

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONTEZ RICARDO ROSS,

Defendant-Appellant.

UNPUBLISHED

September 10, 2026

10:03 AM

No. 372948

Wayne Circuit Court

LC No. 19-007656-01-FC

Before: LETICA, P.J., and RICK and GARRETT, JJ.

PER CURIAM.

This case returns to us following our remand in *People v Ross*, unpublished per curiam opinion of the Court of Appeals, issued December 7, 2023 (Docket No. 360155). On remand, the trial court determined that defendant had a legitimate expectation of privacy in the residence where police conducted a warrantless search and recovered a handgun. The court nevertheless concluded that admission of the handgun and related evidence at defendant’s trial was harmless beyond a reasonable doubt and denied defendant’s motion for a new trial. Defendant now appeals that ruling.¹ Because the prosecution established beyond a reasonable doubt that the erroneous admission of the handgun and the forensic evidence derived from it did not contribute to the verdict, we affirm.

¹ Although defendant filed a claim of appeal, the claim was not filed within 42 days after entry of the trial court’s June 14, 2024 order, and therefore was untimely as an appeal of right. See MCR 7.204(A)(2)(c). However, defendant’s October 21, 2024 claim of appeal was filed within the six-month period for filing an application for leave to appeal in a criminal case. See MCR 7.205(A)(2)(a). In the interest of judicial economy, we exercise our discretion to treat defendant’s claim of appeal as an application for leave to appeal, grant leave, and address the issues presented. See MCR 7.203(B)(5); *Wardell v Hincka*, 297 Mich App 127, 133 n 1; 822 NW2d 278 (2012).

I. FACTUAL BACKGROUND

This case arises from the February 24, 2019 shooting of Johnny Yako. Yako testified that he had purchased tools and other items from defendant six or seven times before the shooting. On the day of the shooting, Yako contacted defendant about purchasing a drone. Defendant initially agreed to sell the drone for \$100 and arranged to meet Yako at a Meijer in Detroit, Michigan. When Yako arrived, however, defendant told him that he did not have a car and offered to reduce the price to \$60 if Yako came to meet him at a different location.

Yako then traveled to an address on Cheyenne Street in Detroit, where he met defendant. Defendant entered the passenger side of Yako's truck and demanded \$100 for the drone. Yako refused, maintaining that they had agreed on \$60. According to Yako, defendant threatened to shoot him, got out of the truck, turned around, and fired multiple shots at him before fleeing.

Yako sustained serious injuries and was hospitalized in a coma. Police recovered nine-millimeter shell casings and other physical evidence from the scene and Yako's truck. They also examined Yako's cell phone and discovered communications with a telephone number registered to Aye-Darius James. Phone records showed multiple calls and text messages between Yako's phone and James's number, including communications on the day of the shooting concerning where to meet. The investigation of James's number led police to a residence on Littlefield Street in Detroit.

James testified that defendant regularly used his cell phone to buy and sell items. James recalled answering a call from a man with an Arabic accent who asked for defendant, after which James gave the phone to defendant. James also testified that defendant had discussed "hitting a lick," which James understood to mean robbing someone. On the day of the shooting, James saw defendant with a black handgun. Defendant left the Littlefield residence for approximately 30 minutes and returned sweaty and complaining of leg pain.

Police initially searched the Littlefield residence without locating a weapon. During a later warrantless search, however, they recovered a black nine-millimeter Smith & Wesson handgun from the attic.

After Yako regained consciousness, police showed him a photographic array that included both defendant and James. Yako identified defendant as the shooter.

At trial, Lieutenant Jeffrey Bedell, a firearms and toolmark examiner, testified that three cartridge cases recovered during the investigation had been fired from the handgun recovered from the Littlefield residence. The prosecutor emphasized the handgun and ballistics evidence at trial. In her opening statement, she told the jury that it would have an opportunity to see "the gun that Mr. Ross used to shoot Mr. Yako." During closing argument, she again emphasized that police recovered the handgun from the Littlefield residence and that the cartridge cases associated with the shooting had been fired from it.

Defendant challenged the prosecution's identification evidence. Although Yako identified defendant as the shooter, another eyewitness provided a description shortly after the shooting that did not match defendant. Police also obtained surveillance footage of an unidentified individual whom that eyewitness saw leaving the area, and police determined that the individual was neither

defendant nor James. Moreover, the cell phone used to communicate with Yako belonged to James, and the forensic examination of the phones could not establish who was physically using a particular device when any individual communication was sent.

During deliberations, the jury requested several items of evidence, including the handgun. Because the handgun could not be sent into the jury room, the trial court brought the jurors into the courtroom and directed the officer in charge to display it for their inspection. The jury also requested the photographic array from which Yako identified defendant, various other exhibits, and another copy of the elements of assault with intent to murder (AWIM), MCL 750.83.

The jury ultimately convicted defendant of AWIM, MCL 750.83; carrying a dangerous weapon with unlawful intent, MCL 750.226; carrying a concealed weapon, MCL 750.227; and two counts of possession of a firearm during the commission of a felony, MCL 750.227b.

Before trial, defendant had moved to suppress the handgun because police recovered it during a warrantless search. The trial court denied the motion. In defendant's first appeal, this Court concluded that the trial court clearly erred by finding the Littlefield residence abandoned, but the record was insufficient to determine whether defendant had a legitimate expectation of privacy there. *Ross*, unpub op at 5-6. This Court remanded for the trial court to determine that question and, if defendant could challenge the search, whether the erroneous admission of the fruits of the warrantless search warranted a new trial. *Id.* at 6.

On remand, the trial court determined that defendant was an overnight guest at the Littlefield residence and therefore had a legitimate expectation of privacy there. The court consequently concluded that the handgun had been erroneously admitted, but denied defendant's motion for a new trial. Although the court acknowledged that the forensic evidence linking the handgun to the shooting was "compelling," it concluded that the error was harmless in light of Yako's identification and the other admissible evidence corroborating his account. This appeal followed.

II. ANALYSIS

A. NEW TRIAL

Defendant argues that the trial court abused its discretion by denying his motion for a new trial because the prosecution failed to establish that the erroneous admission of the handgun was harmless beyond a reasonable doubt. We disagree.

We review a trial court's decision on a motion for a new trial for an abuse of discretion. *People v Johnson*, 502 Mich 541, 564; 918 NW2d 676 (2018). "An abuse of discretion occurs when a trial court's decision falls outside the range of reasonable and principled outcomes." *Id.* (quotation marks and citation omitted). A trial court's factual findings are reviewed for clear error. *Id.* at 565. We review constitutional questions de novo. *People v Cameron*, 319 Mich App 215, 220; 900 NW2d 658 (2017).

A preserved constitutional error requires reversal unless the prosecution establishes that the error was harmless beyond a reasonable doubt. *People v Houthoofd*, 487 Mich 568, 587; 790 NW2d 315 (2010). A constitutional error is harmless if " 'it is clear . . . that a rational jury would

have found the defendant guilty absent the error.’ ” *People v Mass*, 464 Mich 615, 640 n 29; 628 NW2d 540 (2001), quoting *Neder v United States*, 527 US 1, 18; 119 S Ct 1827; 144 L Ed 2d 35 (1999). Our Supreme Court recently reiterated that this inquiry requires more than determining whether sufficient evidence remained to support the verdict. *People v Soriano*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167373); slip op at 21. Rather, a reviewing court must conduct “ ‘a comparative analysis of the likely effect of the error in light of the other evidence’ ” and determine whether the average jury would have found the prosecution’s case significantly less persuasive without the erroneously admitted evidence. *Id.* at ___; slip op at 21, quoting *People v Mateo*, 453 Mich 203, 206; 551 NW2d 891 (1996).

Applying that analysis, the prosecution’s admissible evidence identifying defendant as the shooter was substantial. Yako was familiar with defendant, having purchased items from him six or seven times before the shooting, and identified defendant from a photographic array that also included James. James likewise testified that defendant used his cell phone to buy and sell items and discussed “hitting a lick” on the day of the shooting. James also recalled receiving a call from an Arabic-speaking man asking for defendant. He saw defendant with a black handgun that day and testified that defendant left the Littlefield residence for approximately 30 minutes and returned sweaty and complaining of leg pain. The cell-phone records were consistent with Yako’s account of arranging the transaction. Physical evidence and Yako’s medical records also corroborated his account of the shooting.

The handgun and ballistics evidence undoubtedly strengthened the prosecution’s case. Bedell testified that cartridge cases recovered during the investigation had been fired from the handgun recovered from the Littlefield residence, and the prosecutor emphasized that evidence at trial. The jury also requested to inspect the handgun during deliberations. But the challenged evidence did not independently identify defendant as the shooter. It did not establish who fired the handgun or place the handgun in defendant’s hands during the shooting. Rather, it provided additional corroboration of identification evidence already supplied by Yako, James, and the cell-phone records.

Defendant points to an eyewitness description that did not match him, an unidentified person observed leaving the area, and the fact that the telephone used to communicate with Yako belonged to James. Those circumstances gave defendant grounds to challenge the prosecution’s identification evidence, but they did not undermine its substantial independent force. Most significantly, Yako knew defendant before the shooting and selected him from an array containing both defendant and James. James’s testimony, together with the cell-phone evidence, connected defendant to the transaction and to conduct immediately before and after the shooting.

Considering the record as a whole, we conclude that the prosecution’s case would not have been significantly less persuasive without the handgun and derivative ballistics evidence. See *Soriano*, ___ Mich at ___; slip op at 21. The challenged evidence corroborated the prosecution’s case, but it did not supply the critical link identifying defendant as the shooter. Accordingly, the prosecution established beyond a reasonable doubt that there was no reasonable possibility that the erroneously admitted evidence contributed to defendant’s convictions. See *id.*; *People v Anderson (After Remand)*, 446 Mich 392, 406; 521 NW2d 538 (1994).

Defendant also argues that the trial court improperly made a credibility determination by relying on Yako's testimony. His reliance on *Barker v Yukins*, 199 F3d 867 (CA 6, 1999), is misplaced. *Barker* is not binding on this Court, see *People v Bennett*, 344 Mich App 12, 16 n 3; 999 NW2d 827 (2022), and the trial court here did not substitute its own credibility determination for the jury's. Rather, it considered the evidence presented to the jury, including Yako's identification, in determining whether the constitutional error affected the verdict.

Finally, defendant argues that the trial court employed the wrong harmless-error standard by focusing on whether there was sufficient evidence to support his convictions without the handgun. But the trial court considered whether the firearm evidence affected the verdict in light of the remaining evidence and concluded that it did not. The trial court therefore did not abuse its discretion by denying defendant's motion for a new trial. See *Johnson*, 502 Mich at 564.

B. ACCOMPLICE INSTRUCTION

Defendant claims the trial court erred when it failed to instruct the jury on M Crim JI 5.5 and M Crim JI 5.6. Defendant has waived this issue. Waiver is "the intentional relinquishment or abandonment of a known right." *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (quotation marks and citation omitted). "A waiver extinguishes the right, as well as any right to pursue an alleged error on appeal." *People v King*, 512 Mich 1, 9; 999 NW2d 670 (2023).

After the close of proofs, the trial court reviewed the final jury instructions with the parties and asked whether there were any additional requests. Defense counsel responded, "No, your Honor," and later affirmatively expressed satisfaction with the instructions. Because counsel expressly approved the instructions and never requested M Crim JI 5.5 or M Crim JI 5.6, defendant waived this claim. See *Kowalski*, 489 Mich at 503.

C. INEFFECTIVE ASSISTANCE

Defendant claims defense counsel was ineffective for failing to request M Crim JI 5.5 and M Crim JI 5.6. We disagree.

Although defendant moved for a new trial, he did not raise an ineffective-assistance claim or seek an evidentiary hearing under *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). Accordingly, the issue is unpreserved, and our review is limited to "errors apparent on the record." *People v Spaulding*, 332 Mich App 638, 656; 957 NW2d 843 (2020). To establish ineffective assistance, defendant must show that counsel's performance "fell below an objective standard of reasonableness" and that, but for counsel's deficient performance, "a different result would have been reasonably probable." *People v Armstrong*, 490 Mich 281, 290; 806 NW2d 676 (2011). Waiver of the underlying instructional claim does not preclude defendant from separately asserting ineffective assistance of counsel. *People v Traver*, 502 Mich 23, 43 n 10; 917 NW2d 260 (2018).

M Crim JI 5.5 applies when the evidence could support a finding that a witness was an accomplice, meaning a "person who knowingly and willingly helps or cooperates with someone else in committing a crime." *People v Allen*, 201 Mich App 98, 105; 505 NW2d 869 (1993) (quotation marks and citation omitted). If the jury determines that the witness was an accomplice, M Crim JI 5.6 instructs the jury to consider the witness's testimony with particular caution. Defendant contends that James could have been an accomplice because he owned the cell phone

used to arrange the meeting and police discovered the handgun after questioning him. Defendant also emphasizes that no forensic evidence affirmatively excluded James as a perpetrator.

The evidence did not support that theory. James testified that he allowed defendant to use his phone, and although James heard defendant discuss “hitting a lick,” nothing showed that James knowingly assisted defendant in arranging or committing the charged offenses. Likewise, that police discovered the handgun after questioning James demonstrated James’s cooperation with the investigation, not his participation in the crime. And the absence of forensic evidence excluding James did not constitute affirmative evidence that he participated. Because the evidence did not support submitting James’s status as an accomplice to the jury under M Crim JI 5.5, the corresponding cautionary instruction under M Crim JI 5.6 was likewise unwarranted. Counsel therefore was not ineffective for failing to request either instruction. See *People v Armstrong*, 305 Mich App 230, 240; 851 NW2d 856 (2014).

Moreover, counsel’s decision not to request the instructions was consistent with the defense theory that defendant had been misidentified as the shooter. An instruction asking the jury to determine whether James knowingly assisted defendant in committing the crimes would have been inconsistent with that theory. See *People v Gonzalez*, 468 Mich 636, 644-645; 664 NW2d 159 (2003). Defendant therefore has not established that counsel rendered ineffective assistance.

Affirmed.

/s/ Anica Letica
/s/ Michelle M. Rick
/s/ Kristina Robinson Garrett