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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v COREY PATRICK O'ROURKE, Defendant-Appellant.	UNPUBLISHED October 09, 2026 11:51 AM No. 371893 Ingham Circuit Court LC No. 23-000669-FC

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

Defendant, Corey Patrick O'Rourke, appeals as of right his jury-trial conviction of second-degree murder, MCL 750.317. He was sentenced to 408 to 720 months' imprisonment as a second-offense habitual offender, MCL 769.10. We remand for the trial court to conduct a *Ginther*[1] hearing to determine whether O'Rourke received ineffective assistance of counsel for failure to request a jury instruction for voluntary manslaughter. In all other respects, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from the fatal stabbing of Jeffrey Medina, which occurred on June 20, 2023, at the home O'Rourke shared with his romantic partner at the time. On the day of the incident, O'Rourke and his partner got into an argument because his partner learned that he was speaking to another woman. The argument began as a verbal dispute inside the home but escalated to a physical fight outside of the home. The altercation was witnessed by O'Rourke's daughter, DO, and his partner's daughter, BP, both of whom attempted to break up the fight.[2] It also drew the attention of a neighbor, who attempted to intervene.

At some point during the altercation, O'Rourke's partner called her cousin, Medina, and requested that he pick up her and BP from the house. O'Rourke and DO went into the house while

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[2] DO and BP were both 15 years old at the time of the offense.

his partner and BP remained outside in the yard. Medina arrived at the home with his fiancée, Monicka Davison, shortly thereafter. Medina exited his vehicle, grabbed a brick, and went onto the front porch of the home where he began banging on the front door and screaming for O'Rourke to come outside. Inside the home, O'Rourke grabbed a kitchen knife, unlocked the front door, opened it, and stabbed Medina. The stabbing was closely observed by DO, who was near O'Rourke when he opened the door, and BP, who was on the front porch attempting to get Medina to leave. O'Rourke's partner and Davison also witnessed the incident from outside the home.

O'Rourke left the home on foot and was apprehended by police the next day, who found him in the rafters of his family friend's garage. O'Rourke was arrested and charged with open murder, MCL 750.316, and felon-in-possession of ammunition, MCL 750.224f(6).[3] Multiple witnesses testified at trial, including O'Rourke's partner, Davison, DO, and BP. Testimony from Davison, DO, and BP indicated that O'Rourke stabbed Medina within seconds of opening the door. O'Rourke also testified at trial. While he admitted that he opened the door and stabbed Medina, he claimed that he acted out of fear and felt that he and DO were in danger because of Medina's attempts to force open the door. O'Rourke testified that he grabbed the knife and opened the door in the hope of deterring Medina, but before he could show Medina the knife, Medina came at him, which necessitated the stabbing.

Following a four-day trial, the jury found O'Rourke guilty of second-degree murder as a lesser offense to first-degree murder, MCL 750.316. The jury also found O'Rourke not guilty of the felon-in-possession charge. The parties did not request, and the trial court did not instruct the jury regarding the lesser-included offense of voluntary manslaughter. At the sentencing hearing, O'Rourke's minimum guidelines sentence range was determined to be 270 to 562 months' imprisonment. He was sentenced as stated above. In imposing its sentence, the trial court noted its consideration of the seriousness of the offense, O'Rourke's extensive prior record, his ongoing pattern of being an offender, and his prior unsuccessful attempts at rehabilitation. This appeal ensued.

II. ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

O'Rourke first argues that the evidence presented at trial was insufficient for the jury to find beyond a reasonable doubt that he did not act in self-defense when he killed Medina. We disagree.

A challenge to the sufficiency of the evidence is subject to de novo review. *People v Xun Wang*, 505 Mich 239, 251; 952 NW2d 334 (2020). "[T]his Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *Id*. (quotation marks and citation

[3] The felon-in-possession charge arose from the discovery of ammunition in the home during the investigation. MCL 750.224f was amended after O'Rourke was initially charged, changing the numbering for felon-in-possession of ammunition from Subsection (6) to Subsection (7), however, the statutory language was not changed. See 2023 PA 201.

omitted). In making this determination, this Court must "draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Baskerville*, 333 Mich App 276, 282-283; 963 NW2d 620 (2020) (quotation marks and citation omitted). "Circumstantial evidence may sustain criminal convictions, but the circumstantial proof must facilitate reasonable inferences of causation, not mere speculation." *Xun Wang*, 505 Mich at 251 (quotation marks and citation omitted). "[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

O'Rourke was found guilty of second-degree murder. "The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Gafken*, 510 Mich 503, 511; 990 NW2d 826 (2022) (quotation marks and citation omitted). He does not challenge the first three elements, and instead focuses his sufficiency claim on the fourth element concerning justification or excuse, asserting that the prosecution failed to disprove his self-defense justification beyond a reasonable doubt.

At common law, self-defense may justify homicide "if the defendant honestly and reasonably believes his life is in imminent danger or that there is a threat of serious bodily harm and that it is necessary to exercise deadly force to prevent such harm to himself." *People v Dupree*, 486 Mich 693, 707; 788 NW2d 399 (2010) (quotation marks and citation omitted). If a defendant "satisfies the initial burden of producing some evidence from which a jury could conclude that the elements necessary to establish a prima facie defense of self-defense exist, the prosecution bears the burden" of disproving the defendant's self-defense claim beyond a reasonable doubt. *Id.* at 709-710. The Legislature has also codified self-defense in MCL 780.972, which states in relevant part:

> (1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:
>
> (a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual. [MCL 780.972(1)(a).]

"[T]he touchstone of *any* claim of self-defense, as a justification for homicide, is *necessity*." *People v Riddle*, 467 Mich 116, 127; 649 NW2d 30 (2002).

We conclude that the prosecution presented sufficient evidence from which a reasonable jury could reject O'Rourke's self-defense claim. O'Rourke testified that after the altercation with his partner, he planned to leave the home with DO but was unable to do so because Medina arrived at the house. On direct-examination, O'Rourke stated that he looked out the window and saw Medina standing on the porch and "kicking the door in." DO was standing near the door and attempted to open it, but O'Rourke "lunged back for it and stopped her" because he felt they were both in danger and he wanted to keep her safe. O'Rourke then looked through the peephole of the door and saw Medina with a "big brick in his hand" as he continued to kick the door. Although

the door was locked, O'Rourke testified that it was "opening slowly" as a result of Medina's attempt to force entry. O'Rourke then yelled at DO to "[g]et the gun," in the hope that it would scare Medina away. However, that did not work, so he retrieved a knife to ward Medina off. O'Rourke unlocked and opened the door, intending to show Medina the knife and scare him away, but as soon as he cracked the door "it just flew open" and Medina crossed into the threshold of the home and came at O'Rourke with the brick.

DO testified that she was packing to leave when she heard banging and yelling at the front door. She attempted to open the door and leave the house because she was "scared of [her] father" and "knew what [her] father was capable of." However, when DO unlocked the deadbolt, O'Rourke "slammed his hand on [her] hand and locked it back up." DO could not feel anyone pushing from outside the door attempting to get in. O'Rourke then retrieved a knife and looked out the peephole. DO described his demeanor as having "a little bit of anger," but denied that he appeared scared. O'Rourke then unlocked and opened the front door, stabbing Medina within seconds. She testified that Medina was standing outside of the home on the porch and fell into the home when he was stabbed. BP likewise testified that she was on the porch standing near Medina when the door opened and she immediately saw "a knife coming straight for [him]."

The fact that O'Rourke unlocked and opened the front door before immediately stabbing Medina tends to undercut the proposition that he reasonably feared for his or DO's life during the incident. While his initial effort to stop DO from unlocking the door could be construed as a reasonable fear of Medina's conduct, his subsequent action of opening the door to confront the threat does not indicate that he reasonably feared imminent death or great bodily harm. DO testified that she was afraid of O'Rourke—not Medina—during the altercation, and that she did not perceive O'Rourke to be scared before opening the door. While O'Rourke indicated that Medina was attempting to force entry into the home, DO did not feel anyone pushing from outside the door attempting to get in. Further, while O'Rourke testified that Medina stepped into the home to confront him, DO and BP both maintained that Medina was on the porch when he was stabbed, and that the stabbing was immediate.

Additionally, O'Rourke's own testimony regarding the incident was inconsistent. On direct-examination, O'Rourke claimed that he observed Medina kicking the door in through the window and peephole. However, on cross-examination, he clarified that he "didn't see [Medina] kicking the door," but assumed he was "because it was forceful." He also conceded that when DO attempted to unlock the door, Medina did not try to open it. Additionally, despite O'Rourke's testimony that Medina lunged at him with a brick, he was cross-examined about a recorded jail call between himself and his partner the day after he was arrested. In the phone call, his partner stated that Medina grabbed a brick and ran up to the front door, to which O'Rourke responded, "He had a brick? Oh." While he claimed that he "wanted her to repeat that [Medina] had a brick . . . so it would be recorded" for the court proceedings, the jury was free to doubt the credibility of his explanation and infer that he did not know Medina had a brick during the incident. See *Baskerville*, 333 Mich App at 282-283 (noting that credibility determinations must be drawn in support of the jury verdict). Given the questionable nature of O'Rourke's testimony regarding Medina kicking in the door and lunging at him with a brick, a trier of fact could reasonably reject his claim that he honestly believed it was necessary to stab Medina.

In sum, there was sufficient evidence for a rational trier of fact to find that O'Rourke did not hold an honest and reasonable belief that the use of deadly force was necessary to prevent imminent death or great bodily harm to himself or DO.

B. SENTENCING CHALLENGES

O'Rourke next challenges the proportionality and constitutionality of his sentence, arguing that it was disproportionate and amounted to cruel and unusual punishment. We disagree.

On appeal, "[s]entencing decisions are reviewed for an abuse of discretion." *People v Ventour*, 349 Mich App 417, 429; 27 NW3d 660 (2023) (quotation marks, citation, and ellipses omitted). "A trial court abuses its discretion if the imposed sentence is not proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id*. (quotation marks and citation omitted). Ordinarily, "[w]hether a defendant's sentence constitutes cruel and/or unusual punishment under the Eighth Amendment of the United States Constitution or Article 1, § 16 of the Michigan Constitution are questions of constitutional law that we review de novo." *People v Stovall*, 510 Mich 301, 312; 987 NW2d 85 (2022). However, O'Rourke failed to preserve this issue by raising it in the trial court. See *People v Burkett*, 337 Mich App 631, 635; 976 NW2d 864 (2021). We therefore review the constitutionality of his sentence for plain error affecting substantial rights. *Id*.

Whether a sentence is reasonable is guided by the principle of proportionality. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). Sentences imposed by the trial court must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id*. at 474 (quotation marks and citation omitted). The sentencing guidelines are "advisory in all applications." *Id*. at 466. Yet, sentencing courts must still "consult the applicable guidelines range and take it into account when imposing a sentence . . . ." *Id*. at 470 (quotation marks and citation omitted). "When a trial court sentences a defendant within the guidelines' recommended range, it creates a presumption that the sentence is proportionate" and "the defendant bears the burden of demonstrating that their within-guidelines sentence is unreasonable or disproportionate[.]" *Ventour*, 349 Mich App at 430 (quotation marks and citations omitted; alteration in original). "A defendant may overcome the presumptive proportionality of a within-guidelines sentence by presenting unusual circumstances that would render the presumptively proportionate sentence disproportionate." *Id*. (quotation marks, citation, and brackets omitted). "Unusual means uncommon, not usual, rare." *Id*. (quotation marks and citation omitted).

The trial court did not abuse its discretion in sentencing O'Rourke because it imposed a within-guidelines sentence that was "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Steanhouse*, 500 Mich at 474 (quotation marks and citation omitted). The guidelines minimum sentence range in this case was 270 to 562 months' imprisonment. The trial court sentenced O'Rourke within the guidelines range to a minimum term of 408 months' imprisonment, making his sentence presumptively proportionate. See *Ventour*, 349 Mich App at 430. The trial court weighed the seriousness of O'Rourke as an offender at sentencing, noting that his criminal history demonstrated an ongoing pattern of offenses and that he was on probation for discharging a firearm during the commission of the instant offense. It further noted that prior attempts to rehabilitate O'Rourke were unsuccessful. Weighing the seriousness of O'Rourke's conduct, the trial court took particular note of the gravity of the killing

and the fact that it was avoidable, noting O'Rourke's testimony that he opened the door before stabbing Medina. The trial court also noted its consideration of factors such as punishment, protection of society, potential for rehabilitation, and deterrence. See *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972) (listing four factors for determining an appropriate sentence). These considerations were adequately supported by the record and resulted in an individualized within-guidelines sentence.

Beyond flagging the total length of his sentence, O'Rourke advances no argument to overcome the presumption that his sentence was proportional. He does not offer any unusual circumstances to establish his sentence was disproportionate. Instead, he advances that his sentence was "purely punitive." As detailed above, while the trial court gave consideration to the necessity of punishment, it based its sentence on several other relevant factors. O'Rourke also maintains that his sentence was unreasonable because there was insufficient evidence at trial to disprove that he acted in self-defense, but as explained above, there was sufficient evidence for a rational trier of fact to reject his self-defense claim. Accordingly, O'Rourke fails to demonstrate that his within-guidelines sentence was unreasonable or disproportionate.

O'Rourke next argues that his sentence was cruel and unusual, because it effectively amounted to a life without parole sentence given that he was 34 years old at the time of sentencing. "The Michigan Constitution prohibits cruel *or* unusual punishment, Const 1963, art 1, § 16, whereas the United States Constitution prohibits cruel *and* unusual punishment, US Const, Am VIII." *Burkett*, 337 Mich App at 636 (quotation marks and citation omitted). "If a punishment passes muster under the state constitution, then it necessarily passes muster under the federal constitution." *Id*. (quotation marks and citation omitted). Notably, "[l]egislatively mandated sentences are presumptively proportional and presumptively valid," *id*. at 637 (quotation marks and citation omitted), and "a proportionate sentence is not cruel or unusual," *People v Jarrell*, 344 Mich App 464, 486; 1 NW3d 359 (2022) (quotation marks and citation omitted).

O'Rourke's claim that his sentence is cruel or unusual fails because, as noted above, the trial court rendered a sentence that was proportionate to the offense and his circumstances as an offender. Further, O'Rourke's argument concerning his potential age at release is without merit because this Court has rejected the argument that a defendant's advanced age at sentencing renders a sentence cruel or unusual. See *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013). Because O'Rourke's sentence was proportionate and he has not pointed to any law suggesting that his age at release would render his sentence unconstitutional, it does not violate the United States or Michigan Constitutions.

C. INEFFECTIVE ASSISTANCE OF COUNSEL

O'Rourke also advances multiple claims of ineffective assistance of counsel. In his Standard 4 brief,[4] he argues that trial counsel was ineffective for failing to request jury instructions regarding castle-doctrine and defense-of-property theories. In his brief on appeal and Standard 4 brief, he argues that trial counsel was ineffective for failing to request a jury instruction on voluntary manslaughter. While we disagree with O'Rourke's claims regarding the castle doctrine

[4] See Administrative Order No. 2004-6, 471 Mich c, cii (2004).

and defense of property, we conclude that remand for a *Ginther* hearing is warranted to factually develop his ineffective-assistance claim regarding voluntary manslaughter.

"Whether a defendant has received ineffective assistance of counsel is a mixed question of fact and constitutional law." *People v Yeager*, 511 Mich 478, 487; 999 NW2d 490 (2023). This Court reviews the trial court's factual findings for clear error, while questions of law are reviewed de novo. *Id.* "Clear error exists if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). O'Rourke has not moved for a new trial or evidentiary hearing in the trial court, nor has he moved to remand for a *Ginther* hearing in this Court, so our review is limited to mistakes apparent from the record. See *People v Putman*, 309 Mich App 240, 246; 870 NW2d 593 (2015).

"The United States and Michigan Constitutions protect a criminal defendant's right to a fair trial," which includes the right to receive the effective assistance of counsel. *People v Isrow*, 339 Mich App 522, 531; 984 NW2d 528 (2021). See also US Const, Am VI; Const 1963, art 1, § 20. "Trial counsel's performance is presumed to be effective, and defendant has the heavy burden of proving otherwise." *Isrow*, 339 Mich App at 531. To prevail on a claim of ineffective assistance of counsel, "a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that that outcome would have been different." *Yeager*, 511 Mich at 488 (quotation marks and citation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. (quotation marks and citation omitted).

1. CASTLE-DOCTRINE INSTRUCTION

O'Rourke first argues that trial counsel was ineffective for failing to investigate and inform him of the castle-doctrine defense, and there was a reasonable probability of acquittal had the jury been instructed on the defense. Our Supreme Court has described the castle doctrine as follows:

> [R]egardless of the circumstances, one who is attacked in his dwelling is *never* required to retreat where it is otherwise necessary to exercise deadly force in self-defense. When a person is in his "castle," there is no safer place to retreat; the obligation to retreat that would otherwise exist in such circumstances is no longer present, and the homicide will be deemed justifiable. This is true even where one is a voluntary participant in mutual combat. [*Riddle*, 467 Mich at 120-121.]

The castle doctrine is not a complete defense. The cardinal rule of all self-defense claims is whether "under all the circumstances, the defendant honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force." *Id*. at 142. Accordingly, "the 'castle doctrine' permits one who is within his dwelling to exercise deadly force even if an avenue of safe retreat is available, *as long as it is otherwise reasonably necessary to exercise deadly force*." *Id*. (emphasis added).

O'Rourke argues that the jury should have been instructed according to Michigan Nonstandard Criminal Jury Instruction 25:9, which states, in relevant part:

> (3) An individual is entitled to use deadly force to prevent forcible entry into [his/her] dwelling, under circumstances where the defendant would reasonably

believe the intruder intended to commit a felony, or do serious bodily harm to one within the dwelling, only when all of the following circumstances exist:

(A) The evidence must show that a forcible intrusion into the dwelling was occurring.

(B) The evidence must show that the forcible intrusion was occurring under circumstances where it would be reasonable for an occupant to believe the intruder intended to commit a felony or do serious bodily harm to one within the dwelling; the use of deadly force is not permissible to expel a mere trespasser.

(C) The evidence must show that the defendant thus entertained an honest and reasonable belief that the use of deadly force was necessary to prevent the intruder from committing a felony or doing serious bodily harm to one within the dwelling.

The pertinent instructions read to the jury at trial provided:

Third, at the time he acted the defendant must have honestly and reasonably believed that what he did was immediately necessary. Under the law a person may only use as much force as he thinks is necessary at the time to protect himself. . . .

A person can use deadly force in self-defense only where it is necessary to do so. If the defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the defendant honestly and reasonably believed he needed to use deadly force in self-defense. *However, a person is never required to retreat under some circumstances. He does not need to retreat if attacked in his own home, or if he reasonably believes that an attacker is about to use a deadly weapon, or he is subjected to a sudden fierce and violent attack.*

Further, a person is not required to retreat if he or she has not or is not engaged in the commission of a crime at the time the deadly force is used, and has a legal right to be where he or she is at the time, and has a honest and reasonable belief that the use of deadly force is necessary to prevent imminent great bodily harm to himself.

If you find both of these conditions, . . . (A), *the deceased was in the process of breaking and entering a business or dwelling or committing home invasion*, or had broken into a business or dwelling, or committed home invasion and was still present in the business or dwelling, or was unlawfully attempting to remove a person from a dwelling, business, or vehicle against the person's will; and (B), *the defendant honestly and reasonably believed the deceased was engaged in any of the conduct just described*, then if you find both of those things, it is presumed that the defendant had an honest and reasonable belief that imminent great bodily harm would occur. The prosecutor can overcome this presumption by proving beyond a reasonable doubt that the defendant did not have an honest and reasonable belief that great bodily harm was imminent.

In short, O'Rourke's ineffective-assistance claim is meritless because the jury was instructed on the castle doctrine. Though the jury instruction presented at trial differs from O'Rourke's proposed instruction, both instructions reflect that O'Rourke did not have a duty to retreat while in his home and that he needed to have an honest and reasonable belief that the use of deadly force was necessary. Because the instruction provided at trial accurately conveyed the castle doctrine, any objection based on the lack of such an instruction would necessarily fail. See *Isrow*, 339 Mich App at 532 ("Failure to raise a futile objection or advance a meritless argument does not constitute ineffective assistance of counsel.").

2. DEFENSE-OF-PROPERTY INSTRUCTION

O'Rourke next argues that trial counsel was ineffective for failing to investigate and inform him of a "forcible-felony" defense, which he summarizes as his "right to open the door in defense of property." Had the jury been instructed of such a defense, he argues there was a reasonable probability of acquittal on the murder charge. "Under the common law, a person may use such force as is necessary for the protection of his property. That does not, however, include using deadly force or endangering human life." *People v Nelson*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 375156); slip op at 3 (quotation marks and citations omitted). O'Rourke identifies MCL 780.972(2) as the basis of his defense, which states:

> An individual who has not or is not engaged in the commission of a crime at the time he or she uses force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if he or she honestly and reasonably believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

O'Rourke's argument that he was entitled to a defense-of-property instruction fails because, even if he was defending his property, he used deadly force to do so by stabbing Medina. Accordingly, any such defense would be inapplicable under the common law or MCL 780.972(2), and trial counsel did not err by failing to argue or request the defense-of-property instruction proposed by O'Rourke. See *Isrow*, 339 Mich App at 532 ("Failure to raise a futile objection or advance a meritless argument does not constitute ineffective assistance of counsel.").

O'Rourke asserts that the defense is applicable because he opened the door to prevent the malicious destruction of his property. In essence, he maintains that because he was justified in opening the door to prevent the destruction of his property, the necessity of the subsequent stabbing should have been assessed without reference to his opening of the door. Regardless of whether O'Rourke had a justification for opening the door, the jury was permitted to consider that act in determining the necessity of the subsequent stabbing because the fact that he opened the door directly bears on whether he reasonably believed he was in imminent danger and whether the stabbing was necessitated by the circumstances. Therefore, O'Rourke has neither demonstrated that counsel's performance was deficient, nor that there was a reasonable probability of a different outcome had counsel sought the instruction he proposes.

3. VOLUNTARY-MANSLAUGHTER INSTRUCTION

O'Rourke lastly argues that trial counsel was ineffective by failing to request an instruction on the necessarily included and inferior offense of voluntary manslaughter. "[B]ecause both voluntary and involuntary manslaughter are necessarily included lesser offenses and inferior to murder under MCL 768.32, when a defendant is charged with murder, an instruction for voluntary and involuntary manslaughter must be given if supported by a rational view of the evidence." *Yeager*, 511 Mich at 490 (quotation marks and citation omitted). The jury found O'Rourke guilty of second-degree murder as a lesser-included offense of first-degree murder.

As noted above, "[t]he elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *Gafken*, 510 Mich at 511 (quotation marks and citation omitted). In contrast, "for an act to be considered voluntary manslaughter, the defendant must kill in the heat of passion, the passion must be caused by adequate provocation, and there cannot be a lapse of time during which a reasonable person could control their passions." *Yeager*, 511 Mich at 489. "The distinguishing element is malice, which in voluntary manslaughter is negated by the presence of provocation and heat of passion." *Id*. at 489-490 (quotation marks and citation omitted). The emotional states that can mitigate murder to voluntary manslaughter may include anger or other emotional excitement. *Id*. at 493.

In this case, there was adequate evidence of provocation to justify a voluntary-manslaughter instruction. Testimony from trial demonstrated that the stabbing was part of a series of ongoing events. O'Rourke agreed that the situation had been building for hours and was not limited to "just one incident at the door." O'Rourke, his partner, DO, and BP all testified that O'Rourke and his partner got into a verbal altercation that began in the home and escalated to a physical fight outside. It is undisputed that O'Rourke's partner punched him in the face during the dispute. DO and BP both attempted to break up the fight, which also drew the attention of a neighbor, who O'Rourke testified "riled it up again." The trial court took note of O'Rourke's conduct at sentencing, stating that video evidence showed him "hyped up, and angry, and going after anyone in [his] immediate area before Mr. Medina even got there." O'Rourke's partner testified that she called Medina, who arrived while O'Rourke was in the home. Multiple direct witnesses testified that Medina approached the house aggressively with a brick in his hand, banged on the door, and screamed for O'Rourke to come outside. DO perceived O'Rourke to be angry, and O'Rourke described himself as scared, panicked, and "freaking out." He testified that after the event, it was a "long time" before he was able to clear his head and think about the incident. Based on the foregoing, the record contained the modicum of evidence required to justify an instruction of voluntary manslaughter. See *People v Joesel*, ___ Mich ___, ___; 36 NW3d 293, 297 (2026) ("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.") (quotation marks and citation omitted).

The record does not reveal why trial counsel did not request a voluntary-manslaughter instruction. It is apparent that trial counsel pursued a self-defense strategy, which would have secured O'Rourke's acquittal if successful. Trial counsel's decision to pursue an all-or-nothing strategy could constitute a reasonable trial strategy under some circumstances. See e.g., *People v Smith*, 336 Mich App 79, 104; 969 NW2d 548 (2021) (concluding that the failure of trial counsel to request a lesser-included instruction constituted a reasonable trial strategy because the defense's

theory of the case was that the defendant was wholly innocent of the offense charged). However, our Supreme Court recently concluded that the pursuit of a self-defense acquittal may not be a reasonable strategy for failing to seek an instruction on voluntary manslaughter. See *Yeager*, 511 Mich at 494 (concluding that trial counsel's performance was deficient "[b]ecause trial counsel's misunderstanding of the law led to the absence of a voluntary manslaughter instruction to which defendant was entitled"). And given the lack of certainty over what a jury would decide if provided with a voluntary-manslaughter defense, the failure to provide such an instruction may constitute prejudice. See *id*. at 503.

Because it is not apparent from the record why trial counsel did not seek a voluntary-manslaughter instruction, a *Ginther* hearing is warranted for O'Rourke to factually develop his ineffective-assistance claim. See *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973) (noting that "[a] defendant who wishes to advance claims that depend on matters not of record" can seek an evidentiary hearing to establish his or her claims). O'Rourke requested this Court to remand for a *Ginther* hearing in his Standard 4 brief. In support, he attached an affidavit stating that he requested trial counsel to seek a voluntary-manslaughter instruction before and during trial, but counsel refused. O'Rourke further stated that his interest in a voluntary-manslaughter defense was reflected in trial notes.[5] Because there is merit to O'Rourke's argument that he was entitled to a voluntary-manslaughter instruction and his affidavit states that he asked trial counsel to request one, we conclude that "further factual development would advance his claim." *People v Chapo*, 283 Mich App 360, 369; 770 NW2d 68 (2009). Accordingly, O'Rourke is entitled to a *Ginther* hearing to address whether trial counsel provided ineffective assistance by failing to request a voluntary-manslaughter instruction.[6]

III. CONCLUSION

We affirm with respect to O'Rourke's arguments concerning the sufficiency of the evidence, sentencing, and ineffective assistance of counsel for failure to request castle-doctrine and defense-of-property instructions. However, we remand for the trial court to conduct a *Ginther*

[5] Though his Standard 4 brief and affidavit reference the trial notes as though they are attached, they are not appended to his appellate filings. We reference O'Rourke's affidavit solely for the purpose of determining whether remand for an evidentiary hearing is warranted. See *People v Moore*, 493 Mich 933, 933 (2013).

[6] We note that the proper procedural mechanism for requesting a *Ginther* hearing is by moving for one in this Court, which O'Rourke failed to do. See *People v Bass*, 317 Mich App 241, 276 n 12; 893 NW2d 140 (2016) (denying a defendant's request for an evidentiary hearing because it was improperly raised in his Standard 4 brief). Nonetheless, this Court has the authority to remand for an evidentiary hearing in the absence of such a motion, and we conclude it is appropriate to do so here. See MCR 7.216(A)(5) (providing this Court the discretion to remand a case for additional evidence to be taken); *Moore*, 493 Mich at 933 (remanding for consideration of a defendant's ineffective-assistance claim where he failed to move for an evidentiary hearing but requested one in his Standard 4 brief).

hearing to address O'Rourke's ineffective assistance of counsel claim for failure to request a voluntary-manslaughter instruction.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense