

Order

Michigan Supreme Court
Lansing, Michigan

June 26, 2026

SC: 167705-6
COA: 362388, 367180
Muskegon CC: 2020-003689-FC

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

KRISTOPHER HARLAN JOESEL,
Defendant-Appellant.

On November 5, 2025, the Court heard oral argument on the application for leave to appeal the August 29, 2024 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals, which affirmed the trial court's refusal to instruct the jury on voluntary manslaughter; VACATE defendant's conviction, sentence, and order of restitution; and REMAND this case to the Muskegon Circuit Court for further proceedings not inconsistent with this order.

I. FACTS AND PROCEDURAL HISTORY

This appeal follows defendant Kristopher Harlan Joesel's conviction of second-degree murder. Video footage shows that defendant fatally stabbed Laura Sanchez immediately after she followed him to the vestibule of his apartment building and pushed him into a bank of mailboxes.

The stabbing was the culmination of a series of events that evening. At trial, a number of witnesses, including defendant and decedent's boyfriend, testified that defendant was involved in a series of altercations at a bar leading up to the time of the stabbing. After a night out, defendant and a friend stopped at a bar across the street from defendant's apartment. A verbal dispute arose between defendant and a bar employee, and defendant was asked to leave. A physical fight erupted, during which a bouncer, bartender, and bar patron restrained defendant on a pool table while defendant spat in their faces and thrashed his legs. In the chaos, defendant dropped his phone near the pool table. Two bartenders helped the bouncer drag defendant outside. Sanchez was also at the bar but was not involved in this initial altercation.

After being ejected from the bar, defendant punched a patron who was holding the door open and split the man's lip. Defendant reentered the bar briefly but was promptly escorted out. He then urinated on a bartender's truck before walking to his nearby apartment. Defendant sent an angry e-mail to his apartment manager about the encounter

at the bar, alleging that one of the residents of the apartment complex had assaulted him. Defendant then retrieved a fixed-blade double-edged knife, returned to the bar parking lot, and slashed tires on several cars he believed to be empty. One of these cars belonged to Sanchez's boyfriend, Manuel Suarez, who was sitting in his car when defendant punctured a tire on the car. Suarez got out of the car. Sanchez, who was with Suarez, came around the front of the vehicle to confront defendant. Sanchez approached defendant and started to yell at him. Defendant did not engage and returned to his apartment. Suarez testified that he had to restrain Sanchez to prevent her from following defendant.

While Suarez went back into the bar to inform people about the tire slashing, Sanchez walked to defendant's apartment on her own. Within moments of defendant's entry, Sanchez entered the public vestibule of the apartment building and tried to open the locked door into the secure, private lobby. She banged on the door and then went back outside. Sanchez approached a resident of the apartment building who was standing in the parking lot and asked him to let her into the building; he refused to let her into the secure area. Sanchez returned to the bar, where she stood outside with a small group of patrons. Another witness testified that the group included six or seven people.

Defendant left his apartment again, according to some testimony, to retrieve his cell phone from the bar. He put his hair up and put on a hat before leaving. His knife remained in his pocket. When defendant approached the bar, a patron outside recognized him and alerted the others. Sanchez then confronted defendant again—Suarez testified that she came up on him "really fast"—and followed him back to the vestibule of his apartment building. She was followed by some of the other patrons outside the bar.

Defendant entered the building and pulled the outer door shut behind him. Sanchez was close behind him. Video surveillance footage shows that defendant leaned forward and appeared to say something to Sanchez through the door. Sanchez pushed on the door and responded verbally. Defendant turned away and walked to the keypad that grants entrance into the secure lobby. He was holding his knife in his dominant hand as he attempted to get his keys from his belt loop with his nondominant hand.

Sanchez opened the vestibule door and entered unarmed. Another patron from the bar held the vestibule door open and stood in the doorway. Defendant and Sanchez appear to have exchanged words. Defendant turned away from Sanchez and back to the keypad. Sanchez approached defendant slowly at first and then more quickly before she used both her hands to push defendant from behind into the panel and wall. Defendant immediately turned and stabbed Sanchez twice, once in the chest and once in the leg. Sanchez backed away, and defendant lunged at her a third time with his knife, but video footage shows that his knife did not make contact on this third lunge. Sanchez moved further backward. The two appeared to say something to each other. A second patron from the bar approached the vestibule door. Defendant attempted to enter the secure part of the building, but the door remained locked. Sanchez stood near the foyer door while blood streamed down her

leg. Defendant turned back to walk toward the key panel. Sanchez walked toward him and bent forward as if to say something. Defendant swiped his key and entered the secure door as a third patron from the bar approached the vestibule. Sanchez then fell to the ground. The other patrons entered the vestibule, called 911, and attempted to render aid. Sanchez died moments later. The physical confrontation between Sanchez and defendant lasted less than five seconds.

Defendant was charged with open murder, and the jury was given instructions on first-degree and second-degree murder. At trial, defendant requested an instruction on self-defense, which was given by the trial court. A self-defense instruction requires, in relevant part, that there be evidence supporting that the defendant “*honestly and reasonably believed that [he] was in danger of being [seriously injured],*” even if that belief turns out to be incorrect. M Crim JI 7.15 (Use of Deadly Force in Self-Defense) (emphasis added). Defendant also requested a voluntary-manslaughter instruction. The trial court refused that instruction, stating that it did not “believe that the provocation point is adequate enough in this case.” The jury acquitted defendant of first-degree murder and convicted him of second-degree murder. Defendant appealed the trial court’s denial of an instruction on voluntary manslaughter. In a split decision, the Court of Appeals affirmed defendant’s conviction. *People v Joesel*, unpublished per curiam opinion of the Court of Appeals, issued August 29, 2024 (Docket Nos. 362388 and 367180). For the reasons set forth in this order, we reverse.¹

II. DISCUSSION

A. STANDARD OF REVIEW

This Court reviews de novo claims of instructional error. *People v Kowalski*, 489 Mich 488, 501 (2011). We have previously said that we review the question of whether a lesser-included-offense instruction is appropriate under the facts of the case for an abuse of discretion, *People v Jones*, 497 Mich 155, 161 (2014); we have also found that a trial court abuses its discretion when a rational view of the evidence would support a voluntary-manslaughter instruction, *People v Cornell*, 466 Mich 335, 352-361 (2002); see also *People v Pouncey*, 437 Mich 382, 391-392 (1991). This Court also considers the instructions as a whole, rather than piecemeal, to determine whether any error occurred. *Kowalski*, 489 Mich at 501.

B. VOLUNTARY MANSLAUGHTER

¹ This Court also asked for briefing regarding restitution, but it is unnecessary to address that issue given our conclusion that defendant’s conviction must be vacated.

When a defendant is charged with murder, a requested instruction for voluntary manslaughter “must be given if supported by a rational view of the evidence.” *People v Mendoza*, 468 Mich 527, 541 (2003). Voluntary manslaughter consists of three prongs: (1) “the defendant killed in the heat of passion,” (2) “the passion was caused by adequate provocation,” and (3) “there was not a lapse of time during which a reasonable person could control [their] passions.” *Id.* at 535. Provocation is not an element of voluntary manslaughter. *Id.* at 536. Rather, it is “the circumstance that negates the presence of malice.” *Id.* In this way, voluntary manslaughter serves to mitigate an intentional killing because “the law, out of indulgence to the frailty of human nature, regards the offense as of a less heinous character than murder, and designates it manslaughter.” *People v Holmes*, 111 Mich 364, 370 (1896). When there is sufficient evidence to submit a charge of murder to a jury, “only a modicum of evidence of provocation” is required to justify a voluntary-manslaughter instruction. *People v King*, 98 Mich App 146, 152 (1980); cf. *People v Heflin*, 434 Mich 482, 504 (1990) (opinion by RILEY, C.J.) (“[A] trial court need not instruct the jury on inconsistent theories when neither party produces a modicum of evidence in support of a particular theory.”).

A “heat of passion” killing is one that occurs as a result of “temporary excitement, by which the control of reason was disturbed” *Maher v People*, 10 Mich 212, 219 (1862). This “temporary excitement” does not have to “entirely dethrone[] . . . or overpower[]” reason; rather, it is sufficient that reason is “disturbed or obscured by passion to an extent which *might render* ordinary [people], of fair average disposition, *liable* to act rashly or without due deliberation or reflection” *Id.* at 220. Michigan caselaw does not “circumscribe the requisite emotional state” to establish responding in the heat of passion, although “the model jury instruction specifically acknowledges anger as an emotional state that may serve to mitigate murder to voluntary manslaughter” *People v Yeager*, 511 Mich 478, 492-493 (2023).

The Court of Appeals majority stated that defendant was not acting under the influence of passion; the majority described defendant’s state of mind as both “in a state of simmering rage” and, potentially contradictorily, as “an ordinary man functioning with deliberation.” *Joesel*, unpub op at 6-7 (quotation marks and citation omitted). Evidence of deliberation is not fatal to a voluntary-manslaughter instruction. Instead, it is the presence of a provocation that negates any deliberation. See *Holmes*, 111 Mich at 372 (“If it appears that murder is committed upon a heat of passion engendered entirely by such provocations, and suddenly conceived, such a murder cannot properly be called deliberate.”). And, as stated in *Yeager*, 511 Mich at 492-493, the emotional state that serves as the “heat of passion” that mitigates the murder may be anger.

As in other cases involving questions around voluntary manslaughter that have come before this Court, and as evaluated by the Court of Appeals, the entire course of events can be considered. See *id.* at 491-492. In this case, defendant testified that he “was upset” when he left his apartment to slash tires in the bar parking lot. When he left his

apartment again, purportedly to retrieve his phone, he testified that he was scared because he saw “the group that had just beat the crap out of [him] at the bar.” Defendant testified that when Sanchez pushed him, he had an “instinctual reaction” and “just tried getting the person off of [him]” In evaluating these statements, as well as the testimony of other witnesses and the video of the stabbing, the trial court was charged with determining whether a rational view of the evidence would support defendant’s claim that he acted in the heat of passion. It does. A rational view of the evidence might also support the prosecution’s argument that defendant did not act in the heat of passion. But in determining whether an instruction for voluntary manslaughter should be provided, the trial court must not “arbitrarily assume[] to take the question from the jury” *Mahe*r, 10 Mich at 225.

Whether the provocation was adequate is a question of fact. *Id.* at 221-222. Jurors are “much better qualified to judge of the sufficiency and tendency of a given provocation, and much more likely to fix, with some degree of accuracy, the standard of what constitutes the average of ordinary human nature” *Id.* at 222. But if no reasonable jury could find that the provocation was adequate, then a trial court may refuse to instruct the jury on manslaughter. *Pouncey*, 437 Mich at 392. The provocation necessary to mitigate a murder to manslaughter is “that which causes the defendant to act out of passion rather than reason.” *Id.* at 389. The defendant must have been provoked to the degree that their practical-reasoning skills were distorted. *Id.*

This Court has been reluctant to draw clear lines of what does and does not provide sufficient evidence of adequate provocation to warrant a voluntary-manslaughter instruction. For example, in *Pouncey*, this Court held that insulting words *in that instance* were not enough to conclude that the trial court erred by failing to provide a voluntary-manslaughter instruction, but this Court refused to create a per se rule that words are never adequate provocation. *Pouncey*, 437 Mich at 391-392. But there are myriad examples in Michigan caselaw where a physical altercation has been deemed adequate provocation for a voluntary-manslaughter instruction. See, e.g., *People v Oster (On Resubmission)*, 97 Mich App 122, 128, 133 (1980) (the decedent punched the defendant, and the defendant then stabbed him five times); *Holmes*, 111 Mich at 367-369 (the decedent punched the defendant three or four times after a scuffle in a boarding house, after which the defendant retrieved a revolver from his room and shot at the victim three times); *People v Mitchell*, 301 Mich App 282, 287-288 (2013) (the victim swung a baseball bat at the defendant and struck him three or four times before the defendant took the bat from the victim and hit him on the head and shoulders).

We hold that a rational view of the evidence in this matter supports the voluntary-manslaughter instruction and a jury making the determination of whether there was provocation sufficient to mitigate murder to manslaughter. Sanchez’s boyfriend, Suarez, testified that after defendant slashed the tires on his car, Sanchez confronted defendant and yelled at him. Sanchez followed defendant as he walked across the street to his apartment building, and Suarez pulled her back. Another witness said that he heard people screaming

outside the apartment. Suarez testified that when defendant came back out of his apartment, Sanchez was “walking really fast” to confront defendant again. Another witness outside the bar said that there was a “verbal confrontation” at this point and that Sanchez was yelling at defendant. Sanchez followed defendant to his apartment building. One witness testified that Sanchez ran after defendant. A small group of people were in the parking lot to examine the tire damage. At least two of them followed defendant behind Sanchez. After defendant entered the vestibule of his apartment building, Sanchez slammed on the outside door with both her hands, yelled something, and then entered the vestibule. Video evidence shows Sanchez then pushed defendant from behind. He turned and stabbed her.

Accordingly, there was evidence to support each prong of voluntary manslaughter. The Court of Appeals majority erred by discounting the provocation presented here based on defendant’s role as an initial aggressor. *Joesel*, unpub op at 8.² Michigan caselaw does not per se bar an instruction on voluntary manslaughter in cases where the defendant is the initial aggressor or where there is mixed evidence regarding who initiated the circumstances that led to the provocation. See *Mitchell*, 301 Mich App at 283-284, 287 (holding that the trial court erred by denying the defendant’s request for a voluntary-manslaughter instruction where “in the days leading up to the victim’s death,” the defendant “had been threatening and harassing the victim by banging or kicking on the walls and doors of his apartment in an effort to collect [a debt] from the victim”); *People v Reese*, 491 Mich 127, 160 (2012) (holding that factual circumstances that can be characterized as “imperfect self-defense” may negate the malice that distinguishes murder from manslaughter in a case where the defendant engaged in a shoot-out with the victim and there was mixed testimony about who fired first); *Holmes*, 111 Mich at 367 (holding that adequate provocation for a voluntary-manslaughter instruction existed where there was “a conflict in the testimony as to whether [the defendant] struck [the decedent] first, or whether [the decedent] was the aggressor”); *People v Palmer*, 96 Mich 580, 581 (1893) (holding that the trial court erred by failing to give a requested instruction on voluntary manslaughter where the defendant “had some words of dispute in a saloon” with the victim before he left, armed himself with a double-barreled shotgun, and returned to the saloon, where he shot the victim).

Here, viewing the entire transaction—including defendant’s role in the affray at the bar and his aggressive acts of tire slashing—may ultimately not be beneficial to defendant. But as a matter of law, a rational view of the evidence supports providing the voluntary-manslaughter instruction and allowing the jury to make this determination.

² Neither the Court of Appeals nor the dissent attempts to square how the trial court found that there was sufficient evidence that defendant “honestly and reasonably believed that [he] was in danger of being [seriously injured]” to support a self-defense instruction but not adequate provocation to support a voluntary-manslaughter instruction.

The third prong of the voluntary-manslaughter test provides that there cannot be a cooling-off period during which a reasonable person could control their passions. *Pouncey*, 437 Mich at 388. Neither the trial court nor the Court of Appeals stated that there was a cooling-off period that would warrant refusing defendant's instructional request. Here, we cannot conclude as a matter of law that defendant had sufficient time to control his passions such that the issue was properly withheld from jury consideration.

Because a rational review of the evidence supports each prong of the voluntary-manslaughter test, the trial court erred by refusing to provide a voluntary-manslaughter instruction.

C. HARMLESS ERROR

We turn now to whether the error in refusing to provide a voluntary-manslaughter instruction was harmless. See *Cornell*, 466 Mich at 361-362; see also *Yeager*, 511 Mich at 494, 503 (applying *Cornell* to an unpreserved instructional error). We conclude that the failure to provide a voluntary-manslaughter instruction in this case was not harmless.

Whether the absence of an instruction on a lesser included offense is harmless depends on the facts and circumstances of the individual case. *Yeager*, 511 Mich at 496. We recently held that where a rational view of the evidence supports a voluntary-manslaughter instruction, the trial court's refusal to provide the instruction is not "harmless" because "it is impossible to know what a jury would do if it had been properly apprised of the lesser included offense." *Id.* at 494, 503. Unlike in other cases of instructional error where a "substantial evidence" standard is applied to "a disputed factual element," *Cornell*, 466 Mich at 361, 365,³ instruction on voluntary manslaughter requires

³ The *Cornell* defendant was charged with breaking and entering with intent to commit larceny and requested an instruction on the lesser included offense of breaking and entering without permission. *Cornell*, 466 Mich at 360. The lesser included offense contained all elements of the greater offense except for intent, which—as this Court observed—means that it was impossible to commit the greater offense without first committing the lesser offense. *Id.* at 361. We found that the error in *Cornell* was harmless because intent was shown at trial through the statements of two co-offenders who testified that they intended to steal property in a house. *Id.* at 366-367. This Court could be confident that the instructional error would not have been outcome-determinative because there was "little evidence in the record to support defendant's assertion that they just went into the house to look around." *Id.* at 366. The *Cornell* Court contrasted that case with the situation in *People v Rodriguez*, 463 Mich 466 (2000), where the defendant placed evidence in the record that supported the instruction and the failure to instruct "was 'outcome

a harmless-error analysis that rests on a “legal question [regarding] the defendant’s required state of mind,” *Yeager*, 511 Mich at 498. The *Yeager* Court did not demand certainty on what a jury might find on retrial, as the dissent suggests. See *id.* at 500 (“[W]e cannot *definitively* conclude whether the jury would have determined that defendant’s actions were provoked by inflamed passions or emotional excitement.”) (emphasis added).⁴ In cases where a voluntary-manslaughter instruction was warranted, it is the *lack* of certainty about what a jury might decide that is “sufficient to undermine confidence in the outcome of defendant’s trial.” *Id.* at 501 (citation modified).⁵

We cannot say that the error here was harmless. As Judge MARIANI discusses in his dissent in this case, the fact that the jury chose to convict defendant of second-degree murder does not necessarily tell us what the jury would have done had it been properly instructed on voluntary manslaughter. See *People v Silver*, 466 Mich 386, 393 n 7 (2002) (opinion by TAYLOR, J.) (rejecting as “too facile” the argument that the absence of a lesser-offense instruction was harmless because “the jury would have acquitted defendant if it believed his testimony,” given the reality that, “ ‘[w]here one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of some offense, the jury is likely to resolve its doubts in favor of conviction’ ”), quoting *Keeble v United States*, 412 US 205, 212-213 (1973). We held that the error was not harmless in *Yeager*, where a voluntary-manslaughter instruction was warranted and the defendant was convicted of first-degree murder, because the jury could have reasonably concluded that the defendant’s actions were the result of provocation to a state of emotional excitement. *Yeager*, 511 Mich at 500-501. We find no reason to conclude differently here.⁶

determinative’ because it undermined the reliability of the verdict.” *Cornell*, 466 Mich at 365.

⁴ See also *id.* at 501 (“[T]he absence of the lesser-included-offense instruction *does not* ‘necessarily . . . indicate a lack of likelihood that the jury would have adopted the lesser requested charge.’ ”) (citation omitted; emphasis added); *id.* (“[A] reasonable jury *could* have found that defendant acted in the state of mind required for voluntary manslaughter . . .”) (emphasis added); see also *Rodriguez*, 463 Mich at 474 (holding that the error was not harmless when the jury received no instruction on a statutory exemption crucial to the defense that was supported by the evidence, but making no finding that the defendant would have succeeded on that defense).

⁵ The dissent points to factual distinctions between *Yeager* and this case. These distinctions make no difference to *Yeager*’s conclusion with regard to harmless error.

⁶ The dissent contends that by not applying the *Lukity* harmless-error standard we are overruling prior decisions without conducting a stare decisis analysis. We do no such thing. We are applying the harmless-error standard used in *Yeager*, which examined harmless error in the context of a voluntary-manslaughter-instruction error, the exact

In the same vein, we cannot say that the error was harmless because of the information the jury did receive about manslaughter, as the Court of Appeals majority concluded. It is true that defense counsel discussed the prongs of voluntary manslaughter during argument and that the trial court provided more information about voluntary manslaughter than is included in the model jury instructions. But this does not cure the error of failing to provide the jury with the option to convict defendant of voluntary manslaughter.

We have previously held that when considering whether a jury should have been instructed on a lesser included offense, appellate courts must consider whether “the intermediate charge rejected by the jury would necessarily have to indicate a lack of likelihood that the jury would have adopted the lesser requested charge” in light of the proposed defense theory and the factual elements of the relevant offense. *People v Beach*, 429 Mich 450, 491 (1988). Here, the jury was given information about the existence of voluntary manslaughter but was never given the opportunity to *adopt* that charge. As in *Yeager*, defendant’s conviction “does not speak to what the jury might have done were it instructed on adequate provocation.” *Yeager*, 511 Mich at 502; see also *Silver*, 466 Mich at 393 n 7 (opinion by TAYLOR, J.). Accordingly, we cannot say that the error here was harmless.

III. CONCLUSION

Having found error in the trial court’s refusal to provide a voluntary-manslaughter instruction and that such error was not harmless, we reverse Part II of the judgment of the Court of Appeals, vacate the remainder of the opinion given that the instructional error is dispositive, vacate defendant’s conviction, and remand this case to the trial court for further proceedings.

WELCH, J. (*concurring in part and dissenting in part*).

I agree with the majority that a rational view of the evidence supports an instruction for voluntary manslaughter and that the trial court erred when it failed to give that

situation we have in this case. To the extent there is tension between *Yeager* and *Lukity*, a future court may want to address that further. The dissent also implies that our approach is inconsistent with *Mendoza*, but there we disagreed with the Court of Appeals’ conclusion that a rational view of the evidence supported an involuntary-manslaughter instruction. *Mendoza*, 468 Mich at 545-546. We did not conduct a harmless-error analysis because we did not find error, *id.*, and we did not discuss the defendant’s claim of error related to his requested voluntary-manslaughter instruction because he did not cross-appeal the Court of Appeals’ judgment affirming the trial court’s decision not to give that instruction, *id.* at 531 n 1.

instruction. However, because I believe that this error was harmless, I join Part III of Justice BERNSTEIN’s dissent. As a result, I would not reverse defendant’s second-degree murder conviction.

I write separately because, given the majority decision, we do not reach the second question in our order granting oral argument on the application—whether the award of over \$1 million in restitution for future lost earnings under the Crime Victim’s Rights Act (CVRA), MCL 780.751 *et seq.*, was appropriate. That is not because it was unworthy of our consideration. As the prosecution candidly acknowledged at oral argument, such awards are currently uncommon. The question of whether they are available as a matter of course in homicide cases has significant implications.

In *People v Garrison*, 495 Mich 362, 365-366 (2014), we upheld a restitution order to compensate several theft victims for \$977 in travel expenses incurred while reclaiming their stolen property. Although the holding used broad language, *id.* at 369 (“[T]he Legislature unambiguously instructed courts to order restitution that is ‘full,’ which means complete and maximal.”), that case obviously was not pondering a multimillion-dollar award for a lifetime of lost earnings.

Moreover, our prior interpretations of the CVRA appear to have relied on an understanding that the statute imposed a civil remedy rather than a criminal punishment. See *People v Neilly*, 513 Mich 401, 426 (2024) (“In enacting the restitution statutes, the Legislature intended to create a civil remedy. Although the imposition of these statutes has some punitive effect, that effect is not sufficient to overcome the demonstrated legislative intent.”). That reading may have been undercut by the United States Supreme Court’s decision in *Ellingburg v United States*, 607 US ___, ___; 146 S Ct 564, 567 (2026), which held that the federal Mandatory Victims Restitution Act of 1996, 18 USC 3663A *et seq.*, is “criminal punishment for purposes of the Ex Post Facto Clause.” The United States Supreme Court vacated our decision in *Neilly*, see *Neilly v Michigan*, ___ US ___ (January 26, 2026) (No. 24-395), and we are set to reconsider its reasoning in light of *Ellingburg*, see *People v Neilly*, ___ Mich ___ (June 18, 2026) (Docket No. 165185).

Viewing restitution as criminal punishment could affect our reading of the statute, as we have traditionally construed criminal statutes more strictly than remedial statutes. Compare *Soap & Detergent Ass’n v Natural Resources Comm*, 415 Mich 728, 740 (1982) (“[A] remedial statute, . . . which attempts to protect the public health and general welfare, should be liberally construed.”), with *People v Bergevin*, 406 Mich 307, 312 (1979) (“ ‘It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment.’ ”), quoting *Bell v United States*, 349 US 81, 83 (1955); *People v Gilbert*, 414 Mich 191, 211 (1982) (“[P]enal statutes are to be strictly construed and any ambiguity is to be resolved in favor of lenity[.]”) (citation omitted); *People v Jahner*, 433 Mich 490, 499 (1989) (“The rule of lenity operates in favor of an accused, mitigating punishment when punishment is unclear.”). See also

People v Ellis, 204 Mich 157, 160 (1918) (stating that a remedial statute provided “but little aid . . . in construing” a statute that “creates a felony and provides for drastic punishment”).

In short, though our decision today does not answer the question of whether restitution awards for homicide victims’ future earnings are available under the CVRA, I question if the award was proper. Should another trial court issue a similar restitution award, appellate review would be warranted to determine whether *Garrison* was intended to be applied so broadly.

BERNSTEIN, J. (*dissenting*).

This case asks us to consider whether the trial court abused its discretion when it rejected defendant’s request to provide the jury with a voluntary-manslaughter instruction. Today, the majority holds that: (1) defendant was entitled to an instruction on voluntary manslaughter; and (2) the failure to receive such an instruction was outcome-determinative. I disagree with both holdings and, accordingly, I respectfully dissent.

I. FACTUAL BACKGROUND

To begin, I believe that a comprehensive accounting of the factual background is necessary to determine whether a reasonable person in defendant’s situation would have been adequately provoked. See *People v Pouncey*, 437 Mich 382, 388 (1991). This factual grounding is necessary because a voluntary-manslaughter instruction assists the jury in considering a “defendant’s state of mind . . . in a manner not contemplated by instructions on first- and second-degree murder alone.” *People v Yeager*, 511 Mich 478, 500 (2023). A full discussion of the events underlying defendant’s conviction provides better context for whether defendant was entitled to the instruction.

The majority is correct that defendant was forcibly ejected from a bar for instigating a fight. But this was anything but a run-of-the mill bar fight. Testimony from the bartender and video evidence provided from the bar demonstrate that the bartender working that night asked defendant to leave the bar. Defendant responded by knocking over a number of items. One of the bar’s bouncers then attempted to restrain defendant. Defendant overpowered this bouncer and pushed him into a lottery machine, which broke on impact. Two other individuals also attempted to restrain defendant, but defendant overpowered these individuals as well. When a patron tried to help, defendant grasped onto some sort of post, lifted himself into the air, and kicked this patron in the face. At some point, when defendant finally left the bar, a man was holding the door open and defendant hit the man so hard that the man required stitches to repair a split lip.

Defendant did not stop there. He attempted to reenter the bar but was denied entry. He urinated on the bartender’s truck and then went home to his apartment, which was

within walking distance of the bar. While there, he sent his apartment manager an incoherent and charged email, referring to him as “degenerate scum.” As the majority notes, defendant then returned to the bar with a knife and slashed the tires of multiple patrons’ cars. One of these patrons was the boyfriend of the victim in this case—Laura Sanchez.

After slashing a number of tires, defendant returned to his apartment once more. He again returned to the bar shortly after. He testified that he returned because he forgot his cell phone at the bar, but he was still armed with his knife. Seeing that there were patrons outside the bar, he decided to return to his apartment instead. Sanchez followed him to his apartment. The video footage from the apartment building demonstrates that Sanchez followed defendant into the vestibule of the building. She said something to him, and defendant ignored her. At this point, Sanchez shoved defendant and knocked his shoulder against a wall. Defendant then turned around and stabbed her twice with his knife. He attempted a final blow after Sanchez was already falling backward from the first two blows. Sanchez fell to the ground, bleeding heavily. Defendant left Sanchez in the vestibule, opened the lobby door, and went up to his apartment. Two men from the bar found her on the ground in a pool of her own blood. She died shortly after.

Defendant was arrested, and the prosecution charged him with open murder. Pertinent to our consideration here, defendant argued at trial that he acted out of passion and that he did not have adequate time to cool off. Accordingly, defendant requested that the trial court instruct the jury on voluntary manslaughter. The trial court denied the request, reasoning that “the provocation point is [not] adequate enough in this case.” Defendant was convicted of second-degree murder. He appealed his conviction in the Court of Appeals, which affirmed in a split opinion. *People v Joesel*, unpublished per curiam opinion of the Court of Appeals, issued August 29, 2024 (Docket Nos. 362388 and 367180). He now seeks leave to appeal in this Court, challenging the trial court’s failure to instruct the jury on voluntary manslaughter.

II. VOLUNTARY MANSLAUGHTER

To determine whether defendant was entitled to a voluntary-manslaughter instruction, we must determine whether a rational view of the evidence supports that: (1) defendant was adequately provoked; (2) defendant acted in a heat of passion; and (3) there was not a lapse of time during which a reasonable person could control their passions. *Pouncey*, 437 Mich at 388. Given that defendant has all but abandoned any argument about the third element, and because I believe that defendant’s voluntary-manslaughter claim fails on the first two elements, it is unnecessary to determine whether an adequate cool-off

period existed here.¹ Whether defendant was adequately provoked and whether he acted in a heat of passion are interrelated inquiries. *Id.* (explaining that “the passion must be caused by an adequate provocation”). The facts of this case do not demonstrate either that there was adequate provocation or that defendant acted in a heat of passion in response to that provocation.

To begin, I agree with the majority that this Court has never created a bright-line rule as to what could constitute adequate provocation. This makes sense, as each case will present unique facts and circumstances for a court’s consideration. Our caselaw demonstrates that in some circumstances, some degree of actual, imminent physical harm can amount to adequate provocation. But the cases relied upon by the majority are readily distinguishable from the case at hand. In *Oster*, for instance, the defendant was convicted of voluntary manslaughter for stabbing a man who had punched him and tossed him down a flight of stairs, even though the defendant attempted to deescalate the dispute. *People v Oster (On Resubmission)*, 97 Mich App 122, 125, 128 (1980). In *Mitchell*, the victim had threatened the defendant multiple times prior to the altercation and struck the defendant in the head with a baseball bat several times before the defendant took the bat and killed the victim. *People v Mitchell*, 301 Mich App 282, 284-285, 287-288 (2013). In each case, the defendant responded to imminent and threatening behavior *from the victim*. In other words, the victim exhibited behavior that adequately provoked the defendant under the circumstances.

Here, defendant was shoved one time by Sanchez, who was much smaller than defendant and unarmed. Perhaps this incident did provoke defendant, but the question is whether this provocation was adequate. Our inquiry does not consider this particular defendant’s state of mind; instead, the provocation element must be of such a nature that “would cause a *reasonable* person to act out of passion rather than reason.” *Pouncey*, 437 Mich at 390 (emphasis added). The majority stops short of explaining why this was an *adequate* provocation under the objective standard that we are bound to apply.

Here, defendant reacted to a single shove—where he was not at all injured or placed in any sort of imminent harm—by stabbing the victim twice. After the first two stabs, Sanchez fell backward, clearly impaired. Yet defendant attempted to stab her a third time. Then, as Sanchez was bleeding out, defendant calmly opened the lobby door and went to his apartment. There is simply no principled reason to conclude that a single shove should be considered so provoking that a reasonable person would enter an altered state of mind and react with a multiple-blow stabbing. See *Yeager*, 511 Mich at 489 (“The

¹ Defendant’s brief only cursorily mentions whether there was an adequate cool-off period and offers no argument on the issue. Defendant states only that this is a question for the jury to determine. The majority similarly makes the conclusory point that this was a question for the jury and faults the Court of Appeals for failing to address this argument.

provocation . . . must be sufficient to cause a reasonable person to lose control, not just the specific defendant.”), citing *Pouncey*, 437 Mich at 389. Indeed, it simply cannot be the case that *any* physical contact can always amount to adequate provocation sufficient to justify a voluntary-manslaughter instruction. See, e.g., *People v Gutierrez*, 45 Cal 4th 789, 827 (2009) (“Simple assault, such as the tussle defendant described, also does not rise to the level of provocation necessary to support a voluntary manslaughter instruction.”). See also 40 CJS (December 2025 update), Homicide, § 122 (“[P]hysical contact between a defendant and a victim is not always sufficient to warrant a manslaughter instruction even when the victim initiated the contact; this is particularly so when a defendant is armed with a deadly instrument and a victim is not.”).

This lack of adequate provocation also helps explain why Sanchez could not have plausibly placed defendant in a heat of passion. The evidence demonstrates that defendant had already been in a prolonged state of rage long before Sanchez encountered him. Indeed, this fact further illustrates the error of the majority’s reliance on *Oster* and *Mitchell*. In those cases, it was adequate provocation from the *victims* that had caused the defendants’ heat of passion. But here, to the extent that defendant was in a heat of passion at all, it clearly preexisted Sanchez’s contact with defendant, as evidenced by defendant’s wide-ranging hostile behavior that night, which was even directed at his apartment manager, who was not present and had nothing to do with any of the altercations at the bar. When viewed in this context, defendant’s encounter with Sanchez can hardly be used to excuse his use of deadly force against her.

It is on this point that the majority misunderstands why the Court of Appeals referred to defendant as the “initial provocateur.”² I agree with the majority that a defendant’s acting as an initial aggressor does not, by itself, preclude a voluntary-manslaughter instruction. But here, the Court of Appeals did not reject defendant’s voluntary-manslaughter argument solely because he was an initial aggressor. Instead, the Court of Appeals’ characterization of defendant as an “initial provocateur” speaks to the fact that defendant was in a fit of rage of his own making well before any contact with Sanchez. The Court of Appeals correctly identified that, in light of all of defendant’s actions that night, it was extremely improbable that defendant’s actions were a result of a “heat of passion” that Sanchez had provoked.

The majority merely observes that defendant was hotheaded and, presumably, subjectively provoked in concluding that a voluntary-manslaughter instruction was

² Although the Court of Appeals majority characterized Sanchez as an initial aggressor for purposes of defendant’s self-defense claim, *Joesel*, unpub op at 11-12, it specifically characterized defendant as “the initial provocateur” for purposes of his voluntary-manslaughter-instruction claim, *Joesel*, unpub op at 8.

warranted. But this is not the legal standard. The facts instead demonstrate that defendant was not objectively provoked by a minor shove and that any heat of passion on defendant's part clearly existed long before his encounter with Sanchez. Thus, when considering the factual circumstances as a whole, a rational view of the evidence does not support a voluntary-manslaughter instruction.³ Instead, defendant is the exact sort of "hot-tempered individual" to whom our law refuses to afford relief. *Pouncey*, 437 Mich at 389 ("Not every hot-tempered individual who flies into a rage at the slightest insult can claim manslaughter. The law cannot countenance the loss of self-control; rather, it must encourage people to control their passions.").

III. HARMLESS ERROR

Even if the trial court erred, any error is harmless in this case. The majority determines that the error here was not harmless largely by analogizing this case to *Yeager*. I find *Yeager* to be inapplicable here, given the significant factual differences. In *Yeager*, the defendant's boyfriend hit her on the head, struck her in the face with his gun, pulled her out of her vehicle by her hair, and chased her with that vehicle, attempting to run her over multiple times. *Yeager*, 511 Mich at 484-485. Soon after, the defendant attempted to retrieve her vehicle and met her boyfriend in a gas station parking lot. *Id.* at 485. It was at this point that the defendant shot and killed her boyfriend. *Id.* The defendant was charged with first-degree murder; at trial, the jury was instructed on first- and second-degree murder, and the jury convicted the defendant as charged. *Id.* at 486. The question in *Yeager* was whether the defendant was denied the effective assistance of counsel by her trial counsel's failure to request a voluntary-manslaughter instruction. We held that the defendant was prejudiced when her attorney failed to request an instruction for voluntary manslaughter because the jury could have used the voluntary-manslaughter instruction to determine whether the defendant had acted in an altered state of mind given the abusive encounter with her boyfriend. *Id.* at 495, 500. But here, the evidence of provocation is not nearly as strong. Sanchez and defendant had no prior relationship or physical contact before their interaction in the apartment building's vestibule. Instead, defendant's provocation claim relies entirely on a single altercation that lasted only a few seconds. Simply put, the defendant in *Yeager* had a much stronger case for voluntary manslaughter than defendant here. Accordingly, our conclusion in *Yeager* does not provide support for the majority's conclusion.

³ The majority incorrectly states that " 'only a modicum of evidence of provocation' is required to justify a voluntary-manslaughter instruction." (Quoting *People v King*, 98 Mich App 146, 152 (1980).) That is inconsistent with caselaw from this Court, which is clear in stating that a *rational* view of the evidence is required to support such an instruction. See *People v Mendoza*, 468 Mich 527, 542 (2003) ("Michigan courts have historically concluded that a manslaughter instruction is appropriate on a murder charge if a manslaughter instruction is supported by a rational view of the evidence."); *People v Cornell*, 466 Mich 335, 357 (2002).

Notwithstanding the factual differences in *Yeager*, the majority bungles the harmless-error standard because it conflates the harmless-error analysis in *People v Cornell*, 466 Mich 335 (2002), with the ineffective-assistance-of-counsel analysis in *Yeager*. *Cornell* was a harmless-error case applying the *Lukity* “ ‘more probable than not that the error was outcome determinative’ ” standard, as we are bound to do here. *Cornell*, 466 Mich at 364, quoting *People v Lukity*, 460 Mich 484, 496 (1999). *Yeager*, on the other hand, was an ineffective-assistance-of-counsel case applying the *Strickland* “reasonable probability of a different outcome” standard. *Yeager*, 511 Mich at 488, citing *Strickland v Washington*, 466 US 668, 694 (1984). To the extent that the majority finds *Yeager* instructive, however, it fails to accurately apply the *Strickland* prejudice standard. Put succinctly, we held in *Yeager* that a jury conviction on a more serious offense did not bar a defendant from satisfying the *Strickland* prejudice standard. However, we did *not* hold that the failure to give a warranted lesser-included-offense instruction *automatically* satisfies that standard. A defendant must still establish that but for counsel’s deficient performance, “ ‘there is a reasonable probability that [the] outcome would have been different.’ ” *Yeager*, 511 Mich at 488, quoting *People v Trakhtenberg*, 493 Mich 38, 51 (2012). The majority does not acknowledge this critical aspect of the *Strickland* prejudice standard. As a result, it fails to consider “prejudice” at all.

Instead, the majority states that reversal is warranted whenever a rational view of the evidence supports a voluntary-manslaughter instruction. But the “rational view of the evidence” standard governs whether a *trial court* must give a lesser-included-offense instruction. See *People v Mendoza*, 468 Mich 527, 533 (2003), citing *Cornell*, 466 Mich at 357. Indeed, the majority concedes that consideration of the entire factual transaction might not ultimately benefit defendant but states that this is a judgment for the jury to make. That is a misunderstanding of how the harmless-error standard is applied. A conclusion that an error occurred does not necessarily mean that this error was outcome-determinative and requires a retrial. Rather, the defendant must demonstrate that “it is more probable than not that a different outcome would have resulted had the lesser offense instruction been given.” *Cornell*, 466 Mich at 367. This is because the harmless-error standard requires more evidence to overturn a conviction on the basis that a lesser-included-offense instruction was not given than it does to obtain that instruction in the first place. *Id.* at 365. Neither defendant nor the majority notes this distinction or makes this showing. Instead, the majority peculiarly concedes that the relevant facts may prove to be fatal to defendant’s voluntary-manslaughter claim. Such an assertion flies in the face of the outcome-determinative standard. According to the majority, reversal is warranted whenever a rational view of the evidence supports a voluntary-manslaughter instruction—i.e., when a defendant would have been entitled to the instruction in the first place—and when it is impossible to know what a jury would have done had it been properly instructed to consider the lesser included offense—i.e., every time the instruction was not given. This would

effectively make a trial court’s failure to give a lesser-included-offense instruction an *automatic* reversible error. Whatever standard the majority attempts to piece together here, it has not applied the *Strickland* prejudice standard we applied in *Yeager*, nor has it applied the *Lukity* harmless-error standard that should govern here.⁴

For these reasons, even if defendant were entitled to have the jury instructed on voluntary manslaughter, I cannot conclude that it is more probable than not that the jury would have convicted him of voluntary manslaughter where the factual circumstances indicate that defendant acted in accordance with a fit of rage that predated his encounter with Sanchez.

IV. CONCLUSION

In conclusion, a survey of the facts demonstrates that this particular defendant was agitated long before he encountered Sanchez. The majority errs in focusing on defendant’s subjective state of mind. Defendant simply has not demonstrated either that a single shove was adequately provoking to a reasonable person or that Sanchez’s actions placed him in a heat of passion. But even if defendant was entitled to a voluntary-manslaughter instruction, the majority similarly falls short in explaining how the trial court’s failure to instruct the jury was an outcome-determinative error. For these reasons, I dissent.

ZAHRA, J., joins the statement of BERNSTEIN, J.

WELCH, J., joins Part III of the statement of BERNSTEIN, J.

⁴ By not applying the *Lukity* harmless-error standard, the majority is effectively overruling our many prior decisions stating that “harmless error analysis is applicable to instructional errors involving necessarily included lesser offenses,” *Cornell*, 466 Mich at 361, and thus that the failure to give a lesser-included-offense instruction “is not a ground for reversal unless ‘after an examination of the entire cause, it shall affirmatively appear’ that it is more probable than not that the error was outcome determinative,” *People v Lukity*, 460 Mich 484, 495-496 (1999), quoting MCL 769.26. See, e.g., *People v Fox*, 507 Mich 936 (2021); *People v Haynie*, 505 Mich 1096 (2020); *People v Martin*, 482 Mich 851 (2008); *People v Weeder*, 469 Mich 493, 499 (2004). See also *People v Mendoza*, 468 Mich 527, 545 (2003) (applying the *Cornell* standard for when a lesser-included-offense instruction must be given in a voluntary-manslaughter case). The majority effectively overrules these prior decisions without conducting a stare decisis analysis.



I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 26, 2026

Elizabeth Kingston-Miller
Clerk