STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 20, 2015
v	No. 323208 Delta Circuit Court
BROOK EVAN GRZELAK, Defendant-Appellant.	LC No. 13-008802-FC

Before: MARKEY, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of two counts of breaking and entering a building with the intent to commit a larceny, MCL 750.110, two counts of safe breaking, MCL 750.531, and one count of possession of burglar's tools, MCL 750.116. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 76 to 360 months' imprisonment for each breaking and entering conviction, 114 to 360 months' imprisonment for each safe breaking conviction, and 4 to 15 years' imprisonment for the possession of burglar's tools conviction. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. OFFENSE AND INVESTIGATION

In the early morning of December 12, 2012, two Subway restaurants in Escanaba, Michigan, were burglarized. He wore what the trial court characterized as a "distinctive" coat, "distinctive" shoes, and a ski mask. The burglar carried a white cloth bag with an electric grinder and an extension cord. The burglar used the grinder to cut through the safe in each restaurant and steal its contents. A van owned by defendant, a resident of Wisconsin, was seen in the area of one of the burglaries. Following an investigation by police officers in Michigan and Wisconsin, defendant's van was found and searched in Wisconsin. The search produced, among other things, a ski mask, a white cloth bag, a grinder, and an extension cord. Defendant was ultimately arrested and convicted, as stated *supra*.

B. MOTION TO SUPPRESS

Prior to trial, defendant moved to suppress the evidence recovered during the van search and a statement that he made to police immediately prior to the search. An evidentiary hearing was held.

Shortly after the burglaries, Investigator Robert Messer of the Ashwaubenon Public Safety Department in Wisconsin testified that he was contacted by Escanaba Department of Public Safety Detective Todd Chouinard. Chouinard gave Messer the license plate number of the van that had been seen in the area at the time of the burglaries, which "registered back to the Green Bay area." Messer ran the license plate number and determined that defendant was the owner.

Messer investigated defendant and learned, during the course of his investigation, that defendant's van was located in the parking lot of the Allouez Village Hall, which also functioned as the police station. Defendant was at the Village Hall in order to file a police report regarding a burglary that had occurred at his house.

When Messer arrived at the Village Hall, he looked inside the windows of the van and observed what he believed to be a grinder and an extension cord in a white bag. Messer testified that he called defendant's probation officer, who asked Messer to inquire if defendant had traveled to Michigan, would he have been in violation of the terms of his probation. The probation officer confirmed that it would be a violation.

Messer then entered the Village Hall to speak with defendant. Messer testified that he had received a photograph of the burglary suspect from Detective Chouinard, and the shoes and coat that defendant was wearing were "similar" to the items of clothing that the burglary suspect had been wearing in Michigan. Messer explained to defendant that he was investigating the Escanaba burglaries. Defendant admitted that he had been in Escanaba. According to defendant, Messer immediately stated after defendant's admission that he was placed under arrest for violating his probation by leaving the state.[1]

There is no dispute that at the conclusion of their discussion, Messer asked for consent to search defendant's van, and defendant agreed. At the hearing on the motion to suppress, defendant provided the following testimony regarding his discussion with Messer concerning consent to search the van:

> [Messer] says, "I wonder where I got to tow that van now to have it searched?"
>
> And I said, "Well, why don't you tow it to my house?" I only live like three or four blocks away from where we were. And I said, "Well, just tow it to my house."

[1] At the suppression hearing, Messer denied that he told defendant that he was under arrest at that time. At some point during Messer's conversation with defendant, the probation officer authorized Messer by phone to arrest defendant, although there is some discrepancy in the evidence regarding when this occurred.

> And he says, "No, no, no." He says, "We got to search it and that first," you know, he says, "I have to take it somewhere." And he says, "Oh, unless--unless you give us con'--give me consent to search the van."
>
> And I says [sic], you're going to get it any--I said, "You're going to get a warrant to search it anyway."
>
> He says, "Oh, no no, not necessarily." He says, we have to--and he said, "If we don't get consent, we'll go for the warrant. But if you give a [sic] consent, we'll search it now."
>
> And I said, "Fine, go ahead and search it."
>
> He says, "Do you want to be present for the search?"
>
> I said, "No." I said, "I already know what's in the van."

Before he was handcuffed, defendant also allowed Messer to take his coat. He also allowed Messer to take his shoes before he entered the squad car. It is undisputed that Messer did not read defendant his *Miranda*[2] rights until an officer interviewed defendant following his arrest.

In light of the uncertainty regarding the time at which defendant's probation officer authorized Messer to arrest defendant, the trial court found that the prosecutor had not met his burden of establishing that defendant was not in custody for *Miranda* purposes when Messer asked defendant if he had been in Escanaba. Consequently, the court suppressed defendant's admission that he had been in Escanaba. However, the court found that defendant's consent to the search of his van was valid and denied defendant's motion to suppress the evidence seized from the van. The court further stated even if defendant's consent had not been valid, the police could have obtained a search warrant because there was probable cause to search defendant's van, and, as a result, the evidence would have been inevitably discovered.

II. APPLICATION OF WISCONSIN LAW

Defendant first argues that the trial court erred in declining to apply Wisconsin law in order to determine the admissibility of the evidence seized from the van. In particular, defendant contends, in reliance on the Wisconsin Supreme Court's decision in *State v Knapp*, 285 Wis 2d 86, 123; 700 NW2d 899 (2005),[3] that the evidence seized from the van must be suppressed because Messer intentionally failed to advise defendant of his *Miranda* rights and obtained his consent to search during the course of a *Miranda* violation. We disagree.

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[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[3] The Wisconsin Supreme Court held, pursuant to the state constitution, that "physical fruits obtained from a deliberate *Miranda* violation" are barred in most cases under the exclusionary rule. *Knapp*, 285 Wis 2d at 123.

A. STANDARD OF REVIEW

"We review questions regarding conflicts of law de novo." *People v Krause*, 206 Mich App 421, 422; 522 NW2d 667 (1994). Additionally, "[w]e review for clear error a trial court's findings of fact in a suppression hearing, but we review de novo its ultimate decision on a motion to suppress." *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009).

B. ANALYSIS

Defendant is incorrect that the law of the state in which a search occurred governs the admissibility of its fruits in Michigan. This Court previously concluded that the admissibility of evidence is governed by Michigan law regardless of where the evidence was discovered. *People v Krause*, 206 Mich App 421, 422-423; 522 NW2d 667 (1994) (holding that the admissibility of the defendant's confession made in California is assessed under Michigan law). This holding is consistent with the general rule that if a search is illegal in the jurisdiction where it occurs but is not illegal in the prosecuting jurisdiction, the prosecuting jurisdiction will not suppress the fruits of the search. See 2 LaFave et al, Criminal Procedure (3d ed), § 3.1(e), pp 32-33.[4]

Contrary to defendant's claims, *United States v Di Re*, 332 US 581; 68 S Ct 222; 92 L Ed 210 (1948), does not require a different conclusion. In that case, federal and state police officers collaborated in arresting the defendant for possession of counterfeit gasoline ration coupons, a federal crime. *Id.* at 582-583. In considering the validity of the defendant's arrest, the United States Supreme Court stated, "[I]n absence of an applicable federal statute[,] the law of the state where an arrest without warrant takes place determines its validity." *Id*. at 589. In so ruling, the Court relied on a federal statute, which provided that "the arrest by judicial process for a federal offense must be 'agreeably to the usual mode of process against offenders in such State.' " *Id*., quoting 18 USC 591 (now repealed). The Supreme Court recently clarified that its decision in *Di Re* was premised on the federal statute, and that the conclusion that "the legality of arrests without warrants should . . . be judged according to state-law standards" "was plainly not a rule . . . derived from the Constitution . . . ." *Virginia v Moore*, 553 US 164, 172-173; 128 S Ct 1598; 170 L Ed 2d 559 (2008). Likewise, the Court explained that its decision in *Di Re* "rested on [its] supervisory power over the federal courts, rather than the Constitution." *Id*. at 172. Thus, contrary to defendant's claim, *Di Re* does not hold that a violation of state search and seizure law automatically violates the United States Constitution, nor, in this case, does it require the application of Wisconsin law. *Id*. at 174; see also 1 LaFave, Search and Seizure (5th ed), § 1.5(c), pp 227-230 ("[I]t is well to note that unquestionably there is no constitutional requirement

[4] Accord, e.g., *State v Evers*, 175 NJ 355, 378-380; 815 A2d 432 (2003); *Burge v State*, 443 SW2d 720, 722-723 (Tex Crim App, 1969); *State v Lucas*, 372 NW2d 731, 736 (Minn, 1985) ("It is clear that evidence obtained in another state in violation of the Federal Constitution is subject to the same rule of exclusion that would apply if the evidence had been obtained in this state. There is, however, no requirement that evidence obtained in another state be excluded in this state merely because it would be inadmissible if the prosecution were in that other state." [Citations omitted.]); *People v Orlosky*, 40 Cal App 3d 935, 939; 115 Cal Rptr 598 (1974).

that evidence obtained in another jurisdiction be suppressed merely because the process of acquisition offended some local law.").

Accordingly, we reject defendant's claim that Wisconsin law applies to the admission of evidence obtained through the search of defendant's van in Wisconsin.

III. CONSENT

Next, defendant argues that his consent to the search of his van was invalid, such that the trial court should have suppressed the evidence acquired through the search. We disagree.

A. STANDARD OF REVIEW AND APPLICABLE LAW

The trial court's factual determinations regarding the validity of consent are reviewed for clear error. *People v Farrow*, 461 Mich 202, 208-209; 600 NW2d 634 (1999). "[A] finding of fact is clearly erroneous if, after reviewing the entire record, [this Court is] left with a definite and firm conviction that a mistake has been made." *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005). This Court reviews *de novo* the trial court's determination regarding whether suppression of evidence is required on the basis of a constitutional violation. *Id*. at 341.

"A consent to search permits a search and seizure without a warrant when the consent is unequivocal, specific, and freely and intelligently given." *People v Galloway*, 259 Mich App 634, 648; 675 NW2d 883 (2003). The validity of consent is assessed under the totality of the circumstances. *Id*. "Consent to search is not voluntary if it is the result of coercion or duress." *People v Chowdhury*, 285 Mich App 509, 524; 775 NW2d 845 (2009) (internal quotation marks, citation, and alteration omitted). "[K]nowledge of the right to refuse is but one factor to consider in determining whether consent was voluntary under the totality of the circumstances"; it is not a requirement for valid consent. *People v Borchard-Ruhland*, 460 Mich 278, 294; 597 NW2d 1 (1999). The burden is on the prosecution to establish that consent was valid. *Chowdhury*, 285 Mich App at 524. Additionally, federal courts have identified several factors that

> [c]ourts should consider . . . when evaluating whether consent was voluntary, including: the age, intelligence, and education of the suspect; whether the suspect understands the right to refuse consent; the length and nature of the detention; the use of coercive or punishing conduct by the police; and indications of "more subtle forms of coercion that might flaw [the suspect's] judgment." [*United States v Cochrane*, 702 F3d 334, 342 (CA 6, 2012) (citations omitted).]

B. ANALYSIS

Defendant proffers five reasons why he believes his consent was invalid under the totality of the circumstances. He first calls attention to the Michigan Supreme Court's decision in *People v Kaigler*, 368 Mich 281, 294; 118 NW2d 406 (1962), in which the Court held that the prosecutor's burden of proving that consent is voluntary "is particularly heavy where the individual is under arrest." However, our Supreme Court also has recognized the fact that even a defendant being in custody does not necessitate the conclusion that consent was involuntary. *People v Reed*, 393 Mich 342, 366; 224 NW2d 867 (1975).

Second, defendant argues that Messer's failure to advise him of his *Miranda* rights cuts against a determination that his consent was voluntary. Defendant is correct that federal courts have recognized that whether *Miranda* warnings were given is a factor in determining whether consent was voluntary. See, e.g., *United States v Crowder*, 62 F3d 782, 788 (CA 6, 1995). However, our Supreme Court has held that the absence of *Miranda* warnings will not automatically invalidate consent, *Reed*, 393 Mich at 366, as Fifth Amendment protections are not applicable to a request for consent to search, *People v Marsack*, 231 Mich App 364, 375-376; 586 NW2d 234 (1998). *Miranda* warnings are only required when an individual is subject to custodial interrogation, *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001), and requesting consent to search does not qualify as interrogation because it is not likely to elicit an incriminating statement, *Marsack*, 231 Mich App at 375.

Third, defendant asserts that the atmosphere in which he gave consent was coercive, since Messer told him that he was under arrest and that his van would be searched even if he did not consent. However, as stated *supra*, defendant testified at the suppression hearing that—when Messer told defendant that he was going to tow the van so it could be searched unless defendant consented to a search at the Village Hall—he told the officer, " 'You're going to get a warrant anyway.' " Defendant testified that Messer replied, " 'Oh, no, no, not necessarily . . . . If we don't get consent, we'll go for the warrant.' " This testimony indicates that Messer effectively told defendant that he did not have to consent. Additionally, defendant testified that one of the officers left the room to retrieve a consent form, which defendant immediately signed when the officer returned. Defendant contends that simply being at the police station is a coercive environment. However, defendant fails to recognize that the reason that he was at the police station in the first place was because he went there on his own accord to fill out a police report. Thus, according to defendant's own account at the suppression hearing of the events immediately prior to his consent, there is no indication that the atmosphere was coercive.[5]

Fourth, defendant argues that he consented because he incorrectly believed that a search of his van was a "foregone conclusion" in light of his status as a probationer and the fact that warrantless searches of probationers by probation officers do not violate the Fourth Amendment. See *People v Glenn-Powers*, 296 Mich App 494, 503; 823 NW2d 127 (2012). However, this claim is directly contrary to his testimony at the suppression hearing. Again, he testified that Messer stated that they would not necessarily get a warrant and that they would pursue a warrant if defendant did not provide consent. Therefore, defendant's own testimony undermines this claim on appeal, as his testimony indicated that he was under the impression that the police would apply for a warrant before they searched his van if he did not consent, not that the police would search his van without consent.

[5] See *Kaigler*, 368 Mich at 292 ("In view of the rule that a motion for suppression of evidence must be determined from the facts produced at the time of the hearing, and cannot be amplified by testimony taken later at trial, it becomes incumbent upon this Court to ascertain from the record before [the trial court] whether the police had actually received permission from the defendant to search his home and seize whatever evidence was available.").

Finally, defendant argues that the seizure of his coat and shoes at the outset of his discussion with Messer was not supported by the plain view doctrine, and that this illegal seizure "tainted" his subsequent consent to search his van. In particular, he argues that his coat and shoes were only similar to those worn by the burglar in Escanaba, and, therefore, their criminality was not "immediately apparent" as required to justify a plain-view seizure. See *People v Champion*, 452 Mich 92, 102-103; 549 NW2d 849 (1996). Again, however, defendant's claim is contradicted by his testimony at the suppression hearing. Defendant testified that he consented to the seizure of his coat when he was handcuffed and consented to the seizure of his shoes before he entered the squad car, not prior to the time at which he signed the consent form. Therefore, defendant's claim that his coat and shoes were seized before he consented to the search of his van is factually inaccurate by his own account.

Thus, in light of the foregoing, and based upon our review of the entire record, the trial court did not err in concluding that the totality of the circumstances demonstrates that defendant's consent was voluntary. See *Cochrane*, 702 F3d at 342; *Borchard-Ruhland*, 460 Mich at 294; *Dagwan*, 269 Mich App 338. Defendant's own testimony at the suppression hearing demonstrates that he was fully aware that he was consenting to a search of his van, that his consent was not the result of coercion or duress, that he was aware of his right to refuse, and that he provided unequivocal and specific verbal and written consent to search the vehicle. See *Chowdhury*, 285 Mich App at 524; *Galloway*, 259 Mich App at 648. Additionally, defendant testified that his was only detained between 15 and 20 minutes before he provided consent to search the van, and that his level of education includes two years of college. Accordingly, because defendant has failed to establish that the trial court's conclusion that his consent was voluntary was clearly erroneous, he has failed to establish that the trial court erred in admitting the physical evidence acquired from the van.[6] See *Farrow*, 461 Mich at 208-209.

IV. RIGHT TO COUNSEL

Defendant also argues that he was denied his right to counsel during his conversation with Messer. We disagree.

A. STANDARD OF REVIEW AND APPLICABLE LAW

Whether a defendant was denied his constitutional right to counsel is a question of law, which this Court reviews *de novo*. *People v Van Tubbergen*, 249 Mich App 354, 372; 642 NW2d 368 (2002).

Both the Fifth and Sixth Amendments to the United States Constitution guarantee a right to counsel for criminal defendants. *Marsack*, 231 Mich App at 372.[7] However, the rights

[6] Because we find that defendant's consent was valid, we need not address whether the evidence would have been admissible under the plain view or inevitable discovery doctrines.

[7] The Michigan Constitution guarantees the right to counsel as well. Const 1963, art 1, §§ 17 and 20.

secured by these amendments "are distinct and not necessarily coextensive." *Id*. "The Sixth Amendment directly guarantees the right to counsel in all criminal prosecutions, while the Fifth Amendment right to counsel is a corollary to the amendment's stated right against self-incrimination and to due process." *Id*. at 372-373. The Fifth Amendment right to counsel "simply refers to the right to have an attorney present at a *custodial interrogation*." *People v Smielewski*, 214 Mich App 55, 61; 542 NW2d 293 (1995) (emphasis added).

B. ANALYSIS

At the outset, it is clear that defendant's Sixth Amendment right to counsel had not yet attached when he consented to the search of his van. That right attaches "only after adversarial legal proceedings have been initiated against a defendant by way of indictment, information, formal charge, preliminary hearing, or arraignment." *Marsack*, 231 Mich App at 376-377. Likewise, this Court has expressly stated, "[T]he Sixth Amendment right to counsel does not apply to a consent to search . . . ." *Id*. at 377. Therefore, defendant's reliance on the Sixth Amendment is misplaced.

Defendant's invocation of his Fifth Amendment right to counsel also is unavailing. The trial court found that the prosecutor had failed to establish that defendant was free to leave at the time that Messer began to speak with him, and, therefore, Messer should have read the *Miranda* warnings to defendant. Even so, this Court has recognized that a request for consent does not constitute custodial interrogation, such that a defendant's Fifth Amendment right to counsel is not implicated when consent to search is obtained while a defendant is in custody. *Marsack*, 231 Mich App at 375-376 (holding that the defendant's Fifth Amendment right to counsel was not violated when he was given the *Miranda* warnings, he asked for an attorney, and police thereafter obtained his consent for a search). The rationale behind his rule is that even though a "search pursuant to [an individual's] consent may disclose incriminating evidence, such evidence is real and physical, not testimonial," and "the Fifth Amendment protects against compelled incriminating evidence of a testimonial or communicative nature, . . . not against compelled production of physical evidence." *Id*. at 375 (quotation marks omitted), quoting *Schmerber v California*, 384 US 757, 761; 86 S Ct 1826; 16 L Ed 2d 908 (1966). Thus, there is no basis for concluding that defendant was denied his right to counsel, as defendant's Fifth Amendment right to counsel did not apply to Messer's request for consent to search defendant's van.

V. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next argues that defense counsel provided ineffective assistance, and that he was forced to decide between receiving incompetent assistance of counsel or proceeding as a pro se litigant. We disagree.

A. STANDARD OF REVIEW AND APPLICABLE LAW

Our review of defendant's ineffective assistance of counsel claims is limited to mistakes apparent on the record since he did not move for a new trial or a *Ginther*[8] hearing. *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008). "A claim of ineffective assistance of counsel is a mixed question of law and fact. A trial court's findings of fact, if any, are reviewed for clear error, and this Court reviews the ultimate constitutional issue arising from an ineffective assistance of counsel claim de novo." *Id*., citing *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

The Sixth Amendment to the United States Constitution and Article I, § 20 of the Michigan Constitution guarantee the right to effective assistance of counsel for criminal defendants. *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Vaughn*, 491 Mich 646 n 5; 821 NW2d 288 (2012). In order to prove that counsel provided ineffective assistance, a defendant must demonstrate that (1) " 'counsel's representation fell below an objective standard of reasonableness,' " and (2) respondent was prejudiced, i.e., "that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Vaughn*, 491 Mich at 669-671, quoting *Strickland*, 466 US at 688. "A defendant must also show that the result that did occur was fundamentally unfair or unreliable." *People v Lockett*, 295 Mich App 165, 187; 814 NW2d 295 (2012). "Effective assistance of counsel is presumed," and a defendant bears a heavy burden of proving otherwise. *Petri*, 279 Mich App at 410. Likewise, a defendant "must overcome a strong presumption that counsel's performance constituted sound trial strategy." *Id*. at 411.

B. ANALYSIS

Defendant's first claim of ineffective assistance arises from defense counsel's failure to argue that Wisconsin law should have governed the validity of the search of his van. As discussed *supra*, defendant is incorrect that Wisconsin law applies in this case. Therefore, defendant cannot show that defense counsel provided ineffective assistance in failing to raise an argument on that basis. *People v Riley* (*After Remand*), 468 Mich 135, 142; 659 NW2d 611 (2003) ("Ineffective assistance of counsel cannot be predicated on the failure to make a frivolous or meritless motion."). Likewise, defense counsel's statement in a letter regarding the effect of Wisconsin law in this case, in which he briefly mentioned the effect of "split decisions," does not establish that defense counsel's representation fell below an objective standard of reasonableness.[9] *Vaughn*, 491 Mich 642, 669-671.

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[8] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

[9] As defense counsel noted, *United States v Patane*, 542 US 630; 124 S Ct 2620; 159 L Ed 2d 667 (2004), was a decision without a majority opinion. See *Marks v United States*, 430 US 188, 193; 97 S Ct 990, 993; 51 L Ed 2d 260 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." [Quotation marks and citation omitted.]).

Secondly, defendant draws attention to a letter drafted by defense counsel in which he allegedly provided an inapposite Sixth Circuit opinion to rebut defendant's assertion that Wisconsin law should apply to the admission of the evidence seized from defendant's van. The letter from counsel states, in pertinent part:

> I have also included a recent Sixth Circuit opinion. This case appears to be against your position, as it indicates that consent searches are Constitutional. It may not address *Patane* directly, but it does go against the "additional protections" argument that you indicate it makes. This case is valid law and can only be struck down if the Supreme Court grants certiorari and overturns it.

The case attached to the letter was *United States v Hinojosa*, 534 Fed Appx 468 (CA 6, 2013). In *Hinojosa*, the Sixth Circuit held that, under the facts of the case, the interaction between the defendant and police had been consensual, and that the district court properly denied the defendant's motion to suppress a gun that was discovered during the encounter. *Id*. at 470-471. We find no basis for concluding, based on the letter, that defense counsel provided ineffective assistance or was incompetent. See *Vaughn*, 491 Mich at 669-671. The context of the letter is uncertain. However, it appears to be in response to a discussion between counsel and defendant about the issue of "consent searches," not a discussion regarding the application of Wisconsin or Michigan law.[10]

Defendant also argues that he was denied his right to counsel because he was forced to choose between self-representation and an incompetent attorney. Defendant relies on federal cases holding that a defendant's choice to represent himself is not voluntary when his only other option is to be represented by incompetent or unprepared counsel. See *Crandell v Bunnell*, 25 F3d 754, 755 (CA 9, 1994); *United States v Silkwood*, 893 F2d 245, 248-249 (CA 10, 1989). However, defendant has failed to demonstrate that his counsel was incompetent or unprepared. As stated above, counsel was correct that Wisconsin law did not apply to the admissibility of the evidence recovered from defendant's van, and neither letter demonstrates that defense counsel's performance fell below an objective standard of reasonableness. *Vaughn*, 491 Mich 642, 669-671.

Moreover, we find no basis for concluding that defendant was "forced to make the Hobson's choice . . . between incompetent or unprepared counsel and appearing *pro se*." *Silkwood*, 893 F2d at 249. There is no indication in the record received on appeal that the trial court prevented defendant from receiving substitute counsel rather than proceeding *pro se*, and defendant does not assert that the trial court failed to comply with the requisite procedures in MCR 6.005(D), or *People v Anderson*, 398 Mich 361, 366-368; 247 NW2d 857 (1976).[11]

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[10] We decline to consider defendant's claim based on an affidavit prepared by another prisoner, whom defense counsel represented in another case, as our review is limited to the lower court record. *People v Seals*, 285 Mich App 1, 21; 776 NW2d 314 (2009).

[11] Based on the lower court record, it appears that the trial court held a hearing on defendant's motion to withdraw as counsel on either September 19, 2013, or September 20, 2013, but the transcript from this hearing was not provided for our review. Additionally, the trial court order

Additionally, in his letter to the trial court following the hearing on his motion to suppress, defendant did not request substitute counsel; he only indicated—unequivocally—that he wanted to represent himself, which the trial court allowed. Accordingly, defendant has failed to demonstrate that his right to the effective assistance of counsel was violated.[12]

Affirmed.

/s/ Jane E. Markey
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan

granting defendant's motion to withdraw as counsel only stated that it was granted "for the reasons stated on the record."

[12] We decline to address defendant's request for an "admonition for dereliction of duty" with regard to the trial court, as this argument was not mentioned in the statement of questions presented. MCR 7.212(C)(5); *People v Anderson*, 284 Mich App 11, 16; 772 NW2d 792 (2009). Further, defendant cites no authority demonstrating that it is appropriate for this Court to "admonish" the trial court, and he fails to describe the type of "admonishment" or remedy that he is seeking. See MCR 7.212(C)(8); *People v Kelly*, 231 Mich App 627, 640-41; 588 NW2d 480, 488 (1998) ("An appellant may not . . . give only cursory treatment with little or no citation of supporting authority.").