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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2026 9:35 AM
v	No. 375715 Oakland Circuit Court
JAMES MICHAEL KOHN, Defendant-Appellant.	LC No. 2023-285573-FH

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

Defendant appeals as of right his bench-trial conviction of aggravated domestic violence, second offense, MCL 750.81a(3). The trial court sentenced defendant to nine months' probation. We affirm.

I. FACTUAL BACKGROUND

Defendant and the complainant, YZ, began dating in 2019. They lived together at a dwelling in Commerce Township, Michigan. In June 2023, YZ returned home after defendant missed a couple's-counseling appointment and confronted him in their basement. During the argument, defendant stood, yelled at YZ to "get the f*ck away from me," and grabbed both of her arms above the elbows. YZ's left humerus was fractured as a result.

At the preliminary examination, YZ testified that defendant maintained a firm grip on her arms while she tried to back away. She stated that they moved into the kitchenette counter during the struggle and that she blacked out for several seconds. She also testified that defendant gripped her arms with all his strength because he was angry and that he did not grab her to prevent a fall. At trial[1], YZ instead testified that she felt faint and believed defendant grabbed her to steady her.

[1] Just over a year before trial, on September 28, 2023, defendant had successfully motioned the court to amend conditions of his bond. Neither the prosecutor nor YZ opposed the motion. The trial court amended defendant's bond to eliminate random drug and alcohol testing, and the court

She acknowledged that she could not say how tightly he held her because she lost consciousness. When YZ regained consciousness, defendant was standing over her. YZ testified that he repeatedly asked, "What have I done, oh God, what have I done?"

Other evidence presented at trial was consistent with YZ's earlier account at the scene and during the preliminary hearing. A responding paramedic testified that YZ said she had been "grabbed and thrown by another individual." Her medical record stated that her boyfriend gripped her arms tightly and that she felt a sharp pain and a snap, although YZ denied making that statement. The day after the incident, YZ told Detective Scott Brill that defendant grabbed her arms and pushed her backward about 10 to 20 feet until she was against the kitchenette counter. Defendant testified that he grabbed YZ only to keep her from falling and released her while she was standing near the television. He asserted that he was walking upstairs when he heard a "thud, smack-type sound" from the basement, and turned around to find YZ trying to get up by the kitchenette counter. He did not know how she got to that area of the basement or what happened when she got there.

Before trial, defendant was represented by attorney James Anderson. At an October 2023 pretrial hearing, the prosecutor offered to reduce the charge from aggravated domestic violence, second-offense, which is a felony, to aggravated domestic violence, a misdemeanor. No resolution was reached. Anderson later withdrew as defendant's counsel after citing a serious disagreement with defendant about the handling of the case. When the trial court asked whether defendant wanted appointed counsel, defendant stated that his legal fees had been "all . . . to get me to trial and neither of my attorneys have gotten me there."

The trial court thereafter appointed attorney Gregory Mortimore to represent defendant. At a March 2024 pretrial hearing, Mortimore and the prosecutor indicated that they needed additional time to discuss the case, "in case there is any movement towards a possible resolution." The court scheduled another pretrial hearing, but the prosecution and defense were unable to reach any kind of agreement. At a September 2024 pretrial hearing, Mortimore confirmed that the case would proceed to trial.

At an October 2024 pretrial hearing, defendant stated that he wanted a bench trial, but initially said that he did not know what to do and had not received advice about whether to waive his right to a jury trial. The trial court explained defendant's right to a jury trial and, after defendant characterized his choice as "rolling the dice," stated that the case would proceed before a jury. The trial court judge clarified with defendant that neither the court nor the parties "roll the dice." Defendant responded that he preferred "someone who is familiar with the law" to "12 random people," after which Mortimore requested a private breakout room with defendant. After consulting with counsel, defendant told the court, "I would like the Judge to try the case, please, please."

Following the bench trial, the trial court found beyond a reasonable doubt that defendant intentionally grabbed YZ's arm with force and caused the fracture. The court convicted defendant

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lifted a no-contact order with YZ, replacing it with an order preventing defendant from assaulting YZ. The amendment sanctioned defendant to return to the home he shared with YZ.

of aggravated domestic violence, second offense, and later sentenced him to nine months' probation. This appeal followed.

II. ANALYSIS

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that attorney Mortimore provided ineffective assistance of counsel by failing to pursue a plea agreement and by inadequately advising him about the consequences of a felony conviction. We disagree.

Whether a defendant received ineffective assistance of counsel presents a "mixed question of fact and constitutional law." *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020). We review a trial court's factual findings for clear error and questions of constitutional law de novo. *Id*. Because no *Ginther*[2] hearing occurred in this case, our review is limited to mistakes apparent on the record. *People v Anderson*, 322 Mich App 622, 628; 912 NW2d 607 (2018).

A defendant has the right to effective assistance of counsel during plea negotiations. *People v White*, 331 Mich App 144, 148; 951 NW2d 106 (2020). To establish ineffective assistance, a defendant must show that counsel's performance "fell below an objective standard of reasonableness" and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014) (quotation marks and citation omitted). We presume counsel rendered effective assistance, and the defendant bears the burden of overcoming that presumption. *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

Defendant's claim depends principally on an affidavit submitted for the first time in connection with his motion to remand[3] and appeal. Appeals are heard on the original record, MCR 7.210(A)(1), and a party may not enlarge that record by affidavit. *People v Williams*, 241 Mich App 519, 524 n 1; 616 NW2d 710 (2000). We therefore decline to consider the affidavit in deciding the merits of defendant's ineffective-assistance claim.

The existing record does not establish deficient performance. Defendant asserts that Mortimore never sought a plea agreement, but the record is silent concerning the substance of counsel's discussions with the prosecutor. The absence of a later plea offer does not establish that counsel failed to negotiate, particularly where Mortimore and the prosecutor jointly indicated that they needed more time to discuss the case after Mortimore was appointed. Nor does the record

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

[3] This Court denied the motion to remand. *People v Kohn*, unpublished order of the Court of Appeals, entered March 9, 2026 (Docket No. 375715). Although the denial was without prejudice to the case call panel determining that remand is necessary, we conclude that defendant has not established grounds for a remand.

show any support for defendant's assertion that Mortimore inadequately advised him about the consequences of a felony conviction. A silent record "cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.' " *Burt v Titlow*, 571 US 12, 23; 134 S Ct 10; 187 L Ed 2d 348 (2013), quoting *Strickland*, 466 US at 689. Moreover, defendant was present at nearly every hearing and never raised this issue. He suggested attorney Mortimore did not give him advice regarding his waiver of a jury trial, reflecting defendant's willingness to express perceived shortcomings of his counsel, but never mentioned the lack of advice regarding the consequences of a guilty plea or felony conviction.

Defendant likewise has not established prejudice. To do so, he must show a reasonable probability that he would have accepted a plea and that the prosecution would not have withdrawn it. He must also show that the trial court would have accepted the plea and that the resulting conviction or sentence would have been less severe. *Douglas*, 496 Mich at 592. When attorney Anderson represented defendant, the prosecutor offered to reduce the charge to misdemeanor aggravated domestic violence, but defendant did not accept the offer. When Anderson later withdrew as defense counsel, defendant stated that his legal fees had been incurred to get him to trial. Defendant also maintained his innocence at trial and, by his own account on appeal, wanted to testify. On this record, defendant has not shown a reasonable probability that he would have accepted a renewed plea offer or that the prosecutor would have renewed the earlier offer. Accordingly, defendant has not established ineffective assistance of counsel or a basis for remand.

B. SUFFICIENCY OF THE EVIDENCE

Defendant next argues that the prosecution presented insufficient evidence to support his conviction of aggravated domestic violence. We disagree.

We review de novo a challenge to the sufficiency of the evidence, affording "no deference to the lower court's determination." *People v Prude*, 513 Mich 377, 384; 15 NW3d 249 (2024). In doing so, we view the evidence "in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *Id*. at 385 (quotation marks and citation omitted). We must "draw all reasonable inferences and make credibility choices in support of the [verdict]," and circumstantial evidence and the reasonable inferences arising from it may establish the elements of an offense. *Id*. (quotation marks and citations omitted). We also "will not interfere with the fact-finder's role of deciding the credibility of the witnesses." *People v Solloway*, 316 Mich App 174, 180; 891 NW2d 255 (2016).

Aggravated domestic violence requires proof that the defendant committed an assault or an assault and battery against an individual with whom he had a qualifying domestic relationship and, in doing so, inflicted a serious or aggravated injury. MCL 750.81a(2); *People v Cameron*, 291 Mich App 599, 614; 806 NW2d 371 (2011). A battery is "an intentional, unconsented and harmful or offensive touching of the person of another." *Cameron*, 291 Mich App at 614 (quotation marks and citation omitted). An assault includes "an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *Id*. (quotation marks and citation omitted).

Domestic assault is a specific-intent offense. *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996). The prosecution must prove that "the defendant either intended to batter

the complainant or that the defendant's unlawful act placed the complainant in reasonable apprehension of being battered." *Id*. Because a defendant's intent is rarely susceptible to direct proof, it may be inferred from the surrounding circumstances. *Cameron*, 291 Mich App at 615.

Defendant does not dispute that he and YZ were in a dating relationship or that YZ suffered a serious injury. He instead argues that the prosecution failed to prove that he intentionally touched YZ in a harmful or offensive manner. Although YZ's account of the incident changed over time (notably after defendant's bond was amended and he was permitted to move back in with YZ), defendant had admitted at trial that the two argued, that he stood from the couch while telling YZ to get away from him, and that he grabbed both of her arms above the elbows. However, defendant maintained that he only grabbed YZ because she seemed faint. He explained that he was attempting to steady her and prevent her from falling into the television. Conversely, YZ testified that defendant grabbed her arms during an argument and that, when she regained consciousness, defendant stood over her and repeatedly asked, "What have I done, oh God, what have I done?" The trial court was not required to accept defendant's explanation for the contact and was entitled to consider the surrounding circumstances in determining his intent. See *Cameron*, 291 Mich App at 615.

Other evidence reinforced the inference that defendant's contact with YZ was not merely an attempt to steady her. YZ told Detective Brill that defendant grabbed her arms while yelling at her and continued holding her as she moved backward until she reached the kitchenette counter. The responding paramedic recalled YZ reporting that another person had grabbed and thrown her, and her medical records reflected a report that her boyfriend gripped her arms tightly before she experienced pain in the injured arm. To the extent that YZ's trial testimony conflicted with those earlier accounts, those inconsistencies presented questions of credibility for the fact-finder, not grounds for this Court to reweigh the evidence on appeal. *Solloway*, 316 Mich App at 180.

Viewing the evidence in the light most favorable to the prosecution, a rational fact-finder could infer that defendant intentionally grabbed YZ in a harmful or offensive manner during the argument and that his conduct caused her fractured humerus. *Prude*, 513 Mich at 385. The prosecution was not required to prove that defendant intended to fracture YZ's arm. Instead, the relevant specific intent was the intent to commit the battery. See *Corbiere*, 220 Mich App at 266. Accordingly, sufficient evidence supported defendant's conviction.

C. JURY TRIAL WAIVER

Defendant also argues that his waiver of the right to a jury trial was involuntary because counsel refused to allow him to testify before a jury. We disagree.

Defendant did not challenge the validity of his jury-trial waiver in the trial court, so we review this issue for plain error affecting substantial rights. *People v Lafey*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 361936); slip op at 5. "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). "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id*. If defendant meets each requirement, an appellate court should reverse "only when the plain, forfeited error

resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (quotation marks and citation omitted; alteration in original).

A defendant's waiver of a jury trial must be knowing and voluntary. *People v Cook*, 285 Mich App 420, 422; 776 NW2d 164 (2009); MCR 6.402(B). Compliance with MCR 6.402(B) creates a presumption that the waiver was voluntary, knowing, and intelligent. *Lafey*, ___ Mich App at ___; slip op at 6. MCR 6.402(B) states:

> Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

"The adequacy of a jury trial waiver is a mixed question of fact and law." *Cook*, 285 Mich at 422. The relevant inquiry is whether the defendant understood he was choosing between having his guilt or innocence determined by a group of people from his community or by a judge. *Lafey*, ___ Mich App at ___; slip op at 6.

The record shows that defendant understood his choice and voluntarily selected a bench trial. When defendant initially equivocated, the trial court explained his right to a jury and declined to accept his characterization that he was merely "rolling the dice," instead stating that the case would proceed before a jury. Defendant then explained that he preferred a judge familiar with the law to "12 random people." Attorney Mortimore requested a private conference with defendant, which the trial court granted. It was only after that private consultation with counsel, that defendant unequivocally told the court that he wanted the judge to try the case. The trial court thus did not simply accept defendant's initial equivocal response; it clarified the choice, afforded additional consultation with counsel, and personally confirmed defendant's decision.

Defendant's contrary assertion that Mortimore forced him to choose a bench trial so that he could testify is not supported by the record. The record shows only that Mortimore advised defendant against testifying, advice defendant disregarded when he took the stand. Nothing in the record indicates that counsel prevented defendant from testifying before a jury. Defendant therefore has not overcome the presumption that his waiver was knowing and voluntary, and he has not established plain error.

Affirmed.

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado