If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v ROBERT STEWART ALDERTON, Defendant-Appellant.	UNPUBLISHED December 26, 2025 3:00 PM No. 356493 Wayne Circuit Court LC No. 19-004601-01-FC

ON REMAND

Before: K. F. KELLY, P.J., and MARIANI and WALLACE, JJ.

PER CURIAM.

This case returns to us on remand from the Michigan Supreme Court for reconsideration in light of the Supreme Court's decisions in *People v Washington*, 514 Mich 583; 22 NW3d 507 (2024), and *People v Propp*, 15 NW3d 591 (Mich, 2025) (*Propp II*).[1] Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Defendant was convicted by jury trial of first-degree felony murder, MCL 750.316(1)(b), and carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to life imprisonment without the possibility of parole for the first-degree felony murder conviction and two years' imprisonment for the felony-firearm conviction. This Court's unpublished opinion sets forth the relevant facts and procedural history of the case:

[1] In the original appeal, Judge JANSEN and Judge HOOD both sat on the panel. Judge MARIANI has been designated to serve in the stead of Judge JANSEN and Judge WALLACE has been designated to serve in the stead of Judge HOOD. For ease of reference, this opinion occasionally uses the phrase "this panel" when discussing this Court's prior opinion in this case.

> This case arises out of the homicide of defendant's father, Rory Alderton, on January 11, 2019, at Rory's home in Detroit, Michigan. Testimony from Rory's girlfriend, Karen Schutter, and two of Rory's adult children, Kevin Alderton [("Kevin")] and Jessica Alderton [("Jessica")], was admitted at trial and demonstrated that Rory was afraid of defendant and felt threatened by him. Rory previously obtained a personal protection order ("PPO") against defendant in November 2018, but defendant nevertheless continued to break into Rory's home and engage in violent and threatening behavior.
>
> Rory died from multiple gunshot wounds, and DNA evidence collected from the murder scene showed that defendant's blood was located on Rory's front door and underneath Rory's fingernails. When he was arrested three days after the murder, defendant had scratches on his hands, and Rory's cellular telephone, an "iPhone," was in defendant's pocket. Rory's neighbors saw defendant outside of Rory's house during the 24-hour period surrounding the murder, and surveillance video footage from a nearby gas station showed defendant in the vicinity of the murder scene during that time period. Defendant was convicted of first-degree felony murder, MCL 750.316(1)(b), and felony-firearm, MCL 750.227b, and sentenced as previously noted. [*People v Alderton*, unpublished per curiam opinion of the Court of Appeals, issued January 18, 2024 (Docket No. 356493), pp 1-2 (*Alderton I*), vacated in part & remanded by *People v Alderton*, 19 NW3d 333 (Mich, 2025) (*Alderton II*).]

On appeal, defendant argued that certain statements made by Rory were improperly admitted into evidence. *Alderton I*, unpub op at 3. This panel's opinion summarized the contested statements as follows:

> Defendant's challenged statements of Rory were admitted through the testimony of Schutter, Kevin, and Jessica, and through Rory's verified statement in support of the petition for a PPO against defendant. Defendant contends these statements were inadmissible and violated his right to confrontation. We turn, first, to the statements in question.
>
> Schutter, Rory's girlfriend, testified that Rory said that he felt threatened by defendant because defendant broke into Rory's house and was threatening. Rory stated that he had obtained a PPO against defendant and had him arrested several times, and hoped that defendant would get off drugs and obtain rehabilitation. Rory told Schutter that defendant would sometimes break into Rory's house and sleep in the basement. When defendant was there, Rory kept his bedroom door barricaded because he felt threatened by defendant. Schutter related that Rory did not want defendant to hurt or kill anyone.
>
> Kevin, Rory's son, testified that Rory told him about Rory's relationship with defendant, and Kevin saw the way that Rory and defendant interacted. Rory expressed concerns about defendant and was afraid that defendant was going to hurt Rory. According to Kevin, defendant acted erratic and damaged Rory's home when Rory was gone. Rory sent pictures to Kevin and told him about what was

happening. After the PPO was obtained in November 2018, defendant would repeatedly come to Rory's house, Rory would call the police, and the police would arrest defendant. Kevin testified that defendant would then be released a day later and break into Rory's house again through a window. According to Kevin, Rory expressed concerns about defendant's behavior, arguments, and violent outbursts.

Jessica, Rory's daughter, testified that she had knowledge of Rory's relationship with defendant. Around the end of 2018, Rory stated several times that defendant was becoming aggressive toward Rory and that Rory was scared of defendant. Jessica stated that defendant began living with Rory in July 2018, and around October 2018 or November 2018, Rory was trying to get defendant out of the house because defendant was becoming violent and aggressive. Rory sent pictures to Jessica showing damage to Rory's bedroom door that defendant had caused while trying to get into Rory's locked bedroom. Jessica testified that Rory also said that defendant had destroyed a safe, and Rory sent Jessica pictures of holes defendant had put into a wall. According to Jessica, Rory was terrified and frustrated that the PPO was not working; Rory had defendant arrested several times, and Rory [sic: defendant] would then get out and come back into the house.

A redacted and certified copy of the PPO that Rory obtained against defendant was also admitted into evidence at trial. Two pages of the exhibit consisted of a verified statement made by Rory in support of the petition for a PPO. The statement was signed by Rory and dated November 6, 2018. In the statement, Rory asserted that at 2:00 a.m. on October 1, 2018, defendant kicked in Rory's door and told Rory to give defendant money or defendant would "f*** [Rory] up." Rory said that defendant was "stoned all the time" and that Rory was "afraid" defendant would "beat [Rory] with [defendant's] baseball bats he keeps in the house." On October 8, 2018, defendant "kicked" and screamed that Rory "better give [defendant] money and [Rory's] car keys or [defendant] would f*** [Rory] up." On November 3, 2018, defendant told Rory "to go get a hotel room or [Rory] would be sorry." Rory stayed with a friend that night, and when Rory returned home the next day, defendant said he had warned Rory and started walking toward Rory until Rory drew a firearm. [*Id*. at 4-5 (alterations in original).]

This panel ultimately affirmed defendant's convictions. *Id*. at 1, 12. Notably, this panel rejected defendant's hearsay challenge to the admission into evidence of Rory's statements to Schutter, Kevin, and Jessica, holding that Rory's statements were admissible under MRE 803(3), and that the statements were not substantially more prejudicial than probative under MRE 403. *Id*. at 5-6. Further, even if an evidentiary error occurred, defendant had failed to show that it was more probable than not that the error was outcome-determinative. *Id*. at 6. This panel also rejected defendant's argument "that his state and federal constitutional rights of confrontation were violated by the admission into evidence of Rory's verified addendum in support of the petition for PPO." *Id*. at 7. Applying the primary-purpose test set forth in United States Supreme Court caselaw, this panel concluded that Rory's statements were not testimonial. *Id*.

Defendant sought leave to appeal with the Michigan Supreme Court, which entered an order vacating the part of this panel's opinion that addressed whether the trial court had erred by

admitting into evidence Rory's statements, and remanded the case to this Court to reconsider (1) whether Rory's verified statements in support of the PPO petition were testimonial in light of *Washington*, and (2) whether Rory's statements to Schutter, Kevin, and Jessica were admissible under MRE 803(3) in light of *Propp II*. See *Alderton II*, 19 NW3d 333 (Mich, 2025). We now reconsider defendant's arguments on remand.

II. STANDARDS OF REVIEW

"Whether a defendant's Sixth Amendment right of confrontation has been violated is a question of constitutional law that this Court reviews de novo." *Washington*, 514 Mich at 592. "A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion." *People v Thorpe*, 504 Mich 230, 251; 934 NW2d 693 (2019). An abuse of discretion "occurs when the court chooses an outcome that falls outside the range of principled outcomes." *People v Douglas*, 496 Mich 557, 565; 852 NW2d 587 (2014) (quotation marks and citation omitted). "A decision on a close evidentiary question ordinarily cannot be an abuse of discretion." *Thorpe*, 504 Mich at 252. A preliminary issue of law regarding the admissibility of evidence is reviewed de novo. *People v Jambor (On Remand)*, 273 Mich App 477, 481; 729 NW2d 569 (2007).

III. ANALYSIS

Upon consideration of our Supreme Court's recent decisions in *Washington* and *Propp II*, we again conclude that the trial court did not commit a constitutional or evidentiary error with respect to the admission into evidence of Rory's statements.

A. VERIFIED STATEMENTS IN SUPPORT OF THE PPO PETITION

Our Supreme Court in *Alderton II* has directed this panel to reassess whether Rory's verified statements in support of the PPO petition were testimonial in light of *Washington*'s analysis regarding the applicability of the primary-purpose test.

"The Sixth Amendment of the United States Constitution and Article 1, § 20 of Michigan's Constitution provide a defendant with the right to confront the witnesses against him." *Washington*, 514 Mich at 592. "Thus, '[t]estimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine.' " *Id*. (citation omitted; alteration in original). Therefore, "[t]he threshold question for any Confrontation Clause challenge is whether the proffered evidence is testimonial." *Id*. at 593 (quotation marks, ellipsis, and citation omitted).

In *Washington*, our Supreme Court stated that "this Court has soundly rejected application of the 'primary purpose' test [for determining whether a statement is testimonial] outside of an emergency context." *Id*. at 594. Our Supreme Court added that, in *People v Fackelman*, 489 Mich 515; 802 NW2d 552 (2011), our Supreme Court had

> explained that, while [*Davis v Washington*, 547 US 813; 126 S Ct 2266; 165 L Ed 2d 224 (2006)] "employed a primary purpose inquiry to determine whether statements made to the police in the very specific context of an *ongoing emergency* were testimonial, [*Davis*] did not mandate that this was the exclusive test to be

> applied generally in Confrontation Clause cases." [*Washington*, 514 Mich at 594, quoting *Fackelman*, 489 Mich at 558 (second alteration in original).]

Our Supreme Court in *Washington* further noted observations from *Fackelman* that it was unclear how the primary-purpose test would be applied outside the context of an ongoing emergency. *Washington*, 514 Mich at 595. Because the prosecutor in *Washington* had "not advanced any argument as to why *Fackelman* might have been wrongly decided or should be overturned," the *Washington* Court applied the precedent set by *Fackelman*. *Id*.

The Court in *Washington* asserted that the proper standard for determining whether a statement is testimonial is "whether the statement was 'made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.' " *Id*. at 595-596 (citation omitted). This standard does not require that the declarant *knew* the statement would be used at a later trial, but "requires courts to consider the foreseeability—based on the context at the time the statement was made—of whether the statement would later be used at trial." *Id*. at 596.

The prosecution argues that the Michigan Supreme Court's conclusion in *Washington*—that the primary-purpose test is inapplicable outside the context of an ongoing emergency—is inconsistent with binding United States Supreme Court precedent. "It is an elementary proposition that state courts are bound by United States Supreme Court decisions construing federal law, including the Constitution." *People v Lewis*, 501 Mich 1, 7; 903 NW2d 816 (2017) (quotation marks and citation omitted). Therefore, with respect to any issue involving the determination of federal constitutional rights, all Michigan courts, including this Court and the Michigan Supreme Court, are bound by the decisions of the United States Supreme Court. *People v Cross*, 30 Mich App 326, 333-334; 186 NW2d 398 (1971), aff'd 386 Mich 237 (1971). Notably, our Supreme Court in *Washington* did not purport to interpret the state constitutional provision differently from the federal provision. Michigan has adopted the "language of the federal Confrontation Clause verbatim in every one of our state constitutions." *Fackelman*, 489 Mich at 525. Therefore, the protections of the state and federal provisions are coextensive.

In concluding that the primary-purpose test does not apply outside the context of an ongoing emergency, our Supreme Court in *Washington* relied on its 2011 opinion in *Fackelman* and the failure of the prosecutor in *Washington* to argue that *Fackelman* was wrongly decided or should be overruled. *Washington*, 514 Mich at 595. However, our Supreme Court in *Washington* did not address that, since the issuance of *Fackelman* in 2011, the United States Supreme Court has clarified that the primary-purpose test is not confined to the ongoing-emergency context but instead applies generally in determining whether a statement is testimonial. This view is supported by the United States Supreme Court's 2015 opinion in *Ohio v Clark*, 576 US 237; 135 S Ct 2173; 192 L Ed 2d 306 (2015) and 2024 opinion in *Smith v Arizona*, 602 US 779; 144 S Ct 1785; 219 L Ed 2d 420 (2024).

In *Clark*, the United States Supreme Court reviewed its caselaw and concluded that,

> under our precedents, a statement cannot fall within the Confrontation Clause unless its primary purpose was testimonial. Where no such primary purpose exists, the admissibility of a statement is the concern of state and federal rules of evidence,

> not the Confrontation Clause. [*Clark*, 576 US at 245 (quotation marks and citation omitted).]

Further, according to *Clark*, even if a statement is testimonial under the primary-purpose test, the admission of the statement into evidence would not be barred by the Confrontation Clause if the statement is of a type that was "admissible in a criminal case at the time of the founding." *Id*. at 246. Therefore, "the primary purpose test is a necessary, but not always sufficient, condition for the exclusion of out-of-court statements under the Confrontation Clause." *Id*. The *Clark* Court also highlighted language from *Michigan v Bryant*, 562 US 344, 358; 131 S Ct 1143; 179 L Ed 2d 93 (2011), indicating "that 'there may be *other* circumstances, aside from ongoing emergencies, when a statement is not procured with a primary purpose of creating an out-of-court substitute for trial testimony.' " *Clark*, 576 US at 245. In applying the primary-purpose test, the *Clark* Court determined that an emergency was ongoing at the time of the declarant's statements in that case. *Id*. at 246-247. Therefore, *Clark* itself involved a statement made during an ongoing emergency. Nonetheless, the previously summarized analysis in *Clark* reflects that the primary-purpose test applies generally in determining whether a statement is testimonial; the test is not limited to ongoing emergencies.

As the prosecution argues, this principle was further clarified by the United States Supreme Court's 2024 opinion in *Smith*, which was issued a little more than a month before the Michigan Supreme Court's opinion in *Washington*. *Smith* concerned an expert witness's conveyance at trial of an absent laboratory analyst's out-of-court factual assertions regarding the analysis of suspected drugs. *Smith*, 602 US at 783, 789-790. The *Smith* Court considered "whether the out-of-court statements [the expert witness] conveyed were testimonial," and stated that the determination whether a statement is testimonial "focuses on the 'primary purpose' of the statement, and in particular on how it relates to a future criminal proceeding." *Id*. at 800. "A court must therefore identify the out-of-court statement introduced, and must determine, given all the 'relevant circumstances,' the principal reason it was made." *Id*. at 800-801 (citation omitted). The *Smith* Court declined to decide whether the statements in that case were testimonial because the lower court had not reached the issue yet. *Id*. at 801. But in describing how the lower court might analyze that issue on remand, the *Smith* Court referred repeatedly to an assessment of the "primary purpose" of the statements. *Id*. at 802. The *Smith* Court explained:

> In . . . addressing the statements' primary purpose—why [the laboratory analyst] created the report or notes—the court should consider the range of recordkeeping activities that lab analysts engage in. After all, some records of lab analysts will not have an evidentiary purpose. The United States as amicus curiae notes, for example, that lab records may come into being primarily to comply with laboratory accreditation requirements or to facilitate internal review and quality control. Or some analysts' notes may be written simply as reminders to self. In those cases, the record would not count as testimonial. To do so, the document's primary purpose must have a focus on court. [*Id*. (quotation marks and citations omitted).]

The analysis in *Smith*, in which the statements were made in the context of analyzing suspected drugs in a laboratory setting, reflects that the primary-purpose test applies generally in determining whether a statement is testimonial and is not limited to the context of ongoing emergencies.

The prosecution makes a very strong argument that the primary-purpose test applies in determining whether a statement is testimonial and that this panel in *Alderton I* correctly cited and applied binding United States Supreme Court authority, including *Clark*, regarding the primary-purpose test, which was arguably confirmed by the subsequent issuance of *Smith*. However, we need not determine whether the prosecution's argument is correct because Rory's verified statement in support of the PPO petition was made in the context of an ongoing emergency, meaning we do not need to determine whether the primary purpose test applies only in the context of an emergency. This panel in *Alderton I* acknowledged as much, by noting that "the purpose of the verified addendum was to meet an ongoing emergency, i.e., convince a family court to issue a PPO to end a threatening situation created by defendant." *Alderton I*, unpub op at 7. This panel's analysis was consistent with the United States Supreme Court's explanation that an emergency focuses the participants "on ending a threatening situation" rather than "proving past events potentially relevant to later criminal prosecution." *Bryant*, 562 US at 361 (quotation marks, brackets, and citations omitted). The fact that Rory successfully sought an ex parte PPO further confirms that an emergency was ongoing, because when "an ex parte order is sought, the petitioner must show that the danger is imminent and that the delay to notify the respondent is intolerable or in itself dangerous." *Kampf v Kampf*, 237 Mich App 377, 385; 603 NW2d 295 (1999). This case involves no less of an ongoing emergency than *Clark*, 576 US at 241, 246-247, which involved a child making statements to teachers in a school setting, and far more of an ongoing emergency than *Smith*, 602 US at 783, 789-790, which involved a laboratory analysist's creation of notes and a report in a laboratory setting.[2] Because an ongoing emergency existed when Rory made his verified statements in support of the PPO petition, the primary-purpose test applies and we need not decide whether *Washington* correctly confined that test to statements made during ongoing emergencies.

Moreover, even assuming that the standard set forth in *Washington* for determining whether a statement is testimonial likewise applies outside the context of an ongoing emergency, we conclude that Rory's verified statements in support of the PPO petition were not testimonial. The *Washington* Court stated that the proper standard for determining whether a statement is testimonial is "whether the statement was 'made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.' " *Washington*, 514 Mich at 595-596 (citation omitted). This "standard requires courts to consider the foreseeability—based on the context at the time the statement was made—of whether the statement would later be used at trial." *Id*. at 596.

In *Washington*, our Supreme Court held that the statement in that case was testimonial because it was made by one law-enforcement officer to another while transferring custody of the defendant after having arrested him for engaging in criminal activity. *Id*. at 596-597. By contrast, there was no involvement of a law-enforcement officer in the statement at issue here. Rather, Rory wrote a verified addendum to a family court in an effort to obtain a PPO. As this panel previously noted, "there was no police interrogation or other law enforcement involvement at this stage." *Alderton I*, unpub op at 7. Although statements to persons other than law-enforcement officers

[2] The *Smith* Court did not state that an ongoing emergency existed in that case, and there was no indication that an emergency was ongoing when the laboratory analyst wrote notes and a report.

could conceivably be subject to the Confrontation Clause, "such statements are much less likely to be testimonial than statements to law enforcement officers." *Clark*, 576 US at 246. Under the present circumstances, there was no reasonable basis to believe Rory's verified statements in support of the PPO petition would be available for use at a later trial.

B. HEARSAY STATEMENTS

We now turn to the second issue our Supreme Court directed this panel to consider on remand, which involves whether Rory's statements to Schutter, Kevin, and Jessica were admissible under MRE 803(3) in light of *Propp II*.

"In general, hearsay—an out-of-court statement offered to prove the truth of the matter asserted—may not be admitted into evidence." *People v Green*, 313 Mich App 526, 531; 884 NW2d 838 (2015). At the time of defendant's trial, MRE 803(3)[3] provided the following exception to the general prohibition on hearsay:

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

To resolve the present issue, it is helpful to summarize the long line of caselaw regarding the application of MRE 803(3). In *People v Fisher*, 449 Mich 441, 443-444; 537 NW2d 577 (1995), our Supreme Court upheld a trial court's ruling admitting evidence of oral and written statements of the murder victim, who was the defendant's wife. Our Supreme Court stated that "marital discord, motive, and premeditation" were at issue and that "the statements of the victim-wife [were] admissible to show the effect they had on the defendant-husband." *Id*. at 450. The Court also upheld the decision to admit statements of the victim-wife "that were not known to the defendant about her plans to visit Germany to be with her lover and her plans to divorce the defendant upon her return" because those statements concerned the victim's intent, plan, or mental feeling and thus fell within MRE 803(3). *Id*. at 450-451. In rejecting a defense argument that exclusion was required under MRE 403, our Supreme Court noted that evidence of marital discord may be relevant to show motive, premeditation, or deliberation. *Id*. at 453. Because "the proffered evidence would illustrate the extensive marital discord in defendant's marriage and thus provide a motive, [the Court] believe[d] that it [was] highly relevant and more probative than prejudicial." *Id*. The Court further explained:

> Evidence of marital discord is relevant to motive just as evidence of marital harmony would be relevant to show lack of motive. Discord or lack of discord in an ongoing relationship obviously has some tendency to make the existence of a fact in controversy more or less probable—whether or not the accused ended the

[3] MRE 803 was amended, effective January 1, 2024. We rely on the version of MRE 803 in effect at the time of defendant's trial.

> relationship as it is alleged he did. Whether the marital discord is of a type that would provide a motive for murder is an issue of weight, not admissibility. [*Id*.]

In *People v Ortiz*, 249 Mich App 297, 307-310; 642 NW2d 417 (2002), this Court rejected the defendant's argument that the trial court had improperly admitted under MRE 803(3) numerous statements of the murder victim, who was the defendant's former wife. The victim's statements included

> statements that the victim was afraid of defendant, that she thought defendant was stalking her, that defendant physically assaulted her, that defendant threatened to kill her, that defendant threatened to kill her in such a manner that no one would find out that he did it, that defendant warned the victim that her life was like the O.J. Simpson story, that the victim was changing her will, that the victim anticipated her death, that the victim was going to try to enforce the child support order, that the victim did not want to get back together with defendant, that the victim made arrangements to be away from home on the weekend of July 4, 1998, specifically because she did not want to be around when defendant came to her home to pick up his Grand Am, and that after defendant broke into her house in October 1998, she changed the locks. [*Id*. at 307.]

After summarizing our Supreme Court's decision in *Fisher*, this Court in *Ortiz* reasoned:

> The trial court's ruling in this case was not an abuse of discretion. Evidence of the victim's state of mind, evidence of the victim's plans, which demonstrated motive (the ending of the marriage and the tension between the victim and defendant), and evidence of statements that defendant made to cause the victim fear were admissible under MRE 803(3). They were relevant to numerous issues in the case, including the issues of motive, deliberation, and premeditation and the issue whether the victim would have engaged in consensual sexual relations with defendant the week before her death. [*Id*. at 310.]

In *People v Moorer*, 262 Mich App 64, 66; 683 NW2d 736 (2004), this Court held that the trial court had erred in admitting evidence of a murder victim's out-of-court statements under MRE 803(3). This Court explained:

> [C]ontrary to the trial court's conclusion, no common basis exists for the blanket admission of the statements at issue. A proper analysis requires consideration of the nature of the statements and the purpose for which the statements were offered. Only then can a determination be made regarding whether admission of the statements is violative of the evidentiary standards. [*Id*.]

When a declarant's statements "include assertions other than state of mind, such as events leading to the state of mind, additional considerations must be addressed in deciding whether the statements are admissible" under MRE 803(3). *Id*. at 69. Because the statements in *Moorer* concerned past events, they were not admissible under MRE 803(3). *Id*. at 73.

In *People v Bauder*, 269 Mich App 174, 176-177; 712 NW2d 506 (2005), overruled in part on other grounds as recognized in *People v Burns*, 494 Mich 104, 112-113; 832 NW2d 738 (2013),

the trial court admitted under MRE 803(3) evidence of several statements made by a murder victim in the weeks before her death. This Court noted that "evidence that is properly admissible for one purpose need not be excluded because it is not admissible for another purpose" and that "when evidence is relevant to both a proper purpose and an improper purpose, counsel may request an instruction limiting the evidence to its proper purpose." *Bauder*, 269 Mich App at 187-188. This Court held that the trial court had admitted the victim's statements under MRE 803(3) "for the proper purposes of proving the victim's state of mind, specifically showing domestic discord, and, indirectly, for evidence of a motive for murder, i.e., evidence of defendant's intent, premeditation, and deliberation." *Id*. at 188. After summarizing the statements of the victim in *Ortiz*, this Court in *Bauder* explained:

> The statements in *Ortiz* are remarkably similar to the victim's statements in this case: she had said that she was fearful of defendant, that defendant had threatened to kill her, her son, and her ex-husband, that she was tired of defendant's incessant demands for all kinds of sex and defendant's forcing sex if she refused, that she wanted to end her relationship with defendant and reconcile with her ex-husband, that defendant was jealous of her ex-husband, and that defendant stalked and beat her. These statements were evidence of the victim's state of mind, her fear, her intent to resist sex, and her intent to end her relationship with defendant. The *Ortiz* Court's analysis is applicable to the victim's statements here. [*Id*. at 188-189.]

This Court in *Bauder* further stated:

> We acknowledge that some of the hearsay may have been improperly used to prove a fact that the declarant remembered, for example, that defendant was sexually obsessed with the victim and that defendant was jealous of the victim's ex-husband. Nevertheless, the hearsay also was relevant to the victim's intent to end her relationship with defendant and made it more likely that the victim might have resisted sex, thus leading to her murder. Furthermore, defendant admitted to the police he was jealous of the victim's ex-husband, and defense counsel admitted defendant was obsessed with the victim. Defense counsel used evidence of both defendant's obsession with the victim and defendant's jealousy to successfully argue that defendant did not premeditate and deliberate before killing the victim. [*Id*. at 189 (citation omitted).]

"The evidence was generally admissible under MRE 803(3) to show the victim's state of mind, specifically her intent to end her relationship with defendant, to reconcile with her ex-husband, and to resist defendant's sexual demands." *Id*. at 190-191. Hence, the evidence was "relevant to a motive for murder and indirectly relevant to defendant's intent and to whether defendant acted with premeditation and deliberation." *Id*. at 191.

In *People v Smelley*, 285 Mich App 314, 316-317; 775 NW2d 350 (2009), vacated in part on other grounds, 485 Mich 1023 (2010), this Court held that the trial court had erred in admitting under MRE 803(3) several hearsay statements made by the murder victim. This Court expressed "dismay[]" at "the lack of relevant background facts set forth in" *Fisher* and *Ortiz*. *Id*. at 323. This Court stated that "a proper analysis of admissibility requires that the nature of each statement be considered specifically, as well as the purpose for each statement's admission." *Id*. at 324. The

victim's "state of mind was not a significant issue in [*Smelley*] and did not relate to any element of the crime charged or any asserted defense," and the probative value of the hearsay "was substantially outweighed by its prejudicial effect." *Id*. at 325. Further, the victim's statements were not within the scope of MRE 803(3) because they "were statements of memory or belief that were offered to prove the facts remembered or believed." *Id*. at 326.

In *People v Propp*, 340 Mich App 652, 667; 987 NW2d 888 (2022) (*Propp I*), aff'd on other grounds by *Propp II*, 15 NW3d 591, this Court held that "all of the victim's statements regarding defendant's pattern of stalking, threats, and domestic violence were admissible as evidence concerning the victim's state of mind—and her fear of defendant—under MRE 803(3)." This Court further held that "[s]uch statements were also admissible for several valid nonhearsay purposes, including the effect that they might have had in motivating defendant to kill the victim." *Propp I*, 340 Mich App at 667. However, our Supreme Court in *Propp II* held that this Court in *Propp I* had "erred to the extent it held that all of the victim's statements regarding the defendant's pattern of stalking, threats, and domestic violence were categorically admissible under MRE 803(3)." *Propp II*, 15 NW3d at 591. Our Supreme Court nonetheless affirmed the result reached by this Court "because the erroneous admission of this testimony was harmless in light of the overwhelming untainted evidence." *Id*.

Having considered the relevant caselaw, including our Supreme Court's order in *Propp II*, we conclude that this panel in *Alderton I* correctly upheld the admission of Rory's hearsay statements under MRE 803(3). This panel in *Alderton I* reasoned, in relevant part:

> Rory's statements were admissible under MRE 803(3). The central focus of Rory's statements consisted of expressions that he was afraid of defendant and felt threatened by him. Rory's statements included examples of what caused his fear and feeling of being threatened and were relevant to facts at issue, including by demonstrating familial discord and tension that existed between Rory and defendant, and revealing a possible motive for defendant to have broken into Rory's home and killed him. [*Alderton I*, unpub op at 5.]

This panel noted that evidence of motive is always relevant in a prosecution for murder, and that domestic discord is relevant to establish a motive for murder. *Id*. "The statements also indicated a possible ground to find that defendant premediated the murder." *Id*. at 6.

Although the statements included references to defendant's past conduct, such as breaking into Rory's home and threatening him, the central focus of the statements was on Rory's state of mind, namely, his fear of defendant. That state of mind was a proper purpose for admitting the statements under MRE 803(3). As this panel has explained, Rory's fear of defendant reflected familial discord, which was relevant to a possible motive for the murder as well as premeditation. This Court has noted that "evidence that is properly admissible for one purpose need not be excluded because it is not admissible for another purpose." *Bauder*, 269 Mich App at 187.

Our Supreme Court's order in *Propp II* does not alter this panel's conclusion that Rory's statements were properly admitted under MRE 803(3). This Court in *Propp I* held that "*all of* the victim's statements regarding defendant's pattern of stalking, threats, and domestic violence were admissible as evidence concerning the victim's state of mind—and her fear of defendant—under

MRE 803(3)." *Propp I*, 340 Mich App at 667 (emphasis added). Our Supreme Court in *Propp II* then ruled that this Court in *Propp I* had "erred to the extent it held that *all of* the victim's statements regarding the defendant's pattern of stalking, threats, and domestic violence were *categorically* admissible under MRE 803(3)." *Propp II*, 15 NW3d at 591 (emphasis added). *Propp II* therefore stands for the proposition that is it improper to utilize a categorical approach to evaluate the admissibility of hearsay statements under MRE 803(3). This understanding of the order in *Propp II* is consistent with caselaw noting that "a proper analysis of admissibility requires that the nature of each statement be considered specifically, as well as the purpose for each statement's admission." *Smelley*, 285 Mich App at 324.

Specific consideration of the nature of each of Rory's statements and the purpose for their admission supports the conclusion that the statements were admissible under MRE 803(3). This panel's opinion in *Alderton I*, unpub op at 4-5, summarized the testimony about Rory's statements provided by Schutter, Kevin, and Jessica.

Schutter "testified that Rory said that he felt threatened by defendant" and "did not want defendant to hurt or kill anyone." *Id*. at 4. Rory made further statements, including that defendant had broken into Rory's home and was threatening, that Rory had defendant arrested several times, and that defendant sometimes slept in Rory's basement after breaking into the home. *Id*. "When defendant was there, Rory kept his bedroom door barricaded because he felt threatened by defendant." *Id*. Rory said that he "hoped that defendant would get off drugs and obtain rehabilitation." *Id*. Rory's references to past events served to illustrate Rory's state of mind, i.e., his fear of defendant, and why Rory had that state of mind. Rory felt threatened by defendant and did not want him to kill or hurt anyone. As explained, Rory's state of mind was indicative of familial discord, which was relevant to a possible motive to murder Rory as well as premeditation.

Kevin testified that Rory expressed that he "was afraid that defendant was going to hurt Rory." *Id*. Kevin's testimony included background facts explaining Rory's fear, including that defendant acted erratically, broke into and damaged Rory's home, and had violent outbursts. *Id*. This testimony served to illustrate the reason for Rory's state of mind, i.e., his fear of defendant. This state of mind reflected familial discord, which was relevant to motive and premeditation.

Lastly, Jessica testified that Rory said he "was scared of defendant" and felt "terrified and frustrated that the PPO was not working[.]" *Id*. Jessica provided examples of why Rory felt this way, including Rory's statements that defendant was becoming aggressive toward Rory and had damaged Rory's bedroom door and destroyed a safe. *Id*. This information served to illustrate the reasons for Rory's state of mind, i.e., his fear of defendant. And again, this state of mind was indicative of familial discord, which was relevant to motive and premeditation.

In sum, specific consideration of the testimony at issue supports this panel's previous conclusion that "[t]he central focus of Rory's statements consisted of expressions that he was afraid of defendant and felt threatened by him." *Id*. at 5. The statements reflected familial discord, which was relevant to motive and premeditation. *Id*. at 5-6.

We also maintain that Rory's statements were not substantially more prejudicial than probative, and therefore not excludable under MRE 403. *Id*. at 6. As this panel explained:

> Rory's statements were probative of the family discord that existed between himself and defendant, which was relevant to motive and premeditation. Defendant's behavior reflected in the statements was far less serious than his conduct underlying the charged offenses. There was no improper injection of considerations extraneous to the merits of the case. Even if there was unfair prejudice, it did not substantially outweigh the probative value of the evidence. [*Id*.]

Finally, even if the trial court abused its discretion by admitting any of the hearsay statements, defendant is not entitled to relief, as this panel explained in *Alderton I*. A preserved evidentiary error "will merit reversal only when, in the context of the entire trial, it affirmatively appears more probable than not that the error was outcome determinative." *Bauder*, 269 Mich App at 180. Here, reversal is unwarranted:

> Defendant has failed to rebut the presumption of harmlessness as there was overwhelming evidence of guilt: (1) DNA evidence indicated that defendant's blood was on Rory's front door and underneath Rory's fingernails; (2) testimony of Rory's neighbors and video surveillance from a nearby gas station indicated that defendant was near the crime scene on the date at issue; and (3) when he was arrested three days after the murder, defendant had cuts on his hands consistent with an attempt by Rory to defend himself, and defendant's pocket contained Rory's cellular telephone. Thus, on the strength of the entire record, defendant has failed to demonstrate that it is more likely than not that the alleged evidentiary error was outcome-determinative. [*Alderton I*, unpub op at 6.]

IV. CONCLUSION

In sum, we conclude that Rory's verified statements in support of the PPO petition and hearsay statements were properly admitted into evidence, and the trial court did not commit constitutional or evidentiary error in light of *Washington* and *Propp II*.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Randy J. Wallace