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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 16, 2026 9:47 AM
v	No. 374309 Wexford Circuit Court
JESSE JAMES HOTVEDT, Defendant-Appellant.	LC No. 2024-013861-FH

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of operating with a high blood alcohol content (BAC), MCL 257.625(1)(c). He was sentenced, as a second-offense habitual offender, MCL 769.10, to 365 days of incarceration followed by 36 months of probation. On appeal, he challenges the sufficiency of the evidence supporting his conviction and asserts that trial counsel provided ineffective assistance. We affirm.

I. BACKGROUND

On the evening of April 7, 2024, a motorist noticed defendant's vehicle on the side of the road with its hazard lights on. Although the vehicle, which was backed up against a stop sign near a roadside ditch, did not appear to be immobile, defendant asked the motorist to pull the vehicle out of the ditch so he could continue his drive. The motorist refused and called 911 because he believed that defendant was intoxicated.

When the responding officers arrived, defendant's radio was playing, but the vehicle was not running. Defendant exited the driver's seat and spoke with the officers, reporting that he had taken his vehicle for a "test drive" and parked it against the stop sign after it stalled. The officers observed that defendant "reeked" of alcohol, struggled to stand still without swaying, slurred his words, and had bloodshot and watery eyes. He initially gave the officers a fake name and denied consuming any alcohol. The officers placed defendant under arrest after he refused to submit to field sobriety tests; during a subsequent search of his vehicle and the surrounding area, the officers found unopened beer cans in the back of the vehicle and an empty can of the same beer in the

ditch. The officers obtained a search warrant for defendant's blood, and the results of a blood test later indicated that defendant had a BAC of 0.283.

Several witnesses testified at trial, including the forensic scientist who analyzed the blood sample, the motorist who called 911, and the arresting officers. As relevant to this appeal, one of the officers testified that, after defendant was transported to the county jail, he stated to the officer, "Don't be surprised if next time you deal with me it ends up in shots fired." After the prosecution rested, defense counsel moved for a directed verdict of acquittal, contending that the prosecution had not presented sufficient evidence from which a reasonable juror could conclude that defendant had a high BAC at the time that he operated the vehicle. The trial court disagreed and denied the motion.

The jury ultimately convicted defendant of operating with a high BAC, and he was sentenced as described above. This appeal followed.

II. DISCUSSION

A. SUFFICIENCY OF EVIDENCE

"This Court reviews de novo a defendant's challenge to the sufficiency of the evidence supporting his or her conviction." *People v Miller*, 326 Mich App 719, 735; 929 NW2d 821 (2019). "In reviewing the sufficiency of the evidence, this Court must view the evidence—whether direct or circumstantial—in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v Kenny*, 332 Mich App 394, 402-403; 956 NW2d 562 (2020). "[T]he standard of review is deferential: a reviewing court is *required* to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018) (quotation marks and citation omitted). The prosecution is not required to disprove every reasonable theory of a defendant's innocence; it "need only prove the elements of the crime in the face of whatever contradictory evidence is provided by the defendant." *Kenny*, 332 Mich App at 403.

Due process requires the prosecution to prove every element of an offense beyond a reasonable doubt. *People v Smith*, 336 Mich App 297, 308; 970 NW2d 450 (2021). Defendant was charged with operating with a high BAC in violation of MCL 257.625(1)(c), which provides:

> (1) A person, whether licensed or not, shall not operate a vehicle on a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means any of the following:
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> * * *
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> (c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Defendant does not dispute that he operated the vehicle at some point on the evening of April 7, 2024, or that he was intoxicated when his blood was drawn. He argues only that the evidence was insufficient to prove that he was intoxicated at the time that he operated the vehicle.

The prosecution presented sufficient evidence to establish that defendant operated while intoxicated with a high BAC. Under MCL 257.625a(6)(a), "[t]he amount of alcohol . . . in a driver's blood . . . at the time alleged as shown by chemical analysis of the person's blood . . . is admissible into evidence in any civil or criminal proceeding and *is presumed to be the same as at the time the person operated the vehicle.*" (Emphasis added.) Defendant's BAC of 0.283 when his blood was drawn is therefore presumed to have been his BAC when he operated his vehicle earlier that night.

Moreover, circumstantial evidence demonstrated that defendant operated the vehicle while impaired. The motorist and responding officers observed defendant's vehicle partially in a ditch, backed up against a stop sign, and the motorist testified that defendant said he intended to continue his drive if the motorist could help get his vehicle back on the roadway. The responding officers saw defendant exit the driver's seat of the vehicle and did not observe any other persons near the vehicle when they made contact with defendant, who reported that he had been taking the vehicle for a "test drive" when it stalled. And the officers found an empty can of beer in the ditch near the vehicle, which was the same brand as the unopened cans found in defendant's back seat. From that evidence, the jury could reasonably conclude that defendant operated the vehicle while he was intoxicated, causing him to drive into the ditch. Additionally, the officers testified that defendant initially provided a false name, denied consuming alcohol, and refused field sobriety testing. A jury may infer a defendant's consciousness of guilt from evidence of deception and noncooperation with police. See *People v Kowalski*, 489 Mich 488, 509 n 37; 803 NW2d 200 (2011); *People v Unger*, 278 Mich App 210, 227; 749 NW2d 272 (2008).

Viewing the evidence together with the statutory presumption in the light most favorable to the prosecution, and drawing all reasonable inferences in support of the verdict, a rational jury could find beyond a reasonable doubt that defendant operated his vehicle with a BAC of 0.17 or more. The evidence was therefore sufficient to support defendant's conviction.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

"Whether a defendant has received ineffective assistance of counsel is a mixed question of fact and constitutional law." *People v Yeager*, 511 Mich 478, 487; 999 NW2d 490 (2023). "A judge must first find the facts, then must decide whether those facts establish a violation of the defendant's constitutional right to the effective assistance of counsel." *Id*. (quotation marks and citation omitted). We review the trial court's factual findings for clear error and questions of law de novo. *Id*. Because defendant failed to preserve this challenge by moving for a new trial or evidentiary hearing on this basis, "this Court's review is limited to mistakes apparent from the record." *Miller*, 326 Mich App at 726.

Criminal defendants have a constitutional right to the effective assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20; see also *Yeager*, 511 Mich at 488 (recognizing that the right to counsel "guarantees the effective assistance of counsel"). A defendant claiming ineffective assistance "must show that (1) counsel's performance fell below an objective standard of

reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

To establish deficient performance, a defendant must demonstrate that "counsel made errors so serious that counsel was not performing as the counsel guaranteed by the Sixth Amendment." *People v Cooper*, 309 Mich App 74, 80; 867 NW2d 452 (2015) (quotation marks and citation omitted). But "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 US at 691. "There is a presumption that counsel was effective, and a defendant must overcome the strong presumption that counsel's challenged actions were sound trial strategy." *Cooper*, 309 Mich App at 80. We do not "second-guess counsel on matters of trial strategy" or "assess counsel's competence with the benefit of hindsight." *People v Traver (On Remand)*, 328 Mich App 418, 422-423; 937 NW2d 398 (2019) (quotation marks and citation omitted).

In the brief on appeal filed by appellate counsel, defendant argues that he was denied the effective assistance of counsel because defense counsel neither filed a pretrial motion to exclude the officer's testimony that defendant stated, "Don't be surprised if next time you deal with me it ends up in shots fired," nor objected to or moved to strike that testimony at trial. According to defendant, that statement was not relevant, and its probative value was substantially outweighed by the danger of unfair prejudice. Additionally, in a Standard 4 brief,[1] defendant asserts that counsel provided ineffective assistance by failing to follow defendant's preferred trial strategy regarding witness examination and the presentation of evidence.

We need not decide whether trial counsel's performance fell below an objective standard of reasonableness because defendant cannot establish the requisite prejudice to succeed on either claim. "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Strickland*, 466 US at 697. As already discussed, the properly admitted evidence at trial—including defendant's BAC of 0.283, the statutory presumption that this was also his BAC when he drove, and his provision of a false name, denial of drinking, and refusal of field sobriety testing—was independently sufficient for a rational jury to find defendant guilty beyond a reasonable doubt. The single, brief reference to defendant's remark about "shots fired" added little to this already strong record, and defendant has not shown a reasonable probability that its exclusion would have changed the verdict. Likewise, defendant's claim that trial counsel ignored his preferred cross-examination questions and proposed exhibits is unaccompanied by any showing, from the record or an offer of proof, that this evidence would have undermined the properly admitted proof of his intoxication. Defendant therefore cannot establish a reasonable

[1] "A 'Standard 4' brief refers to a brief filed on behalf of an indigent criminal defendant pursuant to Michigan Supreme Court Administrative Order No. 2004-6, Standard 4, 471 Mich c, cii (2005)." *People v Lowrey*, 342 Mich App 99, 103 n 1; 993 NW2d 62 (2022).

probability of a different outcome on that basis either, and he is not entitled to relief on his ineffective-assistance claims.

Affirmed.

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock