

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID SAMIR KIRIAKUS,

Defendant-Appellant.

UNPUBLISHED

December 29, 2022

No. 355962

Wayne Circuit Court

LC No. 18-009439-01-FC

Before: GARRETT, P.J., and O’BRIEN and REDFORD, JJ.

GARRETT, P.J. (*concurring*).

I concur in the majority’s opinion affirming defendant’s convictions.

I agree that defendant has not met his burden to establish that trial counsel was constitutionally ineffective by failing to object to Deputy Garza’s expert qualifications and the reliability of his testimony. While I have concerns about Deputy Garza’s lack of knowledge regarding the accuracy or error rate of the cell phone mapping software, I cannot conclude on this record that these deficiencies in knowledge rendered him unqualified to give expert testimony or necessarily rendered his testimony unreliable. The known or potential error rate is only one factor considered when assessing the admissibility of expert testimony under MRE 702 and *Daubert*. See *People v Muhammad*, 326 Mich App 40, 52; 931 NW2d 20 (2018). And the admissibility inquiry is a flexible one, allowing the reviewing court to consider “reliability factors pertinent to the particular type of expert testimony offered and its connection to the particular facts of the case.” *People v Kowalski*, 492 Mich 106, 120; 821 NW2d 14 (2012). As the majority notes, without any offer of proof supporting defendant’s contention that Deputy Garza’s testimony was unreliable, defendant cannot establish the factual predicate of his ineffective assistance claim. With that in mind, I join the majority’s opinion.

/s/ Kristina Robinson Garrett