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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v CARL DIETRICH PAPP, Defendant-Appellant.	UNPUBLISHED November 10, 2026 12:22 PM No. 373930 Otsego Circuit Court LC No. 2023-006564-FH

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

PER CURIAM.

Defendant, Carl Deitrich Papp, was convicted by a jury of being a felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possessing a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On appeal, defendant raises claims of ineffective assistance of counsel, error in the admission of evidence, and a violation of the Second Amendment. For the reasons stated in this opinion, we conclude that defendant is not entitled to relief, and we therefore affirm.

I. BACKGROUND AND FACTS

Defendant and his girlfriend were evicted from a rental home that they lived in together. A district court's order of eviction, which gave possession back to the landlord, was carried out by the local sheriff's department. The eviction process required the removal of all the couple's personal property from the dwelling.

When sheriff's deputies arrived at the residence, defendant's girlfriend and her minor children were in the home, but defendant was not. The girlfriend told the deputies that they needed a warrant to enter the home, and the deputies explained that they only needed the eviction order, which they offered to show her. The girlfriend attempted to slam the door on the deputies, but the deputies pushed their way in. Following a scuffle, the girlfriend was arrested and her 15-year-old daughter was detained. A deputy asked the girlfriend if she had "any firearms or anything in the house that we need to be aware of[.]" Defendant's girlfriend reported that there was a firearm in the home, and her daughter helped the deputies locate it. A handgun was located just inside the door to the master bedroom that defendant shared with his girlfriend. According to police

testimony, the gun was sitting out in the open on top of a shelf. The gun was not in a safe, and although it was equipped with a trigger lock, the lock mechanism was installed improperly and would not have prevented the handgun from being removed from the shelf or from being used.

At some point during the eviction process, defendant returned to the residence. According to police testimony, he became belligerent and irate, complained that the eviction was illegal, and claimed ownership over fixtures in the home such as the thermostat and smoke alarm. Further investigation revealed that defendant had previous felony convictions on his record and that his right to possess a firearm had not been restored. Defendant was charged with felon-in-possession and felony-firearm based on the handgun found in the home.

At trial, defendant stipulated to the fact that he was a convicted felon as a result of which he could not lawfully possess a firearm. Nevertheless, the prosecution sought to present a certified record of defendant's previous conviction of third-degree criminal sexual conduct. The trial court admitted the record into evidence and provided the jury with a limiting instruction.

Also at trial, defendant's girlfriend was on defendant's witness list, and she was sequestered outside the courtroom. At the close of the prosecution's case-in-chief, defendant's trial counsel mused aloud, outside the jury's presence, that he was "debating whether or not I'm going to call her" and was "conflicted with that issue" because "I don't know that I need to call her to put the prosecution to its burden." He asked for, and was granted, a short recess in order to consult with defendant. When proceedings resumed, trial counsel announced, "We'll rest our case," having decided not to call the girlfriend as a witness.

Defendant was convicted as described and filed his claim of appeal. Defendant then filed a motion in the trial court for an evidentiary hearing and a new trial. See MCR 7.208(B). Relevant to this appeal, defendant argued that his trial counsel was ineffective and that barring a felon from living in a home with a lawful gun owner violated the Second Amendment. The trial court denied the motion without an evidentiary hearing.

II. ANALYSIS

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant contends that he is entitled to a new trial because he was deprived of his right to the effective assistance of counsel. He claims two instances of ineffective assistance: failure to call his girlfriend as a witness and failure to move for suppression of the gun as evidence. We conclude that neither claim has merit.

The United States and Michigan Constitutions guarantee criminal defendants the right to effective assistance of counsel. *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023), citing Const 1963, art 1, § 20, US Const, Am VI, and *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 (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Shaw*, 315 Mich App 668, 672; 892 NW2d 15 (2016), citing *Strickland*, 466 US at 687, 694. It is

presumed that trial counsel was effective, and a defendant must overcome the strong presumption that counsel's performance was sound trial strategy. *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). A trial strategy is not deficient merely because it was unsuccessful or because it "entail[ed] taking calculated risks." *People v White*, 331 Mich App 144, 149; 951 NW2d 106 (2020). Additionally, failure to "advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel." *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Whether a defendant has been denied the effective assistance of counsel is a "mixed question of fact and constitutional law." *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004) (quotation marks and citation omitted). Factual findings are reviewed for clear error and questions of constitutional law are reviewed de novo. *Id.* "When the trial court has not conducted a hearing to determine whether a defendant's counsel was ineffective, our review is limited to mistakes apparent from the record." *People v Lane*, 308 Mich App 38, 68; 862 NW2d 446 (2014). We review for abuse of discretion a trial court's decision whether to hold an evidentiary hearing. *People v Unger*, 278 Mich App 210, 216-217; 749 NW2d 272 (2008).

1. FAILURE TO CALL A WITNESS

Defendant first argues that trial counsel was ineffective for failing to call his girlfriend as a witness. We disagree.

For purposes of defendant's felon-in-possession conviction under MCL 750.224f, the element of possession of a firearm may be satisfied by either actual possession or constructive possession. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). "Physical possession is not necessary as long as the defendant has constructive possession." *Id*. at 471. A defendant has constructive possession of a firearm if the defendant knows the location of the weapon and it is reasonably accessible to the defendant. *Id*. at 470-471. In addition, "[w]hether actual or constructive, possession may be joint as well as exclusive." *Id*. at 470.

Defendant asserts that his girlfriend would have testified that she purchased the handgun to use for her own protection when defendant was not at home, and that she and defendant had a "system" whereby it was always locked in a safe and inaccessible to defendant when he was at home.[1] Defendant did not know where the gun was located and did not know where she kept the key. The prosecution never presented direct evidence that defendant had actual possession of the firearm or that he was ever in the house at the same time it was outside of the safe and accessible. Therefore, defendant argues, his girlfriend's testimony, if believed by the jury, would have negated all evidence of constructive possession. And had trial counsel called the girlfriend as a witness, he further argues, there is a reasonable probability that the result of the proceedings would have been different.

[1] This information was provided in an affidavit in support of defendant's motion for an evidentiary hearing and new trial filed in the trial court. The affidavit was that of a defense investigator who spoke with the girlfriend about a year after the trial.

It is well established that a trial attorney's "decision whether to call a witness is presumed to be a strategic one for which this Court will not substitute its judgment." *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). "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. "This Court does not second-guess counsel on matters of trial strategy, nor does it assess counsel's competence with the benefit of hindsight." *People v Russell*, 297 Mich App 707, 716; 825 NW2d 623 (2012).

Here, the record indicates that trial counsel seriously considered calling defendant's girlfriend as a witness, consulted with his client, and ultimately decided not to do so, believing that her testimony was unnecessary "to put the prosecution to its burden." On the record before us, defendant has not overcome the strong presumption that this decision was sound trial strategy. See *Trakhtenberg*, 493 Mich at 52. As the trial court observed in denying defendant's motion for new trial, some of the girlfriend's testimony might have been helpful to defendant, but calling her as a witness also entailed significant risks. The deputies who had testified at trial described her as screaming, hollering, and combative during the eviction; she had been arrested on the scene for physically tussling with the deputies who were carrying out the eviction order; and, at the time of trial, she was also facing felony charges arising from that incident. Trial counsel could have reasonably calculated that her credibility could be undermined on the stand, and calling her as a witness could therefore end up being more harmful than helpful to defendant's case. The prosecution's evidence of possession was wholly circumstantial, so a reasonable trial strategy was simply to argue to the jury that the prosecution had not met its burden of proof, without the possible distraction of presenting the testimony of a defense witness with credibility problems—particularly when she would be the only defense witness and the last witness the jury would hear from. Such a strategy was not deficient merely because it was unsuccessful or because it "entail[ed] taking calculated risks." *White*, 331 Mich App at 149.

Nor did the trial court abuse its discretion by denying defendant's request for an evidentiary hearing on this issue. See *People v Ginther*, 390 Mich 436, 442-444; 212 NW2d 922 (1973); *Unger*, 278 Mich App at 216-217. A *Ginther* hearing is not warranted if the "defendant has not set forth any additional facts that would require development of a record to determine if defense counsel was ineffective." *People v Williams*, 275 Mich App 194, 200; 737 NW2d 797 (2007); see also *People v Chapo*, 283 Mich App 360, 368-369; 770 NW2d 68 (2009). Defendant's motion in the trial court was supported by an offer of proof purporting to relay how his girlfriend might have testified had she been called as a witness. But no offer of proof was provided to rebut the strong presumption that trial counsel's decision not to call her was sound trial strategy. See *Trakhtenberg*, 493 Mich at 52. For example, no evidence was offered regarding trial counsel's consultation with defendant during the brief recess in which the decision not to call the witness was made, nor does the record contain any statement from trial counsel or evidence that trial counsel's testimony could not be obtained without a hearing. Under these circumstances, the trial court's denial of defendant's motion was not "outside the range of reasonable and principled outcomes." *Unger*, 278 Mich App at 217.

2. FAILURE TO MOVE TO SUPPRESS EVIDENCE

Defendant next argues that trial counsel was ineffective for failing to move for the suppression of evidence—namely, the gun—that defendant contends was obtained through an unconstitutional search of his home. Here, too, we disagree.

Both the Fourth Amendment of the United States Constitution and Article 1, § 11 of the Michigan Constitution protect the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. "As a general rule, searches conducted without a warrant are per se unreasonable under the Fourth Amendment unless the police conduct falls under one of the established exceptions to the warrant requirement." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). But "not all government intrusions constitute searches within the meaning of the Fourth Amendment. One seeking the benefit of the Fourth Amendment must first carry the burden of showing that the Fourth Amendment is applicable." *People v Nash*, 418 Mich 196, 204; 341 NW2d 439 (1983). That is, "the threshold question is whether a search has taken place, because neither the Fourth Amendment nor Const 1963, art 1, § 11, is implicated absent one." *People v Serges*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167154); slip op at 8. Our caselaw recognizes two tests for determining whether a search, in the constitutional sense, has occurred. First, "a search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable," sometimes referred to as the reasonable-expectation-of-privacy approach. *Id*. (quotation marks and citation omitted). Alternatively, a search occurs when the government effects "a physical trespass on a constitutionally protected area" to obtain information, sometimes referred to as the trespass approach. *Id*. (quotation marks and citation omitted).

In this case, a district court judgment had been entered against defendant, awarding possession of the dwelling in question to the landlord, and a subsequent order of eviction required law enforcement to restore the landlord to full possession of the premises. To carry out that order, the deputies entered the home and oversaw removal of the occupants' personal property from the building. Within the home, the handgun was in plain view.

Although neither party points us to binding authority directly on point, courts in other jurisdictions have recognized that tenants who have been ordered evicted are not protected by the Fourth Amendment when police officers who are lawfully carrying out an eviction order enter the premises for that purpose and locate contraband in plain view. See *United States v Curlin*, 638 F3d 562, 565 (CA 7, 2011); *State v Hinton*, 216 NJ 211, 216; 78 A3d 553 (2013); *People v Davis*, 169 App Div 2d 16, 19; 570 NYS2d 661 (1991).[2] And this Court's decision in *People v Antwine*, 293 Mich App 192, 202; 809 NW2d 439 (2011), while factually different, held that an unlawful occupant of a building known to be condemned had no reasonable expectation of privacy. In light of these authorities, and under these circumstances, we conclude that the deputies' seizure of the weapon in this case was not the product of a "search" within the meaning of the Fourth Amendment. Defendant had no reasonable expectation of privacy in the home because he had been

[2] "Decisions from other jurisdictions are not precedentially binding, but they may be considered for their persuasive value." *People v Lillis*, ___ Mich App ___, ___ n 3; ___ NW3d ___ (2026) (Docket No. 372637); slip op at 5 n 3.

lawfully evicted by court order and the officers' entry was reasonably necessary to carry out the eviction order. Similarly, the deputies were not physically trespassing on a constitutionally protected area because they were acting pursuant to a lawful order that allowed them to enter the premises for purposes of carrying out the eviction. Consequently, any motion to suppress evidence on the basis of an unconstitutional search would have been meritless, so trial counsel was not ineffective by failing to file such a motion. See *Ericksen*, 288 Mich App at 201.

B. ADMISSION OF RECORD OF PRIOR FELONY CONVICTION

Next, defendant contends that the trial court erred by admitting his criminal record into evidence because defendant had already stipulated that he had a prior felony conviction that made it unlawful for him to possess a firearm. We agree that the trial court erred, but we conclude that defendant is not entitled to a new trial on these grounds because he has not demonstrated that the error affected the verdict.

We review a trial court's decision to admit evidence for abuse of discretion. *People v Duncan*, 494 Mich 713, 722; 835 NW2d 399 (2013). "A trial court necessarily abuses its discretion when it makes an error of law." *Id*. at 723. "When the decision regarding the admission of evidence involves a preliminary question of law, such as whether a . . . rule of evidence precludes admissibility of the evidence, the issue is reviewed de novo." *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003). But we may not reverse a criminal conviction because of the improper admission or exclusion of evidence unless we are persuaded that, but for the error, it is more probable than not that the outcome of the trial would have been different. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

In *Old Chief v United States*, 519 US 172; 117 S Ct 644; 136 L Ed 2d 574 (1997), the United States Supreme Court applied the Federal Rules of Evidence to the admission of prior-conviction evidence in a trial involving the federal felon-in-possession statute, 18 USC 922(g)(1). The Court held that if a defendant offers to stipulate to the fact of a prior conviction, a trial court abuses its discretion by admitting evidence regarding the name and nature of the prior offense when doing so raises the risk of tainting the verdict with improper character evidence in violation of FRE 403. *Old Chief*, 519 US at 174, 180-192. Although Michigan courts are not bound by the Federal Rules of Evidence, this Court found *Old Chief* persuasive in *People v Swint*, 225 Mich App 353, 377-379; 572 NW2d 666 (1997), and adopted its rationale for the Michigan Rules of Evidence.[3]

In the present case, despite defendant's stipulation that he had a prior felony conviction making it unlawful for him to possess a firearm, the trial court admitted into evidence a certified record of defendant's previous conviction of third-degree criminal sexual conduct. Consistent with *Old Chief* and *Swint*, we agree with defendant that the trial court abused its discretion by admitting this evidence.[4] In light of defendant's stipulation, the probative value of the certified record of defendant's prior conviction was substantially outweighed by the danger of unfair prejudice that

[3] As this Court observed in *Swint*, MRE 403 is identical to FRE 403. *Swint*, 225 Mich App at 378.

[4] The prosecution concedes that the trial court erred.

could result from informing the jury of the name and nature of defendant's predicate felony offense. See MRE 403.

Having determined that the trial court erred, we must separately determine whether the error entitles defendant to relief on appeal. See *Lukity*, 460 Mich at 495-496. In *Old Chief*, the Supreme Court explicitly left open "the possibility of harmless error, an issue not passed upon" in the lower courts. *Old Chief*, 519 US at 192 n 11. And in *Swint*, this Court applied the harmless-error rule and affirmed the defendant's conviction, determining in that case that the erroneous admission of evidence likely had no effect on the verdict. *Swint*, 225 Mich App at 379-380.

Here, we are likewise unpersuaded that, but for the error, it is more probable than not that the outcome of the trial would have been different. See *Lukity*, 460 Mich at 495-496.[5] Defendant's predicate felony offense was not itself a gun crime or one frequently associated with guns (such as burglary, for example). So the likelihood that the jury impermissibly inferred from the name or nature of the predicate offense that defendant had a propensity to possess firearms is not particularly high. A jury's knowledge that a defendant has a criminal history necessarily entails some danger that it will be improperly influenced by character evidence, but there is never any question in a felon-in-possession trial that the jury will learn that the defendant has a felony conviction; the only question is whether the jury will learn what the felony is. The central question for the jury in this case was whether defendant, who lived in the house where the firearm was found, had constructive possession of it. The evidence of constructive possession was circumstantial, but it was strong, and we do not think it likely that the jury's knowledge that the particular predicate felony was third-degree criminal sexual conduct is what led the jury to convict. Additionally, when the record of defendant's prior conviction was admitted, the trial court promptly gave the jury a limiting instruction, explaining that it should not consider any information in the exhibit other than its proof of the fact that defendant had a prior felony conviction. "Jurors are presumed to follow their instructions, and jury instructions are presumed to cure most errors." *People v Zitka*, 335 Mich App 324, 348; 966 NW2d 786 (2020) (quotation marks and citation omitted). Overall, we conclude that defendant has not met his burden of demonstrating that the error was outcome-determinative. See *Lukity*, 460 Mich at 496. Therefore, defendant is not entitled to relief.

C. SECOND AMENDMENT

Lastly, defendant contends that barring a felon from cohabitating with a lawful gun owner violates the Second Amendment. We construe defendant's claim as an argument that Michigan's felon-in-possession statute is unconstitutional as applied to him. We disagree.

"Whether a statute is constitutional is a question of law that this Court reviews de novo." *People v Hughes*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 367172); slip op at 8 (quotation marks and citation omitted).

[5] *Lukity* makes it clear that defendant has the burden of persuasion on this point, but defendant does not address the harmless-error issue in his brief on appeal.

> 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. [*Id*. (citation modified).]

In *Hughes*, this Court considered a challenge to the constitutionality of Michigan's felon-in-possession statute, MCL 750.224f, in light of the revised analytical framework for Second Amendment cases announced by the United States Supreme Court 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 defendant in *Hughes* challenged the constitutionality of the statute both on its face and as applied to him. *Hughes*, ___ Mich App at ___; slip op at 8. Beginning with the defendant's facial challenge, the *Hughes* Court held that MCL 750.224f was not unconstitutional on its face because prohibitions on the possession of firearms by felons are consistent with this Nation's historical tradition of firearm regulation. *Id*. at ___; slip op at 10-14. The *Hughes* Court then addressed the defendant's argument that MCL 750.224f was unconstitutional as applied to him because he was a nonviolent offender. *Id*. at ___; slip op at 15. Again applying the *Bruen* framework, the Court held that barring nonviolent offenders from possessing firearms is also consistent with historical precedent. *Id*. And, the Court added: "Nor does the fact that [the] defendant was convicted under a constructive possession theory change our conclusion." *Id*. at ___; slip op at 16.

Applying *Bruen* and *Hughes* here, we reject defendant's Second Amendment argument. According to defendant, "a law that prohibits a convicted felon from residing in the same home as a spouse or partner who lawfully possesses a firearm for self-defense infringes not only the individual's Second Amendment rights, but also the rights of the law-abiding cohabitant and their household," and "courts should reject overbroad interpretations of firearm prohibitions that criminalize mere proximity or residence with someone else's lawfully owned weapon." But contrary to defendant's argument, MCL 750.224f does not prohibit cohabitation or proximity; it prohibits constructive possession. At trial, the jury was properly instructed that defendant could be guilty of such possession only if he "kn[ew] the location of the firearm and ha[d] reasonable access to it." It is true that the prosecution's case against defendant was largely circumstantial because defendant was not at home when police located the firearm, but it was found on an open shelf in the master bedroom and was not secured. In any event, defendant does not contend on appeal that the evidence was insufficient to support his conviction on a constructive-possession theory. Had the firearm been secured and not reasonably accessible to defendant, defendant would not have been guilty of violating the felon-in-possession statute notwithstanding his cohabitation with the firearm's lawful owner. Therefore, in light of this Court's holding in *Hughes* that MCL 750.224f does not violate the Second Amendment on its face or as applied to constructive possession, defendant's Second Amendment argument fails.[6]

[6] We decline defendant's invitation to consider whether MCL 750.224f infringes on the Second Amendment rights of law-abiding cohabitants of felons. "As a general rule, one does not have standing to raise issues involving the violation of the rights of others." *People v Russell*, 266 Mich App 307, 314; 703 NW2d 107 (2005).

III. CONCLUSION

To summarize, we hold that (1) defendant was not deprived of his right to the effective assistance of counsel; (2) the trial court erred by admitting evidence of defendant's previous conviction but relief is unwarranted under the harmless-error rule; and (3) Michigan's felon-in-possession statute does not violate the Second Amendment as applied to defendant. The judgment of the trial court is therefore affirmed.

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