

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTOINE C. COOK,

Defendant-Appellant.

No. 25-3775

Appeal from the United States District Court for the Northern District of Ohio at Akron.
No. 5:24-cr-00347-1—Donald C. Nugent, District Judge.

Decided and Filed: October 16, 2026

Before: BOGGS, GILMAN, and BUSH, Circuit Judges.

COUNSEL

ON BRIEF: Lori Beth Riga, FEDERAL PUBLIC DEFENDER’S OFFICE, Cleveland, Ohio, for Appellant. Colleen Egan, UNITED STATES ATTORNEY’S OFFICE, Cleveland, Ohio, for Appellee.

OPINION

JOHN K. BUSH, Circuit Judge. Defendant-Appellant Antoine Cook appeals his conviction for possessing illegal drugs with intent to distribute and for possessing ammunition as a convicted felon.

Before trial, Cook moved to suppress evidence found on his cell phone. His then-girlfriend had given the phone to the police after she told them that she and Cook had used drugs

the previous night. The phone contained incriminating photographs that led to his conviction. Cook argued that his parole officer lacked reasonable suspicion to search the phone. The district court denied his motion.

Cook appeals the district court's decision, and he additionally claims that his trial counsel was ineffective and that the district judge was biased. For those reasons, he now seeks to vacate his three convictions. But Cook's then-girlfriend had common authority to consent to the search of the phone, and Cook can point to no evidence showing that the district judge was biased. Consequently, we affirm the decision of the district court on those grounds, and we decline to address Cook's ineffective-assistance-of-counsel claim.

I

In the morning hours of May 1, 2024, Cook's parole officer (Officer John Zubick) received a phone call from Cook's phone number. But it was not Cook calling. Rather, Cook's then-girlfriend E.C. was on the line. She informed Officer Zubick that local sheriffs had arrested Cook for domestic violence at a nearby hotel.

So, Officer Zubick and his colleague Officer Ashley DiMarco went to the hotel. Officer Zubick also called his colleague Officer John Christie to meet them there. Upon arrival, Officers Zubick and DiMarco found E.C. outside of the hotel entrance with Cook's phone. E.C. explained the incident that had led to Cook's arrest and mentioned that she and Cook had taken drugs the night before. Meanwhile, Cook continually called his phone from jail, trying to reach E.C. At one point during the parole officers' interview, E.C. answered the phone, told Cook that she was with his parole officer, and subsequently hung up. E.C. told the officers that it was Cook who called. She additionally told the officers that the phone was her only method of communication.

Officer DiMarco asked if she could look at the phone. E.C. assisted and willingly gave Officer DiMarco the passcode. Officer DiMarco saw that the phone contained a video of "a rifle magazine with ammunition." R. 70, Suppression Hr'g Tr., PageID 458. E.C. stated that Cook had recorded the video in their hotel room the previous night. Officer DiMarco then handed the

phone to Officer Zubick, who proceeded to look through the phone. There, he found additional pictures of ammunition and a video of Cook posing with multiple firearms.

After Officer Christie had arrived, the officers obtained E.C.'s consent to search the hotel room where she and Cook had stayed. Officers discovered a box containing 12-gauge shotgun shells and a firearm magazine tucked under a mattress. They further found a bag that held multiple smaller containers of cocaine and methamphetamine. Officer Christie also discovered another rifle magazine, which contained .223 caliber ammunition.

Officer Christie later obtained a search warrant for the cell phone. Upon reviewing its content, he found the video from the hotel room.

II

In September 2024, a grand jury indicted Cook for one count of possession with intent to distribute methamphetamine under 21 U.S.C. § 841(a)(1), one count of possession with intent to distribute cocaine under 21 U.S.C. § 841(a)(1), and one count of being a felon in possession of ammunition under 18 U.S.C. § 922(g)(1).

Cook moved to suppress the information that the officers had obtained from his cell phone and from the subsequent hotel-room search. He argued that the officers did not have the reasonable suspicion needed to search the phone as required under the Ohio parolee statute. *See* Ohio Rev. Code Ann. §§ 2967.131(C)(1), (C)(1)(a). Additionally, Cook claimed that E.C. had no actual or apparent authority to consent to the search of the cell phone.

The district court held a hearing on the motion to suppress. At that hearing, the court noted that, pursuant to the Ohio parolee statute, Cook had signed a waiver that allowed the officers to search the phone without a warrant. Also, Officers Zubick, DiMarco, and Christie testified against suppression of the evidence.

In addition to the events recounted above, Officer Zubick stated that Cook previously had signed a condition of supervision in which Cook had agreed to “warrantless searches of his person, place, and things.” R. 70, Suppression Hr’g Tr., at PageID 431. Officer Zubick also agreed with the prosecuting attorney that, in his experience, it is common to find evidence of

drug and firearm activities stored in a cell phone. *Id.* at PageID 435. And when asked if he knew whether E.C. and Cook had joint use of the phone, Officer Zubick replied, “I would imagine so if she had his pass code [*sic*].” *Id.* at PageID 443.

The district court denied the motion to suppress the contents of the cell phone, again referring to the Ohio parolee statute. Towards the end of the hearing, the district judge gave Cook the opportunity to speak. Cook and the district judge had the following colloquy:

DEFENDANT: I understand what’s going on. That I mean, it is clear what I am here for, exercising my rights. That’s what I am in here for. I spit on a white girl. It was my white girl. You know, that’s the problem. I am sitting with everybody that is Caucasian. Everybody is white.

THE COURT: Then move. You should have moved a long time ago if you didn’t like it.

THE DEFENDANT: If I could have, I would if I would have known for real.

THE COURT: Well, I looked at your record, and you have 45 prior convictions. That’s probably why you couldn’t move.

Id. at PageID 491. After further back-and-forth, the district judge adjourned the hearing.

On the morning of trial, Cook expressed a desire to proceed either pro se or seek new counsel. The district judge explained that Cook’s current trial counsel was “ready, willing and able to proceed” with trial and denied Cook’s request for new counsel. R. 73, Trial Tr. Vol. I, PageID 601, 603. After continued discussion with the district judge, Cook decided to proceed ahead with his current appointed counsel as opposed to proceeding pro se. A jury convicted Cook on all counts.

Cook timely appeals. He argues that the district court erred in denying his motion to suppress the cell phone, that his trial counsel was ineffective, and that the district judge was biased.

III

“When a defendant appeals the denial of a motion to suppress evidence, we review the district court’s findings of fact under the clear-error standard and we review its conclusions of law de novo.” *United States v. Ickes*, 922 F.3d 708, 710 (6th Cir. 2019) (quoting *United States v. Quinney*, 583 F.3d 891, 893 (6th Cir. 2009)). “Because this court’s de novo review involves only application of legal propositions to the undisputed facts in the record, we may affirm on any grounds supported by the record even if different from the reasons of the district court.” *Abercrombie & Fitch Stores, Inc. v. Am. Eagle Outfitters, Inc.*, 280 F.3d 619, 629 (6th Cir. 2002).

A

As a preliminary matter, E.C.’s consent obviates our need to consider Cook’s argument that the terms of his supervised release did not extend to the warrantless search of his cellphone, under Ohio law. An officer does not need a warrant or probable cause to search property if a third party with actual or apparent authority over the property consents to the search, or if a third party has “common authority over or other sufficient relationship to the premises or effects sought to be inspected.” *United States v. Morgan*, 435 F.3d 660, 663 (6th Cir. 2006) (quoting *United States v. Matlock*, 415 U.S. 164, 174 (1974)). Still, the third party’s consent must be “freely and voluntarily given.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

For its part, the Government recognizes that a person “who has common authority, or appears to have authority,” over the property in question can consent to a search of the property. Appellee Br. at 23. It is well established that a “prevailing party may, of course, assert in a reviewing court any ground in support of his judgment, whether or not that ground was relied upon or even considered by the trial court.” *Lorillard Tobacco Co. v. Chester, Willcox & Saxbe*, 546 F.3d 752, 759 (6th Cir. 2008) (quoting *Dandridge v. Williams*, 397 U.S. 471, 476 n.6 (1970)). Although the Government focuses on showing that E.C. had actual authority over the cell phone, we need not address whether E.C. had actual authority over the cell phone when it is obvious that E.C. had common authority.

“Common authority is not to be implied ‘from the mere property interest a third party has in the property, . . . but rests on the mutual use of the property by persons generally having joint access or control for most purposes’” *United States v. Ayoub*, 498 F.3d 532, 537 (6th Cir. 2007) (quoting *Matlock*, 415 U.S. at 171 n.7). Because a cell phone is property, the consent to search it may be based on common authority. See *United States v. Gardner*, 887 F.3d 780, 784 (6th Cir. 2018) (concluding that even if officers knew that a phone belonged to a boyfriend, the victim “by all reasonable appearances had ‘joint access or control’” of the cell phone sufficient to give consent of the search (quoting *Matlock*, 415 U.S. at 171 n.7)). The facts here demonstrate that a reasonable officer could believe that E.C. had sufficient “joint access or control” over the phone such that she could consent to the officers searching the cell phone.

For one, E.C. used the phone to call the parole officers while she was alone at the hotel and Cook was already in jail. And Cook continually attempted to reach E.C. from jail by calling the phone while the officers were talking to her. E.C. answered the phone, told Cook she was with his parole officer, and then hung up on Cook. R. 70, Suppression Hr’g Tr., PageID at 456. When Officer Zubick was asked if he “knew at any time that it was established there was a joint use between [Cook] and [E.C.],” the officer responded: “I would imagine so if she had his pass code [*sic*].” *Id.* at PageID 457. Officer DiMarco further testified that E.C. gave her the phone and provided the passcode. *Id.* E.C. also told Officer DiMarco that the phone was her only form of communication at the time of the incident. *Id.*

A reasonable officer could believe that E.C. had authority over the phone because she used the phone to contact the officers and because Cook knew that E.C. could be reached by calling the phone. Absent the officers’ knowledge that Cook owned the phone at the time of the search, the facts in this case are analogous to *Gardner*. The phone was E.C.’s only means of communication, she knew the phone’s passcode, and she had given the phone to the officer. See *Gardner*, 887 F.3d at 783–84; *United States v. Wright*, 838 F.3d 880, 887–88 (7th Cir. 2016) (holding that a wife had common authority over a household desktop despite not having the password to access the computer); *United States v. Thomas*, 818 F.3d 1230, 1240–42 (11th Cir. 2016) (holding that the defendant’s then-wife had common authority over the household computer). And similar to *Gardner*, we conclude that the officers’ knowledge that Cook owned

the phone makes no difference because the facts and circumstances show that E.C. “by all reasonable appearances had ‘joint access or control’” over the cell phone. *See Gardner*, 887 F.3d at 784 (quoting *Matlock*, 415 U.S. at 171 n.7) (emphasis added).

Because we conclude that E.C. had common authority over the cell phone, she could consent to its search. Therefore, no Fourth Amendment violation occurred, and we need not discuss whether the officers had reasonable suspicion sufficient to conduct a search under the Ohio parolee search statute.

B

Cook’s appellate brief makes a vague reference about the seizure of the phone. But he discusses the seizure of the phone as an additional reason that the officers needed reasonable suspicion to search the phone’s contents. Appellant Br. at 28. To the extent that Cook is arguing that the seizure of the phone was unreasonable under the Fourth Amendment, Cook forfeited any argument about an alleged unreasonable seizure because he did not raise it in the district court. *See United States v. Critton*, 43 F.3d 1089, 1093 (6th Cir. 1995); *see also United States v. Soto*, 794 F.3d 635, 654–55 (6th Cir. 2025) (finding that “forfeiture” rather than “waiver” is the correct standard to review a failure to raise pretrial motions). We thus review the forfeited objection under the plain-error standard. *United States v. Woods*, 61 F.4th 471, 481 (6th Cir. 2023). To establish plain error, Cook must show that: “(1) error occurred; (2) that error was obvious; (3) it affected the defendant’s substantial rights; and (4) it affected the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (cleaned up).

Upon receiving the phone from E.C., the officers discovered photographs stored on it of Cook holding firearms. And the officers knew that, as a parolee, Cook could not possess firearms. Thus, they knew that the phone contained evidence of criminal activity. The officers therefore had probable cause to seize the phone for a limited time pending the execution of a search warrant. *See United States v. Thibou*, No. 24-1991, 2026 WL 126431, at *7 (6th Cir. Jan. 16, 2026); *United States v. Sykes*, 65 F.4th 867, 877–78 (6th Cir. 2023); *United States v. Avery*, 137 F.3d 343, 349 (6th Cir. 1997); *United States v. Jacobsen*, 466 U.S. 109, 120–22 (1984).

Regardless, the “seizure did not meaningfully interfere” with Cook’s possessory interest in the phone because he was in custody for the period between when the officers first obtained the phone and the execution of the search warrant, and there is no evidence that Cook requested the phone’s return. *See United States v. Thomas*, 97 F.4th 1139, 1143–44 (8th Cir. 2024) (citing *United States v. Clutter*, 674 F.3d 980, 984 (8th Cir. 2012) and *United States v. Johns*, 469 U.S. 478, 487 (1985)).

Cook has not shown that the officers’ seizure of the cell phone was an obvious error under the Fourth Amendment. *See Woods*, 61 F.4th at 481. Consequently, he has not demonstrated that the district court’s decision not to suppress the evidence from the phone constituted plain error.

IV

Cook next argues that his trial defense counsel was ineffective. Generally, ineffective-assistance-of-counsel claims are not entertained on direct review because those claims are more properly presented in habeas petitions. *See United States v. Coleman*, 835 F.3d 606, 612 (6th Cir. 2016) (“Only in the rare case that would not benefit from further record development do we consider [ineffective-assistance-of-counsel claims] on direct review.”).

Cook lays out three arguments that his trial counsel was ineffective: (1) his counsel failed to contact defense witnesses, family members, and the arresting officer; (2) his counsel failed to inform him that he was attending a suppression hearing; and (3) his counsel failed to visit him and instead sent him legal correspondence by mail that prison officials would read before delivering the mail to him. The record before us is insufficient to evaluate those allegations and whether, if true, those allegations would result in prejudice. We therefore decline to address the ineffective-assistance-of-counsel claims. *See United States v. Ferguson*, 669 F.3d 756, 762 (6th Cir. 2012); *United States v. Galloway*, 316 F.3d 624, 634 (6th Cir. 2003) (declining to address ineffective-assistance-of-counsel claims when the record on direct review is not sufficiently developed to resolve the issues).

V

Finally, Cook argues that the district judge was biased against him and prevented him from mounting a defense and raising legal issues. He therefore requests this court to reassign his case to a different judge. “A judge must disqualify himself where a reasonable person with knowledge of all facts would conclude that the judge’s impartiality might reasonably be questioned.” *Burley v. Gagacki*, 834 F.3d 606, 615–16 (6th Cir. 216). Because Cook did not raise the issue of judicial bias at the district court, we review under the plain-error standard. *United States v. Roach*, 502 F.3d 425, 441 (6th Cir. 2007).

Cook claims that the district judge’s behavior evidenced bias because the judge “shut him down” when Cook asked for new counsel. Appellant Br. at 38. Additionally, Cook contends that the district judge “refused to entertain [his] concerns and personally disparaged him.” *Id.* at 40. The record paints quite a different picture. While the district judge’s exasperation at Cook is apparent, the judge did provide Cook sufficient time to present his issues, voice his opinion, and explain his position on the record.

Cook asserts that the district judge ignored his desire to obtain new counsel who “would listen to him.” *Id.* But context matters. Cook asked to proceed pro se on the morning of his trial and then asked for new counsel despite his current counsel being available and ready to serve. The district judge was well within his authority to deny that request in such circumstances. *See United States v. Justice*, 14 F. App’x 426, 430–31 (6th Cir. 2001) (holding that a court did not abuse its discretion in denying a request for new counsel on the day of trial). Therefore, the judge’s reasonable decision to deny the request for new counsel does not call into question his “impartiality.” *See Burley*, 834 F.3d at 615.

Finally, Cook points to the judge’s actions at the suppression hearing. Recall that when Cook broke into an exhortation about his rights, he stated: “I spit on a white girl. It was my white girl. You know, that’s the problem. I am sitting with everybody that is Caucasian. Everybody is white.” R. 70, Suppression Hr’g Tr., PageID 491. In response, the district judge said, “Then move. You should have moved a long time ago if you didn’t like it.” *Id.*

The district judge added that Cook’s prior convictions likely hindered his ability to move from where he lived, presumably because of release conditions arising from prior incarcerations. *Id.*

The Supreme Court has held that “expressions of impatience, dissatisfaction, annoyance, and even anger” do not establish bias or partiality. *Liteky v. United States*, 510 U.S. 540, 555–56 (1994). The district judge’s comments cited by Cook do not affect our conclusion, based on review of the full record, that the judge’s interactions with Cook throughout the case exhibited no signs of explicit or implicit bias. Nor does the judge’s response at the suppression hearing suggest racial animus. Frustration with the defendant’s attitude, perhaps. But not grounds for recusal. In any event, the judge’s remarks and all other interactions that Cook calls into question occurred outside the presence of the jury. *See United States v. Morrow*, 977 F.2d 222, 225 (6th Cir. 1992) (en banc) (noting that the alleged inappropriate judicial conduct in that case was “neutralized by the absence of the jury”).

Because we conclude that the district judge did not exhibit bias or racial animus, there is no need to reassign the case.

VI

For the forgoing reasons, we **AFFIRM** the judgment of the district court.