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# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>November 05, 2026<br>12:42 PM |
| v | No. 375214<br>Wayne Circuit Court |
| MONAE SHARAE FOSTER,<br><br>Defendant-Appellant. | LC No. 21-004082-01-FC |

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

Defendant appeals as of right her jury convictions of two counts of assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). The trial court sentenced defendant to 3 to 10 years' imprisonment for one AWIGBH conviction, 23 months to 10 years for the other, and two years for each felony-firearm conviction. On appeal, defendant challenges the sufficiency of the evidence to support the AWIGBH and felony-firearm convictions involving one of the two victims. She also argues that she was denied the right to present a defense and that trial counsel provided ineffective assistance. Finding no errors, we affirm.

## I. BACKGROUND

This case arises from a fight at a gas station on the west side of Detroit in the early morning hours of November 14, 2020. The victims, Shannon Harden and Rayshannon Woods, stopped at the gas station after an evening out; Woods went inside the gas station market while Harden waited near Woods's car.

The prosecution's evidence at trial, including the testimony of both victims and surveillance videos from the gas station, showed that defendant and her companion, Marquise Barner, encountered Harden in the gas station parking lot, and a verbal argument ensued. Barner then threw a drink at Harden and tried to hit her. After Harden swung back and struck Barner, defendant attacked Harden. In the fight that followed, Harden was knocked to the ground and defendant pulled out portions of Harden's hair from her scalp. Woods exited the market, saw the fight, and intervened. Defendant then pulled out a gun and threatened to "pistol whip" Woods

before she swung the gun at Woods's head. Woods moved, and the gun struck her shoulder instead.

Harden got up and walked back to Woods's car. Woods got into the driver's seat, and Harden sat in the passenger seat with the door open. Defendant approached the passenger side and shot Harden once in the stomach. Defendant and Barner then fled in a red sedan, and Woods followed the sedan long enough to get its license plate number. Woods flagged down a passing Detroit police officer, who took Harden to the hospital, where she underwent abdominal surgery.

A detective with the Detroit Police Department took statements from Harden and Woods at the hospital and ran the license plate through the Law Enforcement Information Network, which identified defendant and her address. Officers executed a search warrant at defendant's home and recovered a 9-millimeter handgun and documentation showing that defendant had purchased it. Evidence technicians recovered a single spent cartridge case from the gas station. A Michigan State Police firearms examiner later determined that the cartridge case was fired from defendant's handgun. Defendant was initially charged with assault with intent to murder (AWIM), MCL 750.83, as to Harden; AWIGBH as to Harden; AWIGBH as to Woods; carrying a dangerous weapon with unlawful intent, MCL 750.226; and four counts of felony-firearm. Following a preliminary examination, defendant was bound over as charged.

During jury selection, a prospective juror told the trial court that her brother had been shot and paralyzed in 2021 and that this experience might "possibly" affect her ability to be fair and impartial. Defense counsel did not question the prospective juror or seek to remove her, and she was later seated on the jury and identified as Juror One.

At trial, the prosecution presented the evidence summarized above, including testimony from both victims and surveillance videos. As relevant to this appeal, Woods testified that she had not been subpoenaed to appear at the preliminary examination. After Woods was released from her trial subpoena and the jury was excused for the day, defense counsel asked the trial court to order the prosecution to produce Woods's preliminary-examination subpoena, stating that he remembered one being issued and that he intended to use it to impeach her testimony. The trial prosecutor, who had not handled the case at the time of the preliminary examination, responded that he had found no such subpoena in his file. The trial court directed the prosecution to bring the police file to court the next morning so that defense counsel could review it.

The next morning, the prosecutor reported that he had reviewed the police file and found no preliminary-examination subpoena, and he offered to let defense counsel review the file as well. Defense counsel then asked to call Woods in the defense case "for a couple of questions." The prosecutor objected that Woods was not on the defense witness list and had already testified at length. The trial court denied the request, finding that Woods's testimony would be cumulative, that defense counsel had already had a fair opportunity to cross-examine her, that the proposed questioning concerned a collateral matter, and that Woods was not on the defense witness list.

At the close of the prosecution's case-in-chief, the trial court granted defendant's motion for a directed verdict on the carrying-with-unlawful-intent charge and its associated felony-firearm count, but it denied the motion as to the AWIGBH and felony-firearm counts involving Woods. Barner and defendant then testified for the defense. They said the dispute with Harden began

earlier that night at a nightclub behind the gas station and that Harden approached them at the gas station with something in her hand. Defendant acknowledged that she was armed and fought with Harden, but she testified on direct examination that the gun discharged as Harden tried to take it from her; on cross-examination, however, she admitted that she fired a single shot after Harden threw something at her.

The jury acquitted defendant of AWIM and the attendant felony-firearm charge but convicted her of both counts of AWIGBH and two counts of felony-firearm, and the trial court later sentenced her as described above. This appeal followed.

## II. DISCUSSION

### A. SUFFICIENCY OF EVIDENCE

Defendant argues that the evidence was insufficient to prove that she intended to do great bodily harm to Woods, and therefore the AWIGBH conviction involving Woods and the associated felony-firearm conviction must be vacated. We disagree.

We review challenges to the sufficiency of the evidence de novo, reviewing the evidence "in a light most favorable to the prosecutor to determine whether any [trier] of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Baskerville*, 333 Mich App 276, 282; 963 NW2d 620 (2020) (citation omitted). We "draw all reasonable inferences and make credibility choices in support of the jury verdict" and resolve all evidentiary conflicts in favor of the prosecution. *Id*. at 282-283 (citation omitted). "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

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). "The elements of AWIGBH are: (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Stevens*, 306 Mich App 620, 628; 858 NW2d 98 (2014) (quotation marks and citation omitted). Defendant challenges only the second element. The intent to do great bodily harm less than murder is "an intent to do serious injury of an aggravated nature." *Id*. (citation omitted). A defendant's intent may be inferred "from the defendant's actions, including the use of a dangerous weapon or the making of threats." *Id*. at 629. More generally, "[a] factfinder can infer a defendant's intent from his words or from the act, means, or the manner employed to commit the offense." *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001) (citations omitted).

Defendant contends that there was no evidence that she intended to cause "serious injury of an aggravated nature" to Woods, emphasizing that she missed Woods's face and struck only Woods's shoulder, did not try to strike Woods again, and caused no injury requiring treatment. But actual injury is not an element of AWIGBH; the question is not what injury defendant caused, but what injury she intended. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992). Viewed in the light most favorable to the prosecution, the evidence showed that defendant had just attacked Harden, leaving her on the ground with portions of her hair torn from her scalp. Defendant then turned on Woods while holding a handgun, threatened to "pistol whip" her, and

swung the gun at her head. Surveillance footage from the gas station, which corroborated the victims' accounts, allowed the jury to see the force and manner of that swing for itself. The jury could reasonably conclude that defendant intended to cause serious injury of an aggravated nature to Woods when she attempted to strike Woods in the head with a handgun. That defendant missed her target because Woods moved does not negate her intent when she swung. See *id*. The evidence was sufficient to establish that defendant assaulted Woods with the intent to do great bodily harm less than murder.

Defendant's challenge to the attendant felony-firearm conviction depends entirely on her challenge to the AWIGBH conviction. Because the evidence was sufficient to support the AWIGBH conviction, and because Harden, Woods, and defendant herself all testified that defendant possessed a handgun during the confrontation, the evidence was also sufficient to support the associated felony-firearm conviction. See *People v Bass*, 317 Mich App 241, 268-269; 893 NW2d 140 (2016) (stating that the elements of felony-firearm are that the defendant possessed a firearm during the commission of, or attempt to commit, a felony).

## B. RIGHT TO PRESENT A DEFENSE

Defendant next submits that the trial court violated her right to present a defense by denying her midtrial motion to add Woods to the defense witness list. We disagree.

Defendant's claim has two components, which are subject to different standards of review. Defendant asked the trial court to allow her to call Woods during her case-in-chief, so her challenge to the evidentiary ruling itself is preserved. We review a trial court's decision to exclude evidence for an abuse of discretion, which occurs "when its decision is outside the range of principled outcomes." *People v King*, 297 Mich App 465, 472; 824 NW2d 258 (2012). But defendant did not argue in the trial court that denying her request would violate her constitutional right to present a defense. Although we ordinarily "review de novo the question whether a defendant was denied the constitutional right to present a defense," *People v Unger*, 278 Mich App 210, 247; 749 NW2d 272 (2008), defendant's constitutional claim is unpreserved, and we therefore review it for plain error affecting substantial rights, *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). To obtain relief under that standard, defendant must show that (1) an error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected her substantial rights, which generally requires a showing that the error affected the outcome of the lower-court proceedings. *Id*. at 763. Even then, reversal is warranted only if the plain error "resulted in the conviction of an actually innocent defendant" or "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. (quotation marks and citation omitted; alteration in original).

"[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *King*, 297 Mich App at 473, quoting *Crane v Kentucky*, 476 US 683, 690; 106 S Ct 2142; 90 L Ed 2d 636 (1986). "But this right is not unlimited and is subject to reasonable restrictions." *King*, 297 Mich App at 473. The accused must still comply with "established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984), quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973). Thus, the exclusion of defense evidence under the rules of evidence violates the right to present a defense

only if the exclusion "infring[es] upon a weighty interest of the accused" and is "arbitrary" or "disproportionate to the purposes [it is] designed to serve." *Holmes v South Carolina*, 547 US 319, 324; 126 S Ct 1727; 164 L Ed 2d 503 (2006) (citation omitted); see also *King*, 297 Mich App at 474 (stating that the rules of evidence "do not infringe on a defendant's constitutional right to present a defense unless they are arbitrary or disproportionate to the purposes they are designed to serve") (quotation marks and citation omitted).

Applying that standard, the United States Supreme Court has explained that "well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors," and that the Constitution permits judges to exclude evidence that is "repetitive," "only marginally relevant," "or poses an undue risk of harassment, prejudice, [or] confusion of the issues." *Holmes*, 547 US at 326-327 (quotation marks and citation omitted; alteration in original). Michigan's analogous rule provides that a court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . undue delay, wasting time, or needlessly presenting cumulative evidence." MRE 403.

We begin with the preserved evidentiary ruling. Defendant faults the trial court for denying her request without requiring an offer of proof, but the purpose of the proposed testimony was clear from the record. Defense counsel explained that he wanted to impeach Woods's testimony that she had not been subpoenaed for the preliminary examination. Woods had already been examined on that subject. On cross-examination, she admitted she did not attend the preliminary examination and had no "good reason" for her absence. On redirect, she testified that she was never subpoenaed. Defense counsel also questioned the detective, who testified that he did not issue Woods a subpoena. And the prosecutor reported that his review of the police file did not uncover a subpoena for the preliminary examination. Defense counsel offered nothing to the contrary. Defendant does not contend on appeal that a subpoena exists—indeed, she concedes on appeal that Woods was not issued a subpoena—or identify any other evidence with which she could have impeached Woods.

On this record, the trial court did not abuse its discretion. Recalling Woods would have produced the same testimony the jury had already heard. The court also reasonably observed that defense counsel had a full opportunity to examine Woods on the subject when she testified, that whether Woods received a subpoena for a hearing three years earlier was at most a collateral matter, and that Woods was not on the defense witness list. The court's decision to exclude needlessly cumulative testimony fell within the range of principled outcomes.

Defendant's unpreserved constitutional claim fails at the first step of plain-error review. The trial court's ruling was a routine application of MRE 403 to exclude cumulative testimony on a collateral point—precisely the type of exclusion that the Constitution permits. *Holmes*, 547 US at 326-327. The ruling was not arbitrary, and excluding testimony the jury had already heard was proportionate to MRE 403's purpose of avoiding needless repetition and delay. Nor did the ruling infringe on any weighty interest of defendant, who had already fully examined Woods on the subject. The ruling therefore did not deprive defendant of a meaningful opportunity to present her defense. And because there was no error, defendant has not established the first prong of the plain-error test.

Finally, even if the trial court had erred, defendant could not obtain relief under either standard. A preserved, nonconstitutional evidentiary error does not require reversal "unless, after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome[-]determinative." *King*, 297 Mich App at 472; see also MCL 769.26. Likewise, an unpreserved constitutional error does not warrant relief unless it affected the outcome of the proceedings. *Carines*, 460 Mich at 763. Defendant cannot make either showing. The jury already knew that Woods did not attend the preliminary examination and, by her own account, lacked a "good reason" for her absence. Defendant also impeached Woods by pointing to inconsistencies between her trial testimony and her police statement. For example, Woods told police she saw defendant retrieve the gun from a nearby Hummer, but she testified at trial that she did not see when defendant obtained the gun. And as discussed earlier in this opinion, Woods's account of the assault was corroborated by other testimony and a surveillance video. Defendant has not shown that further questioning about a subpoena that does not exist would have changed the outcome of her trial, and she is thus not entitled to relief on the basis of this claim.

## C. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant also asserts that trial counsel was ineffective for (1) failing to move to quash the charges involving Woods after the preliminary examination, and (2) failing to question Juror One during voir dire and failing to remove that juror by a challenge for cause or a peremptory challenge. We disagree.

"The question whether defense counsel performed ineffectively is a mixed question of law and fact; this Court reviews for clear error the 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). Because defendant did not move for a new trial or a *Ginther*[1] hearing in the trial court, or for a remand in this Court, her claims are unpreserved. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012); *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020). We therefore review them for errors apparent on the record. *People v Spaulding*, 332 Mich App 638, 656; 957 NW2d 843 (2020).

The Michigan and United States Constitutions guarantee criminal defendants the effective assistance of counsel. Const 1963, art 1, § 20; US Const, Am VI; *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984). "To establish a claim of ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *People v Fyda*, 288 Mich App 446, 450; 793 NW2d 712 (2010).

"Trial counsel's performance is deficient when it falls below an objective standard of professional reasonableness." *People v Hughes*, 339 Mich App 99, 105; 981 NW2d 182 (2021). The defendant "must overcome the strong presumption that counsel's assistance constituted sound trial strategy." *People v Armstrong*, 490 Mich 281, 290; 806 NW2d 676 (2011). The reviewing court must "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *People v Jackson (On*

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

*Reconsideration)*, 313 Mich App 409, 431; 884 NW2d 297 (2015), quoting *Strickland*, 466 US at 689. "Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases." *Unger*, 278 Mich App at 242. That said, the strategy "in fact must be sound, and counsel's decision as to it objectively reasonable; a court cannot insulate the review of counsel's performance by calling it trial strategy." *People v Douglas*, 496 Mich 557, 585; 852 NW2d 587 (2014) (quotation marks and citation omitted). "Counsel always retains the duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Trakhtenberg*, 493 Mich at 52 (quotation marks and citation omitted).

To establish prejudice, the defendant must show that "but for counsel's deficient performance, a different result would have been reasonably probable." *Armstrong*, 490 Mich at 290. The defendant also "bears the burden of establishing the factual predicate for his claim." *People v Putman*, 309 Mich App 240, 248; 870 NW2d 593 (2015) (citation omitted). Because a defendant must establish both prongs, a court need not address deficient performance if the claim fails for lack of prejudice. *Strickland*, 466 US at 697.

1. THE CHARGES INVOLVING WOODS

Defendant argues that no evidence presented at the preliminary examination supported the charges involving Woods, so counsel should have opposed bindover on those charges in the district court or moved to quash them in the circuit court.

"The district court conducts a preliminary examination to determine whether a felony has been committed and whether probable cause exists to believe that the defendant committed the felony." *People v Hawkins*, 340 Mich App 155, 174; 985 NW2d 853 (2022); see also MCL 766.13. "Probable cause requires a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003) (quotation marks and citation omitted). "This standard requires evidence of each element of the crime charged or evidence from which the elements may be inferred." *People v Seewald*, 499 Mich 111, 116; 879 NW2d 237 (2016) (quotation marks and citation omitted).

As an initial matter, defendant overstates the record when she asserts that "[n]o testimony was elicited" at the preliminary examination about the assault on Woods. Although Woods did not testify, Harden did, and she described the confrontation between defendant and Woods as follows: defendant assaulted Harden with a gun in her hand, Woods came out of the market and yelled at defendant and Barner, and defendant told Woods "to shut the F up before I pistol whip you." Harden did not testify that defendant swung the gun at Woods or struck her, and the prosecution elicited nothing further about the encounter with Woods. Whether that limited testimony was enough to permit an inference of each element of AWIGBH is a closer question than defendant's brief acknowledges. But we need not decide whether that testimony established probable cause, or whether counsel performed deficiently by failing to challenge the bindover, because defendant cannot establish prejudice for two reasons.

First, even a successful bindover challenge would not have ended the prosecution of the charges involving Woods. Had the district court declined to bind defendant over on those charges,

it would have been required to "discharge the defendant without prejudice to the prosecutor initiating a subsequent prosecution for the same offense." MCR 6.110(F). Likewise, had defendant moved to quash and the circuit court found the bindover unsupported, the court would have been required to "either dismiss the information or remand the case to the district court for further proceedings." MCR 6.110(H). Neither disposition would have barred the prosecution from proceeding on the charges with additional evidence. See MCR 6.110(F); *People v Maye*, 343 Mich App 57, 67; 996 NW2d 571 (2022) (explaining that "dismissal of a prosecution at preliminary examination raises no bar under res judicata or collateral estoppel to a subsequent prosecution") (citation omitted). Nothing in the record suggests that the prosecution could not have refiled the charges and presented additional evidence at a new preliminary examination. To the contrary, Woods was available—she testified at trial—and her account of being threatened and struck with the gun would have readily supplied evidence of each element. Defendant has not shown a reasonable probability that a successful challenge would have done anything more than delay the prosecution of those charges.

Second, the prejudice inquiry asks whether counsel's error undermines confidence in the outcome of the trial, and defendant has not shown that any deficiency at the bindover stage affected her trial. The right to a preliminary examination is statutory, *People v Hall*, 435 Mich 599, 602-603; 460 NW2d 520 (1990), and errors in that proceeding are subject to the harmless-error rule of MCL 769.26. Accordingly, our Supreme Court has held that "[i]f a defendant is fairly convicted at trial, no appeal lies regarding whether the evidence at the preliminary examination was sufficient to warrant a bindover." *People v Wilson*, 469 Mich 1018, 1018 (2004). Characterizing a bindover challenge as a claim of ineffective assistance does not change the underlying reality: once a jury has found the defendant guilty beyond a reasonable doubt on properly admitted evidence, a shortfall in the evidence supporting probable cause at an earlier stage does not call the verdict into question. For the reasons explained earlier in this opinion, defendant received a fair trial, and the evidence at trial was sufficient to convict her of the charges involving Woods beyond a reasonable doubt.

In her reply brief, defendant suggests that Woods's absence from the preliminary examination left defense counsel without prior testimony with which to impeach her at trial. But defendant does not explain how a challenge to the bindover would have produced such testimony, other than by prompting the prosecution to refile the charges and call Woods at a new preliminary examination. Nor does defendant identify any respect in which Woods's testimony at such an examination would likely have differed from her trial testimony. Any benefit to the defense from that sequence of events is purely speculative, and a defendant cannot rely on speculation to satisfy her burden to establish the factual predicate for her claim. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Because defendant has not shown a reasonable probability that the outcome of the proceedings would have been different had counsel challenged the bindover, this claim of ineffective assistance fails.

2. JUROR ONE

Defendant also argues that trial counsel was ineffective for failing to question Juror One, who expressed some uncertainty about her ability to be impartial, and for failing to remove her through a challenge for cause or a peremptory challenge.[2]

"A defendant who chooses a jury trial has an absolute right to a fair and impartial jury." *People v Tyburski*, 445 Mich 606, 618; 518 NW2d 441 (1994). "[P]art of the guarantee of a defendant's right to an impartial jury is an adequate voir dire to identify unqualified jurors." *Morgan v Illinois*, 504 US 719, 729; 112 S Ct 2222; 119 L Ed 2d 492 (1992). "The purpose of voir dire is to elicit enough information for development of a rational basis for excluding those who are not impartial from the jury." *Tyburski*, 445 Mich at 618.

This Court has long been "disinclined to find ineffective assistance on the basis of an attorney's failure to challenge a juror," because the most important considerations in jury selection "include a potential juror's facial expressions, body language, and manner of answering questions," which a reviewing court "cannot see." *Unger*, 278 Mich App at 258 (citation omitted). "A lawyer's hunches, based on his observations, may be as valid as any method of choosing a jury." *Id*. (citation omitted). And to establish prejudice from counsel's failure to remove a juror, the defendant must show that the juror who sat was actually biased against her. See *Hughes v United States*, 258 F3d 453, 458 (CA 6, 2001) (holding that a defendant who claims ineffective assistance based on counsel's failure to strike a purportedly biased juror "must show that the juror was actually biased against him") (citation omitted); see also *People v Miller*, 482 Mich 540, 548, 550; 759 NW2d 850 (2008) (holding that a juror's nondisclosure during voir dire is prejudicial only if it denied the defendant an impartial trial, and that "[t]he burden is on the defendant to establish that the juror was not impartial or at least that the juror's impartiality is in reasonable doubt"). But "[a] juror's express doubt as to her own impartiality on voir dire does not necessarily entail a finding of actual bias." *Hughes*, 258 F3d at 458.

Defendant's claim rests on the premise that Juror One "admitted to harboring prejudice" against people like defendant and expressed "negative feelings surrounding firearms." The voir dire record does not support that characterization. When the trial court asked the venire whether they or anyone close to them had been the victim of a violent crime, Juror One said that a close relative had been. Asked whether that would affect her ability to be fair and impartial, she answered, "Possibly." She explained that her brother had been shot and paralyzed in 2021, which was "a very traumatic experience," and that although she did not "know all the facts of this case," gun violence "greatly impacted [her] family." The court then asked whether there was any reason, "other than what you stated earlier," that she could not be fair and impartial, and whether she held any beliefs that would prevent her from passing judgment on another person; she answered "No"

[2] In her brief on appeal, defendant additionally contends that "the record supports the conclusion that the trial court failed to discharge its independent duty to excuse [Juror One], even in the absence of a formal challenge by either party." To the extent defendant intended to raise that issue as an independent claim of error, she has abandoned it by failing to raise it in her statement of questions presented. See *People v McMiller*, 202 Mich App 82, 83 n 1; 507 NW2d 812 (1993) (holding that an issue is abandoned when it is not raised in the statement of questions presented).

to both questions. Later, when the prosecutor asked the venire whether anyone had "a sort of strong negative feeling surrounding firearms," no one—including Juror One—raised a hand. Juror One then disclosed that she held a concealed pistol license (CPL). Thus, Juror One never said that she could not be fair. She said only that her brother's shooting might "possibly" affect her, while acknowledging that she did not yet know the facts of the case, and she gave no indication of hostility toward gun owners—indeed, she was one.

On this record, defendant has not overcome the strong presumption that counsel's decision to keep Juror One was strategic. To be sure, the record contains information that could have given defense counsel pause: in response to further questioning by the prosecutor, Juror One said that a CPL holder who discharges a weapon should immediately report it to the police, which defendant did not do. But the question is not whether counsel could have made a different choice; it is whether the choice counsel made fell outside the wide range of reasonable professional judgment. *Jackson*, 313 Mich App at 431. A juror who equivocates about the effect of a past experience, who does not otherwise express hostility toward gun owners, and who is herself a licensed gun owner—in a case in which the defense emphasized that defendant was a licensed gun owner—is a juror whom reasonable defense counsel could choose to keep, particularly after observing her demeanor.

Even assuming that counsel's failure to further question or challenge Juror One constitutes deficient performance, defendant cannot establish prejudice because nothing in the record shows that Juror One was actually biased. Her statement that her brother's shooting might "possibly" affect her was an expression of uncertainty, not a declaration of prejudgment, and she affirmed that she held no other beliefs that would prevent her from judging the case. See *Hughes*, 258 F3d at 458. Nothing in the record demonstrates that Juror One was biased against defendant, against gun owners, or in favor of the prosecution. Accordingly, defendant has not established prejudice, and this ineffective-assistance claim also fails.

Affirmed.

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin