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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Plaintiff-Appellee, | UNPUBLISHED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>October 05, 2026<br>1:48 PM |
| v | No. 373801<br>Macomb Circuit Court |
| ELISHA DEMTRIUS WILSON,<br><br>Defendant-Appellant. | LC No. 2023-000556-FH |

Before: MALDONADO, P.J., and RIORDAN and YOUNG, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of three counts of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(*iv*); carrying a concealed weapon, MCL 750.227; being a felon in possession of a firearm (felon-in-possession), MCL 750.224f; and carrying a firearm during the commission of a felony (felony-firearm), third or subsequent offense, MCL 750.227b(1). Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to 30 to 360 months' imprisonment for each of the possession with intent to deliver convictions, two to 10 years' imprisonment for the carrying a concealed weapon and felon-in-possession convictions, and 10 years' imprisonment for the third or subsequent felony-firearm conviction. We affirm.

## I. FACTUAL BACKGROUND

This case arose from a Warren Police Department undercover operation involving purchases of crack cocaine. An undercover police officer, Officer Alana Jannette, arranged to purchase crack cocaine from defendant in the parking lot of Value Fresh Market in Warren, Michigan, on January 9, 2023. At the arranged time, defendant arrived, entered Officer Jannette's vehicle, and handed her a bag of crack cocaine in exchange for $100.

Again, on January 12, 2023, Officer Jannette purchased crack cocaine from defendant. Officer Jannette coordinated with her special investigation team, Sergeant Jeff Konwinski and Officer Jacob Owen, and Patrol Officer Guy Angelucci to plan surveillance and the operation to arrest defendant after the drug transaction. Sergeant Konwinski and Officer Owen were positioned to observe the transaction. At the arranged time, defendant arrived and again entered Officer

Jannette's vehicle, where he gave Officer Jannette crack cocaine in exchange for another $100. Officer Jannette was wearing a wire, so all of the officers involved in the undercover operation could hear the transaction. Defendant then exited Officer Jannette's vehicle and drove away.

Officer Owen followed defendant and maintained constant surveillance on his vehicle. Officer Angelucci, who had been positioned about a half of a mile away during the undercover transaction, pulled defendant over. Officer Angelucci falsely informed defendant that he stopped defendant to investigate a stolen vehicle. Officer Owen arrived shortly thereafter and assisted Officer Angelucci with the stop. A search of the vehicle was conducted after Officer Angelucci's narcotic-detection dog alerted to the presence of narcotics in the vehicle. The officers found cocaine in the vehicle. In addition, a search incident to arrest uncovered cocaine and a firearm on defendant's person.

Defendant was charged with the crimes of which he was eventually convicted and one count of receiving and concealing a stolen firearm, MCL 750.535b. Defendant moved to suppress the evidence stemming from his arrest and the subsequent search. Officer Jannette, Officer Owen, and Officer Angelucci testified at an evidentiary hearing on the motion. The trial court denied the motion to suppress.

Defendant also moved to dismiss the felon-in-possession and carrying-a-concealed-weapon charges, arguing that the charges violated his right to self-defense protected by the Second Amendment. The trial court denied that motion as well.

At trial, along with the officers who had testified at the evidentiary hearing, Sergeant Konwinski testified. On cross-examination, Sergeant Konwinski explained that he did not attempt to obtain video surveillance from Value Fresh Market despite its presumptive availability. On redirect examination, the prosecutor asked Sergeant Konwinski whether Value Fresh Market was willing to share its surveillance videos if subpoenaed. Sergeant Konwinski answered affirmatively.

The jury found defendant guilty of the crimes noted above. However, the jury found defendant not guilty of receiving and concealing a stolen firearm. This appeal followed.

## II. SUPPRESSION

Defendant first asserts that the trial court erred by denying his motion to suppress because his traffic stop, arrest, and search of his vehicle and his person violated both the Fourth Amendment and Fourteenth Amendment. In particular, defendant argues that his Fourth Amendment rights were violated because Officer Angelucci did not have probable cause to conduct the initial traffic stop, which tainted the subsequent discovery of evidence, and Officer Angelucci violated his Fourteenth Amendment due-process rights because Officer Angelucci lied to him about the reason for the traffic stop. We disagree.

### A. STANDARD OF REVIEW

"Findings of fact made after a suppression hearing are reviewed for clear error, while the ultimate decision on a motion to suppress is reviewed de novo." *People v Vaughn*, 344 Mich App

539, 549; 1 NW3d 414 (2022). "A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that the trial court made a mistake." *Id*. (quotation marks and citations omitted).

## B. ANALYSIS

"Both the United States Constitution and the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Pagano*, 507 Mich 26, 31-32; 967 NW2d 590 (2021), citing US Const, Am IV; Const 1963, art 1, § 11. "Reasonableness is measured by examining the totality of circumstances." *People v Williams*, 472 Mich 308, 314; 696 NW2d 636 (2005). "Generally, if evidence is unconstitutionally seized, it must be excluded from trial." *People v Dillon*, 296 Mich App 506, 508; 822 NW2d 611 (2012).

"A custodial arrest based on probable cause is not an unreasonable intrusion under the Fourth Amendment." *People v Nguyen*, 305 Mich App 740, 751; 854 NW2d 223 (2014). "[T]he Fourth Amendment permits an arrest without a warrant in a public place as long as the police officer making the arrest possesses sufficient probable cause." *People v Hammerlund*, 504 Mich 442, 453; 939 NW2d 129 (2019) (quotation marks and citation omitted). "Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Id.* at 451 (quotation marks and citation omitted). Moreover, "a police officer may stop and detain a motor vehicle on the basis of an articulable and reasonable suspicion that the vehicle or one of its occupants is violating the law[.]" *Dillon*, 296 Mich App at 508. Finally, it is well-recognized that "the police may search a motor vehicle without the necessity of first obtaining a warrant if probable cause to support the search exists," *People v Moorman*, 331 Mich App 481, 486; 952 NW2d 597 (2020) (quotation marks and citation omitted), and "[w]hen conducting a search incident to a lawful arrest, the police may search the arrestee and the area within his immediate control," *People v Eaton*, 241 Mich App 459, 463; 617 NW2d 363 (2000).

"An arresting officer, or collectively the officers involved in an investigation ('the police team' approach), must possess information demonstrating probable cause to believe that an offense has occurred and that the defendant has committed it." *Nguyen*, 305 Mich App at 751. That is, "probable cause for arrest may emanate from collective police knowledge." *United States v Perkins*, 994 F2d 1184, 1189 (CA 6, 1993) (quotation marks and citation omitted). Here, Officer Jannette had knowledge that on January 12, 2023, defendant possessed a substance which he claimed was crack cocaine, selling it to Officer Jannette. Officer Jannette had reason to believe that defendant was telling the truth, as the substance sold to her three days earlier tested positive for crack cocaine. Further, Officer Owen observed the January 12, 2023 transaction and could hear the exchange through Officer Jannette's wire. Officer Owen did not lose sight of defendant's vehicle throughout the whole operation, from the undercover transaction through the traffic stop and arrest. Officer Angelucci had been informed earlier about the plan for the undercover transaction and was positioned to arrest defendant after it occurred. Over the radio, Officer Angelucci was provided with a description of defendant and his vehicle. Officer Angelucci then conducted the traffic stop and arrested defendant.

Officer Jannette, Officer Owen, and Officer Angelucci, who were the officers involved in the investigation, collectively had reasonably trustworthy information to believe that an offense had been committed by defendant. That is, the officers had probable cause to believe criminal activity occurred, specifically that defendant possessed and sold a narcotic. The fact that Officer Angelucci did not personally have knowledge of the facts establishing probable cause is irrelevant because this was a team investigation, and the relevant question is whether the entire police team had probable cause to stop and arrest defendant. See *Nguyen*, 305 Mich App at 751. As explained, it did have probable cause to do so.[1]

Next, defendant argues that he was deprived of his due-process rights under the Fourteenth Amendment when Officer Angelucci lied about the reason that he pulled over defendant. Defendant asserts that this egregious conduct warrants suppressing the evidence against him. We disagree.

"Under our state and federal Constitutions, a person cannot be deprived of life, liberty, or property without due process of law." *People v Joly*, 336 Mich App 388, 399; 970 NW2d 426 (2021). "In the context of criminal proceedings, the denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice." *Id*. (quotation marks and citation omitted). "[O]utrageous misconduct by the government in detecting and obtaining incriminating evidence can rise to the level of a due-process violation." *Id*. at 399-400 (quotation marks and citation omitted). The exclusion of evidence that was obtained as a result of a fundamentally unfair investigatory process may remedy violations of due process. *Id*. at 400.

When Officer Angelucci stopped defendant after the undercover drug transaction, he told defendant that he was looking for a stolen vehicle that matched a description of defendant's vehicle. Officer Angelucci testified that the purpose of this lying is to "throw[] him off a little bit" because a suspect such as defendant is aware that his vehicle is not stolen, "so that kind of buys me time and maybe a little bit of safety window while I'm waiting for my backup to arrive so I don't get harm[ed]." Defendant has not established that the officer's lying about the reason for stopping his vehicle amounted to misconduct or that the officer was required to disclose the true reason for stopping him. We find nothing inappropriate with such safety-based police conduct during a narcotics investigation. As explained above, the officers had probable cause to arrest defendant based on their observations of him during the alleged drug transactions, and attempting to stall a suspected drug dealer until police backup arrives does not constitute misconduct or an unfair investigatory process. Accordingly, defendant was not deprived of his right to fundamental fairness or due process.

For these reasons, defendant has not established that the trial court erred by denying his motion to suppress the evidence against him.

## III. PROSECUTORIAL MISCONDUCT

[1] Because the officers had probable cause to stop and arrest defendant, it follows that the subsequent search incident to arrest and search of his vehicle did not violate the Fourth Amendment. See *Moorman*, 331 Mich App at 486; *Eaton*, 241 Mich App at 463.

Defendant next argues that he was denied a fair trial because the prosecutor improperly shifted the burden of proof to him. We disagree.

## A. ISSUE PRESERVATION

"[T]o preserve an issue of prosecutorial misconduct,[2] a defendant must contemporaneously object and request a curative instruction." *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). In this case, the prosecutor asked, "If you know, would Value Fresh give other, give out their video not just to the Warren police, if they were subpoenaed or questioned, correct?" Defense counsel objected to the question based on lack of foundation. However, defendant did not raise an objection based on shifting the burden of proof. "An objection based on one ground is usually considered insufficient to preserve an appellate attack based on a different ground." *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). Thus, this issue is unpreserved.

## B. STANDARD OF REVIEW

We review unpreserved claims of prosecutorial error "for plain error affecting defendant's substantial rights." *People v Roscoe*, 303 Mich App 633, 648; 846 NW2d 402 (2014). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (cleaned up).

## C. ANALYSIS

"A prosecutor may not imply . . . that the defendant must prove something or present a reasonable explanation for damaging evidence because such an argument tends to shift the burden of proof." *People v Fyda*, 288 Mich App 446, 463-464; 793 NW2d 712 (2010). "Also, a prosecutor may not comment on the defendant's failure to present evidence because it is an attempt to shift the burden of proof." *Id*. at 464. But it is permissible for a prosecutor to "comment on the failure of the defense to produce evidence" if the defendant seeks to rely on that unproduced evidence. *People v Fields*, 450 Mich 94, 111 n 21; 538 NW2d 356 (1995) (quotation marks and citation omitted). A prosecutor also may attack the credibility of a theory advanced by the defense without shifting the burden of proof. *People v McGhee*, 268 Mich App 600, 635; 709 NW2d 595 (2005).

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[2] "This Court explained in *People v Cooper*, 309 Mich App 74, 87-88; 867 NW2d 452 (2015), that a more accurate label for most claims of prosecutorial misconduct is 'prosecutorial error,' while only the most extreme cases rise to the level of 'prosecutorial misconduct.' " *People v Caddell*, 332 Mich App 27, 71 n 10; 955 NW2d 488 (2020).

In this case, on cross-examination, defense counsel questioned whether Sergeant Konwinski had obtained Value Fresh Market's surveillance footage of the parking lot where the undercover purchases occurred. Sergeant Konwinski explained that he had not sought the footage because "[i]t wasn't necessary." On redirect examination, the prosecutor asked Sergeant Konwinski for additional information about why he did not request the footage. Sergeant Konwinski explained that he likely would have requested the footage if there had been a question regarding defendant's identity considering the "limited time and resources." The prosecutor asked, "If you know, would Value Fresh give other, give out their video not just to the Warren police, if they were subpoenaed or questioned, correct?" Sergeant Konwinski answered, "I have had experience with the people at Value Fresh or the people that operate the camera system at Value Fresh. And I'm sure, or I know they do hand out the video."

Defendant argues that the prosecutor implied that defendant had the burden to produce the Value Fresh Market footage. However, defendant opened the door to the prosecutor's questions about the unproduced evidence on re-direct examination. See *McGhee*, 268 Mich App at 635. Specifically, defense counsel cross-examined Sergeant Konwinski about the unproduced video footage to suggest that the overall investigation was unreliable and that the undercover purchases may not have occurred as the officers described them. In other words, defendant used the fact that the police did not obtain the video footage to imply that the police investigation was unreliable, and the prosecutor responded to that implication by questioning Sergeant Konwinski about his legitimate reasons for not obtaining the video footage. This did not shift the burden of proof to defendant, and no error occurred.

Moreover, even if error occurred and it was plain, defendant cannot show that his substantial rights were affected. See *Carines*, 460 Mich at 763. The reference to the video recording was brief in the overall context of trial, and the officers' trial testimony against defendant is fairly characterized as overwhelming evidence of guilt. Further the trial court's instructions dispelled any prejudice arising from the prosecutor's questioning. Specifically, the trial court instructed the jury regarding the presumption of innocence, the burden of proof, and the general nature of evidence. "Jurors are presumed to follow the trial court's instructions, and instructions are presumed to cure most errors." *People v Mullins*, 322 Mich App 151, 173; 911 NW2d 201 (2017). Here, because any possible prejudice was minimal, the trial court's instruction worked to cure any prejudice caused by the prosecutor's alleged improper questioning.

## IV. RIGHT TO KEEP AND BEAR ARMS

Finally, defendant asserts that Michigan's felon-in-possession statute, MCL 750.224f, is unconstitutional as applied to him.[3] We disagree.

[3] MCL 750.224f(1) provides that "a person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state" until the person has satisfied various requirements, such as "successfully complet[ing] all conditions of probation or parole imposed for the violation." See MCL 750.224f(1)(a) to (c).

## A. STANDARD OF REVIEW

We review de novo the issue of whether a criminal statute is unconstitutional. *People v Parker*, 319 Mich App 664, 669; 903 NW2d 405 (2017). The trial court's decision on a motion to dismiss criminal charges against a defendant is reviewed for abuse of discretion. *People v Caswell*, 336 Mich App 59, 69; 969 NW2d 538 (2021). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *Id*. (quotation marks and citation omitted).

## B. ANALYSIS

"A constitutional challenge to the validity of a statute can be brought in one of two ways: by either a facial challenge or an as-applied challenge." *People v Johnson*, 336 Mich App 688, 692; 971 NW2d 692 (2021) (quotation marks and citation omitted).

> A facial challenge alleges that a statute is unconstitutional on its face, meaning that, in general, the challenger must establish that no set of circumstances exists under which the statute would be valid. An as-applied challenge alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution of government action. [*People v Hughes*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 367172); slip op at 8 (cleaned up).]

In *Hughes*, we held that MCL 750.224f is not facially unconstitutional. *Id*. at ___; slip op at 14. Thus, in this case, defendant raises an as-applied challenge. Consequently, we must analyze whether application of MCL 750.224f to defendant led to a denial of a specific right possessed by defendant. See *id*. at ___; slip op at 8.

"Both the United States Constitution and the Michigan Constitution grant individuals a right to keep and bear arms for self-defense." *People v Deroche*, 299 Mich App 301, 305; 829 NW2d 891 (2013) (quotation marks and citation omitted). "Like most rights, the right secured by the Second Amendment is not unlimited." *Dist of Columbia v Heller*, 554 US 570, 626; 128 S Ct 2783; 171 L Ed 2d 637 (2008). Thus, in *Heller*, the United States Supreme Court stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons. . . ." *Id*. Again, in *McDonald v Chicago*, 561 US 742; 130 S Ct 3020; 177 L Ed 2d 894 (2010), the Court clarified that it "did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons. . . ." *Id*. at 786 (quotation marks and citation omitted). Prohibitions "on the possession of firearms by felons and the mentally ill[] are presumptively lawful." *United States v Rahimi*, 602 US 680, 699; 144 S Ct 1889; 219 L Ed 2d 351 (2024) (quotation marks and citation omitted). By the same measure, this Court has stated that "[e]xceptions to the right to bear arms include regulation of gun possession by felons." *People v Powell*, 303 Mich App 271, 273; 842 NW2d 538 (2013).

In *New York State Rifle & Pistol Ass'n, Inc v Bruen*, 597 US 1; 142 S Ct 2111; 213 L Ed 2d 387 (2022), the United States Supreme Court specified the standard for determining whether a restriction on the right to possess firearms violates the Second Amendment:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command. [*Id*. at 17 (quotation marks and citation omitted).]

There is no dispute that the Second Amendment generally protects the right of individuals to possess firearms for self-defense. See *Heller*, 554 US at 584. Because the Second Amendment protects the challenged conduct in which defendant engaged, i.e., possessing a firearm, the prosecution has the burden of establishing that application of MCL 750.224f to defendant, i.e., prohibiting defendant from possessing a firearm, is "consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 US at 17.

The prosecution has satisfied this burden. When the events at issue occurred and defendant was arrested while in possession of a firearm, he previously had been convicted of several felonies, including, but not limited to, felony-firearm; possession with intent to deliver less than 50 grams of cocaine, heroin, or another narcotic; assault with a dangerous weapon; assaulting a prison employee; and prisoner in possession of a weapon. MCL 750.224f served to prevent defendant from engaging in future violence aided by a firearm before it occurred. In other words, given defendant's extensive criminal history, which includes violent and assaultive conduct, our Nation's historical tradition of firearm regulation includes prohibiting individuals such as him from possessing firearms, at least until certain requirements are satisfied indicating his willingness and ability to follow the law. See *Heller*, 554 US at 626; *McDonald*, 561 US at 786. Thus, the trial court correctly denied defendant's motion to dismiss the charge of felon-in-possession under MCL 750.224f.

## V. CONCLUSION

There were no errors warranting relief. We affirm.

/s/ Allie Greenleaf Maldonado
/s/ Michael J. Riordan
/s/ Adrienne N. Young