

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID DEWAYNE COULSON,

Defendant-Appellant.

UNPUBLISHED

March 1, 2005

No. 251413

Cass Circuit Court

LC No. 03-010024-FH

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of possession of a dangerous weapon (metallic knuckles), MCL 750.224(1)(d), for which he was sentenced as an habitual offender, third offense, MCL 769.11, to a prison term of thirty months to ten years. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in denying his motion to suppress the weapon, which was taken from his home during a warrantless search. We disagree. This Court reviews a trial court's factual findings at a suppression hearing for clear error, but reviews the ultimate ruling on a motion to suppress de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002).

“The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures.” *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). “In order to satisfy the Fourth Amendment of the United States Constitution and article 1, § 11 of the Michigan Constitution, a search must be ‘reasonable.’ As a general matter, this requires that law enforcement authorities obtain a warrant.” *People v Goforth*, 222 Mich App 306, 309; 564 NW2d 526 (1997). One exception to the warrant requirement is “the governmental ‘special needs’ or regulatory exception. A warrant or probable cause will not be required in such cases as long as the searches meet ‘reasonable legislative or administrative standards.’” *People v Woods*, 211 Mich App 314, 317; 535 NW2d 259 (1995), quoting *Griffin v Wisconsin*, 483 US 868, 873; 107 S Ct 3164; 97 L Ed 2d 709 (1987).

A department regulation authorizes warrantless searches of parolees and their property if there is reasonable cause to believe that a violation of parole exists. 1999 AC, R 791.7735(2). Defendant concedes that parolees' homes may be subjected to warrantless searches and that the

agents' entry into his home on January 9th was lawful. While at his home, the agents observed various weapons in defendant's room, which clearly created reasonable cause to believe that he was in violation of parole, one condition of which was that he not possess any type of weapon. Therefore, the warrantless search conducted the following day was lawful.

Defendant next takes issue with the court's decision to give a modified version of CJI2d 11.29. Defendant preserved this issue by raising a timely objection below. *People v Gonzalez*, 468 Mich 636, 642-643; 664 NW2d 159 (2003). However, his "argument is cursory and devoid of citation to relevant authority and we consider it abandoned." *People v James Green*, 260 Mich App 392, 409-410; 677 NW2d 363 (2004).

Defendant next contends that the prosecutor intimidated his father to prevent him from testifying on defendant's behalf, thus depriving him of due process and a fair trial. Because defendant did not raise this issue below, it has not been preserved for appeal. *People v Geno*, 261 Mich App 624, 626; 683 NW2d 687 (2004). Therefore, review is precluded unless defendant shows plain error that affected the outcome of the proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

"Both our Supreme Court and this Court have strongly condemned prosecutorial intimidation of witnesses." *People v Stacy*, 193 Mich App 19, 25; 484 NW2d 675 (1992). "[G]overnment conduct which amounts to substantial interference with a witness' free and unhampered determination to testify will violate due process. However, even if a defendant is able to prove prosecutorial misconduct amounting to substantial interference with a witness, that misconduct will not result in a new trial if it can be said to be harmless." *United States v Foster*, 128 F3d 949, 953 (CA 6, 1997) (citations omitted). Courts have found a defendant entitled to relief where a defense witness refused to testify after being threatened by the prosecutor with prosecution for perjury or other crimes. See, e.g., *People v Callington*, 123 Mich App 301; 333 NW2d 260 (1983); *People v Williams #1*, 45 Mich App 623; 207 NW2d 176 (1973).

Defendant apparently sought to call his father to testify that he owned the metallic knuckles found in defendant's possession. Whether defendant or his father owned the brass knuckles was irrelevant because the statute prohibits not the ownership of the enumerated weapons but the manufacture, sale, offering for sale, and possession of such weapons. Lack of ownership does not preclude conviction of a possessory offense. Cf. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000) ("possession of a weapon is not the same thing as ownership of a weapon"); *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748, amended 441 Mich 1201 (1992) ("possession may be found even when the defendant is not the owner of the recovered narcotics"). Thus, the fact that someone else owned the brass knuckles would not preclude defendant's conviction if he was in possession of them. Possession of a weapon may be actual or constructive, *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989), and constructive possession may be sole or joint. *Wolfe, supra*. The evidence showed that defendant was in constructive possession of the brass knuckles, which he had taken from a child and put away in his room. Therefore, the error could not have affected the outcome of the trial because the witness' proposed testimony did not establish a defense to the crime charged. *Carines, supra*.

Defendant lastly contends that he is entitled to a new trial due to ineffective assistance of counsel. Because defendant failed to raise this claim below in a motion for a new trial or an

evidentiary hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

To prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel's performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To demonstrate prejudice, the defendant must show that, but for counsel's error, there was a reasonable probability that the result of the proceedings would have been different. This Court presumes that counsel's conduct fell within a wide range of reasonable professional assistance, and the defendant bears a heavy burden to overcome this presumption. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001), *aff'd* 468 Mich 233 (2003) (citations omitted).]

Defendant first contends that counsel was ineffective for failing to call his father as a witness. "Ineffective assistance of counsel can take the form of a failure to call witnesses or present other evidence only if the failure deprives the defendant of a substantial defense." *People v Bass (On Rehearing)*, 223 Mich App 241, 252-253; 565 NW2d 897 (1997), vacated in part on other grounds 457 Mich 866 (1998). "A substantial defense is one that might have made a difference in the outcome of the trial." *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990).

Because review is limited to the existing record and that record is silent regarding the testimony defendant's father would have offered if called, defendant has not shown that a reasonable probability exists that, if counsel had called his father to testify, the outcome of the trial would have been different. *People v Pratt*, 254 Mich App 425, 430; 656 NW2d 866 (2002); *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999). If the Court were to consider evidence outside the record, Coulson's unsworn statements indicate that he would have testified that he owned the brass knuckles in question. As discussed above, lack of ownership does not preclude conviction of a possessory offense. Thus, counsel's failure to call defendant's father to testify did not deprive defendant of a substantial defense. *Kelly, supra*.

Defendant also contends that counsel was ineffective for failing to seek suppression of evidence that defendant had other weapons in his room. Defendant has not explained why the evidence was inadmissible or cited any authority in support of this contention, and therefore the issue is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). A party may not "simply . . . announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Because defendant has not shown any error in the admission of the evidence, he has not shown that counsel was ineffective for failing to object to its admission. *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio