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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v MARK ALLEN HILL, Defendant-Appellant.	UNPUBLISHED November 05, 2026 10:32 AM Nos. 370267; 370268; 370269; 370270; 370271 Kent Circuit Court LC Nos. 23-000976-FC; 23-000977-FH; 23-000978-FC; 23-001498-FC; 23-001499-FC

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

In these consolidated appeals,[1] defendant, Mark Allen Hill, appeals as of right his jury trial convictions and resulting sentence for five counts of armed robbery, MCL 750.529. The trial court sentenced Hill as a fourth-offense habitual offender, MCL 769.12, to serve concurrent terms of 25 to 50 years' imprisonment. For the reasons set forth in this opinion, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

These cases arise out of a series of similar armed robberies in Wyoming and Grandville in November and December 2022. Each robbery involved a Black man, dressed in dark clothes and wearing a mask, robbing a cashier at knifepoint and demanding the money from the cash register. A cooperative investigation between the Wyoming Police Department and Grandville Police Department identified a silver Chevrolet Impala complete with license plate information as a vehicle of interest in one of the robberies. Police discovered that the Impala was registered to Hill's girlfriend and obtained a search warrant to place a GPS tracker on the Impala. The evening that police placed the GPS tracker, the Impala drove from Hill's girlfriend's apartment at

[1] *People v Hill*, unpublished order of the Court of Appeals, entered April 2, 2024 (Docket Nos. 370267, 370268, 370269, 370270, and 370271).

Wimbledon Apartment complex in Grandville to a nearby Walgreens. While the Impala was there, an armed robbery occurred.

GPS tracking showed that the Impala left the Walgreens and then pulled into a Speedway gas station. There, the driver used a rewards card registered to Hill. Officers caught up with the Impala shortly after it left the Speedway and followed it until it arrived at the Wimbledon Apartments, where police stopped the Impala and arrested Hill, the sole occupant of the vehicle. Police searched the Impala, Hill's girlfriend's apartment, and Hill's apartment. Police recovered several masks as well as assorted shoes and articles of clothing that resembled those worn by the robbers in the various armed robberies.

The preliminary examination related to the robberies in Grandville took place on January 23, 2023 and January 30, 2023, in the 59th District Court. The preliminary examination related to the Wyoming robberies took place on January 25, 2023, in the 62nd District Court. At both preliminary examinations, none of the victims could positively identify Hill as the armed robber, and defense counsel argued that the circumstantial evidence linking Hill to the robberies was insufficient to establish probable cause that he was the robber. The district courts disagreed and bound over Hill to the Kent Circuit Court.

The circuit court consolidated these cases. Following a three-day jury trial, Hill was found guilty of the armed robberies.[2] Hill subsequently moved the circuit court for a new trial on the grounds that defense counsel had rendered ineffective assistance at the preliminary examination and during trial. Hill also argued that he should be resentenced because the prosecution failed to timely provide notice of its intent to charge him as a fourth-offense habitual offender such that Hill's 25-year minimum sentence was invalid. The circuit court denied Hill's motion. This appeal followed.

II. ANALYSIS

A. INEFFECTIVE ASSISTANCE OF COUNSEL

First, Hill argues that defense counsel was ineffective for failing to argue, at the preliminary examinations in the district courts or in a later motion to quash the bindover orders, that the evidence at the preliminary examinations was insufficient to establish probable cause that he was the armed robber. Second, Hill argues that defense counsel unreasonably failed to investigate the location data stored on his cell phone. Hill asserts that this data, if shown to the jury, would have established that Hill was not present at any of the robberies. Third, Hill argues that defense counsel's cumulative unprofessional errors sufficiently undermine the reliability of his verdict such that a new trial is necessary. We disagree.

[2] Hill was also charged with possession of a controlled substance in connection to powder found in a plastic bag in the Impala. However, the jury was unable to reach a unanimous verdict with respect to that charge.

"Claims of ineffective assistance of counsel present mixed questions of fact and law. Factual findings are reviewed for clear error, and legal conclusions are reviewed de novo." *People v Urbanski*, 348 Mich App 90, 97; 17 NW3d 430 (2023) (citation omitted).

"Criminal defendants are entitled to the assistance of counsel under both the Michigan and United States Constitutions." *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023). To prevail on a claim of ineffective assistance, a defendant must "show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that [the] outcome [of the defendant's trial] would have been different." *Yeager*, 511 Mich at 488 (quotation marks and citation omitted). " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *People v Ackley*, 497 Mich 381, 389; 870 NW2d 858 (2015), quoting *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

1. BINDOVER

Bindover is appropriate when, "following a preliminary examination, the magistrate determines that there is probable cause to believe that the defendant has committed a felony." *People v Burkman*, 513 Mich 300, 313; 15 NW3d 216 (2024). See also MCL 766.13. "Probable cause requires a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." *Id*. (quotation marks and citation omitted). Probable cause can be established by circumstantial evidence and reasonable inferences drawn from the evidence. *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). That standard was met here.

To begin, we note that defense counsel argued at the conclusion of both preliminary examinations that there was insufficient evidence to support the bindovers; counsel cannot be ineffective for failing to do that which was done. Further, we also reject Hill's argument that defense counsel should have moved to quash the bindover orders in the circuit court. The evidence presented at the preliminary examinations connected Hill with the robberies through Hill's use of the Impala, including Hill being arrested while driving the Impala shortly after it was used in the Walgreens robbery. Although Hill suggested that the Impala was being driven by a person named "Cheese" as a type of short-term rental, the fact that the driver of the Impala used Hill's Speedway rewards card immediately after the Walgreens robbery provides a reasonable inference that Hill was, in fact, the driver and robber. Although circumstantial, this evidence was sufficient to "cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief in defendant's guilt." *Burkman*, 513 Mich at 313. We conclude that the district courts did not abuse their discretion by binding over Hill; a motion to quash would have been futile and defense counsel cannot be ineffective for failing to make a futile motion. See *People v Isrow*, 339 Mich App 522, 532; 984 NW2d 528 (2021).

2. FAILURE TO INVESTIGATE CELL PHONE LOCATION DATA

"Trial counsel is responsible for preparing, investigating, and presenting all substantial defenses." *People v Thorne*, 322 Mich App 340, 347; 912 NW2d 560 (2017) (quotation marks and citation omitted). "Counsel always retains the duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Trakhtenberg*, 493 Mich at 52 (quotation marks and citation omitted). "The failure to make an adequate investigation is ineffective assistance of counsel if it undermines confidence in the trial's outcome." *People v Grant*, 470 Mich 477, 493; 684 NW2d 686 (2004).

We reject Hill's argument that defense counsel unreasonably failed to investigate the location data stored on his cell phone. To begin, in the trial court, appellate counsel presented an unsigned affidavit from Hill and one of the paragraphs of this unsigned affidavit states that the "GPS data from my I-Phone was exculpatory evidence . . . it would show I was not in the area of any of the businesses at the time of the robberies." It appears to be factually true that Hill requested and his defense counsel did not obtain Hill's cellphone data.[3] During oral argument in this Court, Hill's appellate counsel argued that trial counsel's failures were all the more inexcusable because that phone evidence was available to trial counsel but never obtained. Specifically, there was a police report in the case file that referenced a data extraction from Hill's cellphone. At this Court's request, Hill's appellate counsel provided a copy of that police report, which does indeed reference a data extraction from Hill's cellphone.

Prior to obtaining the police report exhibit, this Court saw nothing in Hill's lower court pleadings or briefs in this Court to explain how that phone data would have meaningfully served Hill, let alone create a reasonable probability of a different outcome. As was discussed at oral argument, at least as to one of the armed robberies, the phone data would not negate the evidence of Hill's Impala's presence at an armed robbery and the later discovery that he was *the only person in that car*. Whatever the cellphone location data might show, this evidence proves Hill's statement in his—again, unsigned[4]—affidavit that he "was not in the area of *any* of the businesses at the time of the robberies" is not accurate.

Now, with these new-filed exhibits, the record establishes that the cellphone data would *not* have helped Hill. In the police report provided by appellate counsel, the data extraction information provides that all location data was extracted and only one data point was from the same day as any of the armed robberies. Put differently, Hill's phone *does not* provide location data, let alone alibi-level location data, for the days of the robberies of which he now stands convicted. Appellate counsel for Hill also filed in this Court an email exchange between Hill's trial counsel and the prosecutor. In that email, dated the second day of trial, the trial prosecutor forwards an email from a Wyoming police officer that states "FYI on the phone. Only things that would help the prosecution at this time." It further provides a statement from a Michigan State

[3] Hill presented a letter he sent to trial counsel requesting counsel obtain phone data before trial.

[4] This Court has previously made clear that "an unsigned, unnotarized affidavit is no affidavit at all" in the context of criminal appeals. *People v Stanson*, unpublished per curiam opinion of the Court of Appeals, issued April 11, 2024 (Docket No. 360109), p 4.

Police officer that begins, "I didn't find any exculpatory evidence that he had rented out his vehicle."

As the trial court correctly concluded, "[Hill] cannot demonstrate a reasonable probability that introducing evidence of his phone's location would have generated a viable alibi defense providing a different result at trial . . . ." Because Hill has not established that defense counsel was ineffective,[5] reversal is not warranted on the basis of cumulative error.

B. NOTICE OF HABITUAL-OFFENDER ENHANCEMENT

Finally, we reject Hill's argument that he is entitled to resentencing because the prosecution failed to timely file notice of its intent charge him as a fourth-offense habitual offender.

We review de novo whether the prosecution failed to properly file a habitual-offender notice because it presents a question of law "involv[ing] the interpretation and application of statutes and court rules." *People v Head*, 323 Mich App 526, 542; 917 NW2d 752 (2018). The same principles apply to the construction and application of both court rules and statutes. We first start with the plain language of the statute or rule; if the language is unambiguous, we must enforce the statute or rule as written. *People v Byars*, 346 Mich App 554, 567; 13 NW3d 328 (2023).

The applicable statutory provision in this case is MCL 769.13, which provides in relevant part:

> (1) In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.
>
> (2) A notice of intent to seek an enhanced sentence filed under subsection (1) shall list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement. The notice shall be filed with the court and

[5] We note that Hill also provides a list of additional, alleged errors by defense counsel in his reply brief. However, these claims of error are not properly before us so we will not consider them. Reply briefs must be "confined to rebuttal of the arguments in the appellee's or cross-appellee's brief." MCR 7.212(G). Parties may not raise new issues in a reply brief. *People v Batten*, 9 Mich App 195, 203; 156 NW2d 640 (1967). We further note that Hill does not provide specific argument or supporting authority for these additional claims of error. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004)

> served upon the defendant or his or her attorney within the time provided in subsection (1) . . .

Similarly, MCR 6.112(F)[6] provides:

> A notice of intent to seek an enhanced sentence pursuant to MCL 769.13 must list the prior convictions that may be relied upon for purposes of sentence enhancement. The notice must be filed within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived or eliminated as allowed under MCR 6.113(E), within 21 days after the filing of the information charging the underlying offense.

The 21-day notice requirement's purpose "is to provide the accused with notice, at an early stage in the proceedings, of the potential consequences should the accused be convicted of the underlying offense." *Head*, 323 Mich App at 543 (quotation marks and citation omitted). An information that contains a habitual-offender enhancement can provide adequate notice, if timely filed. See *id*. at 544.

Criminal proceedings in Michigan can be initiated by the filing of a complaint, "a written accusation that a named or described person has committed a specified criminal offense," MCR 6.101, or an indictment returned by a grand jury or grand juror, MCR 6.112(B). A court presented with a proper complaint must issue an arrest warrant or summons upon a finding of probable cause to believe the accused committed the alleged offense. MCR 6.102. Once the accused is presented to the court, the court must arraign the accused on the complaint or warrant. MCR 6.104. Then, the court must conduct the probable-cause conference and the preliminary examination, unless those hearings are properly waived. See MCR 6.108 and MCR 6.110.

All prosecutions in Michigan "must be based on an information or an indictment." MCR 6.112(B). Unless the defendant is a fugitive from justice, the prosecution may only file an information charging the defendant after the completion or waiver of the preliminary examination. MCL 767.42; MCR 6.112(B). In proceedings commenced by complaint, such as these cases, the defendant must then be arraigned a second time, this time on the information, unless the defendant waives arraignment, MCR 6.113(C), or the circuit court has eliminated arraignment for defendants represented by an attorney, MCR 6.113(E). The prosecution must file the information "on or before the date set for the arraignment." MCR 6.112(C).

In these consolidated cases, Hill asserts that the prosecution did not file the habitual-offender notices within 21 days of his arraignment on the information in each case. The record reflects that the first and only informations filed in these cases were the "amended" informations filed on February 1, 2023, and February 15, 2023; each amended information stated that Hill was being charged as a fourth-offense habitual offender and that he faced a mandatory minimum

[6] During these cases, MCR 6.112(F) was amended, effective May 1, 2023, to add the requirement that the notice must contain any applicable mandatory minimum sentence resulting from the sentence enhancement.

sentence of 25 years if convicted.[7] The fact that these informations are labeled as "amended" appears to be a clerical error by the prosecution. Hill's argument that these informations were not filed within 21 days of his arraignment appears to confuse Hill's arraignment on the complaint or warrant in these cases with the arraignment on the information that occurs after a preliminary examination is completed. MCL 769.13 and MCR 6.112(F) both state that the timeliness of a habitual-offender notice is measured from "the defendant's arraignment on the information charging the underlying offense."

That said, we recognize that it is not clear from the record when, or if, Hill was arraigned on the informations in these cases. Defense counsel stated Hill's intent to waive arraignment on the informations in Docket Nos. 370270 and 370271 at the January 30, 2023 preliminary examination; however, only the circuit court register of actions in Docket No. 370271 reflects that Hill waived arraignment on the information. The record does not show that Hill was arraigned in Docket Nos. 370267, 370268, 370269, and 370270.

Despite gap in the record, we are still confident that Hill received notice of the habitual-offender status. An information cannot be filed before the conclusion of the preliminary examination, thus Hill could not have been arraigned on any information earlier than the conclusion of the preliminary examination on January 25, 2023. Because all the "amended" informations in these cases were filed by February 15, 2023—21 days after January 25, 2023—we conclude that Hill received timely notice in each of these cases.[8] Accordingly, we conclude that the prosecution complied with the requirements of MCL 769.13 and MCR 6.112(F).

Affirmed.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney

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[7] The informations stated that Hill had prior felony convictions for delivering or manufacturing marijuana, MCL 333.7401(2)(d)(*iii*); attempted carrying of a concealed weapon, MCL 750.227; and unarmed robbery, MCL 750.530. Attempted carrying of a concealed weapon and unarmed robbery are both listed prior felonies that qualify defendant for a 25-year mandatory minimum sentence under MCL 769.12(1)(a). MCL 769.12(6)(a)(*iii*). Proofs of service of each "amended" information are also contained in the record.

[8] Defense counsel was not ineffective for failing to challenge the timeliness of the habitual-offender notices because doing so would have been futile. See *Isrow*, 339 Mich App at 532.