at 259.

In reversing, this Court in *Williams* held "that under Michigan law a police officer has reasonable suspicion to approach a person and ask for proof of a CPL after observing a bulge in a person's clothing indicative of a hidden firearm." *Id*. at 272. This Court noted that "MCL 28.425f permits a police officer to ask any person observed to be carrying a concealed weapon to produce his or her CPL at any time and for any reason." *Williams*, 351 Mich App at 272. Also, MCL 750.227 "makes possession of a concealed weapon a presumptive crime, which can be rebutted by a suspect with evidence of a CPL." *Williams*, 351 Mich App at 272.

Like in *Williams*, the officers in this case had reasonable suspicion. Upon arrival on Carrie Street, Officer Alleyne saw an extended black magazine sticking out of defendant's waistband, while the rest of the firearm, including the barrel, was concealed by defendant's clothes. Officer Turner similarly saw a black object at defendant's waistband. Although part of the weapon was visible, it may nonetheless be considered concealed because total concealment is not required for the purpose of the offense of CCW. *Id*. at 261; *People v Wheeler*, 336 Mich App 361, 366, 369; 970 NW2d 438 (2021). Also, although not critical to the analysis here, it is notable that defendant engaged in evasive behavior, which is a relevant factor in determining if reasonable suspicion exists. *People v Oliver*, 464 Mich 184, 197; 627 NW2d 297 (2001), citing *Illinois v Wardlow*, 528 US 119, 124; 120 S Ct 673; 145 L Ed 2d 570 (2000).

The existence of reasonable suspicion in the present circumstances is further supported by *People v Taylor*, 214 Mich App 167, 170; 542 NW2d 322 (1995). In that case, this Court reasoned:

> As the officers were lawfully approaching defendant, Officer [Bobby] Ward observed a bulge in the front of defendant's jacket in the waist area. He testified at the preliminary examination that he had been a police officer for 4½ years, that he had occasion to come in contact with persons carrying weapons, and that on the basis of his experience and observation he suspected that defendant was probably armed. These facts provided the necessary particularized suspicion that a crime was afoot to justify the stop of defendant. Under the circumstances, Officer Ward

> could have reasonably believed that defendant was carrying a concealed weapon in violation of MCL 750.227. [*Taylor*, 214 Mich App at 170.]

Because reasonable suspicion existed in this case, a motion to suppress would have failed. Defense counsel was not ineffective for failing to advance a meritless argument. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Defendant seeks to distinguish *Williams* by raising a Second Amendment argument. He relies on the United States Supreme Court's holding in *New York State Rifle & Pistol Ass'n, Inc v Bruen*, 597 US 1, 10; 142 S Ct 2111; 213 L Ed 2d 387 (2022), that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." Defendant argues that this "right would prove hollow if police officers could seize any individual, without more, based on the mere possession of a gun." Although *Williams* was issued almost two years after *Bruen*, defendant says that this Court in *Williams* "was not directly addressing whether a presumption of unlawful possession is constitutional under the Second Amendment." Defendant is now seeking to use his claim of ineffective assistance of counsel to litigate a novel legal issue, i.e., whether Michigan law creates a presumption of unlawful possession that violates the Second Amendment. But "defense counsel's performance cannot be deemed deficient for failing to advance a novel legal argument." *People v Reed*, 453 Mich 685, 695; 556 NW2d 858 (1996).[3] Defendant's Second Amendment argument thus fails to establish ineffective assistance of counsel.

Defendant also attempts to distinguish *Williams* on the ground that "*Williams* states that an officer may 'approach' a person 'and ask.' It does not state that an officer may immediately seize an individual based on mere suspicion of possession of a handgun." *Williams* does not explicitly say in so many words that a *Terry* stop is justified in these circumstances, but *Williams* establishes that reasonable suspicion exists when an officer observes evidence of a concealed weapon at a person's waistband. *Williams*, 351 Mich App at 257, 272. Reasonable suspicion justifies a *Terry* stop. *Williams*, 351 Mich App at 262. Therefore, when read as a whole, *Williams* supports the conclusion that a *Terry* stop was justified in the instant case. And as noted, the existence of reasonable suspicion is further supported by *Taylor*. Defendant's claim that his counsel was ineffective for failing to move to suppress the firearm is thus unavailing.

V. PROBATION

Defendant argues that his four-year probation term exceeds the statutory maximum initial probation term of three years. We agree.

[3] Beyond being novel, this argument is based on a tenuous reading of *Bruen*. *Bruen* established that ordinary, law-abiding citizens have a constitutional right to carry a firearm outside of the home for self-defense. *Bruen*, 597 US at 9-10. "*Bruen* did not, however, address *Terry*-type stops or the constitutionality of an officer's presumptions upon discovering a firearm during a lawful pat-frisk." *Commonwealth v Crowder*, 495 Mass 552, 569; 253 NE3d 1207 (2025). We also note that *Bruen* was decided on June 23, 2022, well after the date of this offense—September 20, 2020.

This issue involves the interpretation or application of statutory language, which is reviewed de novo. *People v Lee*, 489 Mich 289, 295; 803 NW2d 165 (2011).

A sentence is invalid if it exceeds statutory limits. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). Subject to exceptions that do not apply here, the maximum initial probation period for a felony is three years (with the possibility of two extensions of up to one year each in certain situations). MCL 771.2(1).[4] The trial court imposed a four-year probation term, which exceeds the statutory limit of three years. When a sentence is partially invalid, it is not to be entirely reversed but rather set aside only with respect to the unlawful excess. *People v Thomas*, 447 Mich 390, 393; 523 NW2d 215 (1994), citing MCL 769.24. We therefore remand the case for the entry of an amended probation order to reflect a probation term of three years.

VI. GREAT WEIGHT OF THE EVIDENCE

Defendant argues that the verdict is against the great weight of the evidence. We disagree.

"An appellate court will review a properly preserved great-weight issue by deciding whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011). It is the jury's role "to determine questions of fact and assess the credibility of witnesses." *People v Anderson*, 322 Mich App 622, 632; 912 NW2d 607 (2018) (quotation marks, brackets, and citation omitted). Only testimony that "was so far impeached that it was deprived of all probative value or that the jury could not believe it, or [that] contradicted indisputable physical facts or defied physical realities," can be disregarded. *Id*. (quotation marks, brackets, and citation omitted). Otherwise, "the weight and credibility of evidence, and the inferences to be drawn from the evidence, are matters for the jury to resolve." *Id*. at 633.

Defendant argues "[t]he key evidence against [him] consisted almost entirely of [Officer] Alleyne's testimony . . . ." Defendant says that the reliability of Officer Alleyne's testimony was placed in serious doubt by his undisclosed record of misconduct and alleged history of false statements in other cases. But as explained earlier, Officer Alleyne's testimony was corroborated in key respects by Officer Turner's testimony. Defendant asserts that Officer Turner did not see a gun before discovering it on the ground. This assertion is misleading. Officer Turner saw defendant grab a black object that was in his waistband, although Officer Turner could not yet discern what the object was. Officer Turner then heard a loud clunking noise consistent with metal hitting a hard object. He saw that the discarded object was a firearm after it landed on the sidewalk near a grass area. Officer Turner pointed out where the weapon had landed and directed Officer Alleyne to grab it. Officer Turner also testified regarding evasive behavior by defendant. Defendant is thus incorrect in characterizing the prosecutor's case as hinging almost entirely on Officer Alleyne's testimony. Also, as discussed earlier, defendant has not shown that the alleged impeachment evidence regarding Officer Alleyne's purported misconduct or false statements in

[4] The maximum initial probation term for a felony was reduced from five years to three years by 2020 PA 397, effective April 1, 2021.

other cases is favorable to the defense or material.[5] Overall, defendant fails to establish that the jury verdict is against the great weight of the evidence.

We remand for entry of an amended order of probation reducing defendant's probation term to three years. We affirm in all other respects. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Colleen A. O'Brien
/s/ James Robert Redford

[5] We also note that a great-weight challenge is an inappropriate avenue for defendant to argue about evidence that was not admitted or used at trial. In analyzing a great-weight argument, a court considers the evidence actually presented to the jury. The court decides "whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Musser*, 259 Mich App at 218-219. The great-weight issue does not involve consideration of the evidence that *could have* been admitted or used at trial. Such evidence is instead considered when evaluating defendant's *Brady* claim, which was addressed earlier in this opinion.