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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 12, 2026 11:15 AM
v	No. 367543 Washtenaw Circuit Court
KENT CHARLES HYNE, Defendant-Appellant.	LC No. 21-000374-FC

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

PER CURIAM.

Defendant, Kent Charles Hyne, appeals by right his jury trial convictions of mutilation of a dead body, MCL 750.160, concealing the death of an individual, MCL 333.2841(3), voluntary manslaughter, MCL 750.321, and carrying a firearm during the commission of a felony, MCL 750.227b (felony-firearm). Hyne was sentenced to 36 months to 10 years' incarceration for the mutilation conviction, 12 months to 5 years' incarceration for the concealment conviction, 86 months to 15 years' incarceration for the manslaughter conviction, and 24 months' incarceration for the felony-firearm conviction. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

A. SUBJECT INCIDENT

This case arises out of the fatal shooting of the decedent, Kyle Luark, at Hyne's property, where Hyne resided in a house and operated a marijuana business out of a separate barn. Approximately two weeks before the subject incident, the decedent and his friend, Michael Battle, used Google Maps to identify businesses with the intent of stealing marijuana. During their search, the decedent and Battle came across Hyne's property on Google Maps, which depicted a marijuana field and a greenhouse, suggesting that the property was being used for marijuana cultivation. At approximately midnight on February 26, 2020, the two met at the decedent's residence to prepare for the theft, with the decedent preparing a backpack and certain tools, including a circular saw, a standard pry bar, and a tarp, before driving to Hyne's property and parking on an adjacent dirt road. Neither the decedent nor Battle carried firearms.

The decedent and Battle proceeded to break into the barn, where the marijuana was stored, and Battle started loading the marijuana into a utility vehicle through the garage door of the barn while the decedent stood watch outside. The decedent then alerted Battle that the light at the entrance of the barn turned on. At this time, Hyne received a notification from his security system that people were on his property. In response, Hyne acquired a firearm with a thermal scope and headed toward the barn; he opted not to call the police in the event it was a faulty security alert. Hyne asserted that the barn was approximately 20 steps from the deck of Hyne's residence, and the area was illuminated due to the motion sensors on the property. Officers testified, however, that Hyne's residence was approximately 22 yards from the barn.

As Hyne entered the barn, he turned the corner and saw "a man in full camouflage, face mask, all covered up" approximately 30 feet away, who was subsequently identified as Battle. Hyne did not aim or shoot his firearm at Battle because Hyne's father taught him that he should "never risk hurting anybody who wasn't going to kill [him]." Battle fled the premises and Hyne did not pursue Battle. Hyne noticed that the utility vehicle was running, and he feared that any remaining people on his property were armed and intended to harm him. Then, out of the corner of his eye, Hyne saw the decedent "slightly crouching" nearby in "an aggressive posture," and Hyne described the decedent as "huge" and "all covered." Although Hyne's vision of the decedent was obscured due to the motion sensor light, Hyne believed that the decedent was armed. Hyne shot the decedent six times, and he did not attempt to render aid to the decedent. Hyne then hid out of fear that additional people were present on the property to harm him.

After "some time" Hyne returned to the decedent and he removed the decedent's mask, but Hyne did not recognize the decedent. Hyne collected the decedent's items, which included a backpack, a saw, and a pry bar, and placed them in the trash. However, Hyne placed the decedent's identification card into a burn barrel, and he used a front-end loader to place the decedent's body into the utility vehicle, and he transported the decedent to a burn pile in the middle of his property. Hyne placed the decedent in the burn pile, added logs, poured diesel fuel, and set the pile on fire. Hyne disposed of the decedent's body because he feared that his family would be targeted in retaliation for the decedent's death. Hyne subsequently cleaned up and repaired the damage resulting from the incident.

The following day, on February 27, 2020, the police went to Hyne's residence to inquire about the decedent after Battle and the decedent's mother filed a missing-person report. The report included false details regarding the circumstances that led the decedent and Battle to Hyne's property. Hyne denied recognizing the decedent from the officers' photograph of the decedent. On February 28, 2020, the police executed a search of Hyne's property pursuant to a warrant and discovered approximately 25 firearms and several hundred thousand dollars of cash. Officers further learned that Hyne's children were not home the night of the incident. During the police's subsequent interview with Hyne, Hyne immediately disclosed what transpired, but he contended that he shot the decedent in self-defense. Police recovered the decedent's body from the burn pit on Hyne's property, and the autopsy provided that the cause of death was multiple gunshot wounds and the manner of death was homicide. A forensic investigation indicated that the security footage from the night of the subject incident appeared to be deleted by Hyne.

B. LOWER COURT PROCEEDINGS

Hyne was charged with the four offenses previously listed, in addition to possession of a short-barreled rifle, MCL 750.224b. Before trial, the prosecution filed a notice that it intended to introduce evidence of Hyne's purportedly unlawful marijuana business, contending that the proof was relevant to Hyne's motive and intent for shooting and hiding the decedent's body. The prosecution further moved to bar the trial court from providing Hyne the full protection of the Self-Defense Act (SDA), MCL 780.971 *et seq*., on the ground that Hyne committed several offenses at the time of the underlying incident, including possession of a short-barreled rifle, the manufacture and distribution of marijuana, 21 USC 841, and carrying a firearm while trafficking substances, 18 USC 924. Following a hearing, the trial court ruled that the prosecution may admit the other-acts evidence, opining that the evidence was probative because it may establish that Hyne was perpetrating offenses that would preclude him from claiming the protections of the SDA or demonstrate his "motive, intent, absence of accident or mistake, or plan or system in doing an act." The court further determined that the evidence's probative value was not outweighed by the danger of unfair prejudice because Hyne's allegedly unlawful acts may be "part of the res gestae providing context to the activities of the individuals involved." The trial court did not resolve whether Hyne was entitled to the protection of the SDA, stating that it was required to hear the evidence presented before ruling on the matter.

Hyne's trial began in June 2023. The proof presented indicated that Hyne's marijuana business was considerable and exceeded the means of Hyne's medical marijuana caregiver license. One of Hyne's employees testified that the enterprise sold tetrahydrocannabinol (THC) products to nonmedical-marijuana customers. Additionally, numerous witnesses further testified regarding Hyne's prior statements that, if a person were to steal from him, Hyne would kill the person and dispose of their body. The evidence further demonstrated that Hyne maintained a federal firearms license and possessed several firearms, which Hyne asserted was necessary to protect against theft and threats to his family arising from his marijuana business.

Following Hyne's testimony, the trial court ruled regarding the appropriate jury instructions for self-defense. The court resolved that it would include M Crim JI 7.16(2)[1] in its instructions to the jury, but it would omit M Crim JI 7.16(3),[2] which pertained to the "Stand Your

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[1] M Crim JI 7.16(2) states:

> However, a person is never required to retreat under some circumstances. [He / She] does not need to retreat if [attacked in (his / her) own home / (he / she) reasonably believes that an attacker is about to use a deadly weapon / (he / she) is subjected to a sudden, fierce, and violent attack].

[2] M Crim JI 7.16(3) provides, in pertinent part:

> Further, a person is not required to retreat if he or she
>
> (a) Has not or is not engaged in the commission of a crime at the time the [force / deadly force] is used,

Ground Act." The trial court then asked whether defense counsel desired to place any additional objections on the record. Defense counsel responded, "Your Honor, now that the Court has indicated it's going to leave in paragraph (2) of [M Crim JI] 7.16, I think that pretty much answers the objection that I made on Friday. So I'm—I'm satisfied." Defense counsel previously argued that the inclusion of M Crim JI 7.16(3) was appropriate because "there is no conclusive evidence elicit[ed] in this trial that [Hyne]—that he violated any [state] law," and "there was no evidence elicited that [the decedent and Battles] were lured by the fact that this was an illegal operation." The trial court then allowed the prosecution and defense counsel to read the jury instructions in full, and defense counsel reiterated, "I'm satisfied, Your Honor."

Following closing arguments, the trial court provided the following jury instructions regarding the other-acts evidence:

> You have heard evidence that was introduced to show that the Defendant committed crimes for which he is not on trial. If you believe this evidence, you must be very careful only to consider it for certain purposes. You may only think about whether this evidence tends to show:
>
> (a) that the Defendant had a reason to commit the crimes charged, and;
>
> (g) as evidence of motive or intent.
>
> You must not consider this evidence for other purposes. For example, you must not decide that it shows that the Defendant is a bad person or that he's likely to commit crimes. You must not convict the Defendant here because you think he is guilty of other bad conduct. All of the evidence must convince you, beyond a reasonable doubt, that the Defendant committed the alleged crime or you must find him not guilty.

As to self-defense, the court instructed the jury, in pertinent part:

> A person can use deadly force in self-defense only where it is necessary to do so. However, a person is never required to retreat if attacked in his own home, nor if the person reasonably believes that an attacker is about to use a deadly weapon, nor if the person is subject to a sudden fierce and violent attack.

Following five days of trial proceedings, the jury initiated deliberations on June 12, 2023, at 4:06 p.m. The prosecution and defense counsel reaffirmed that they had no objections to the jury instructions. The attorneys reconvened at 4:38 p.m. to answer a jury question regarding the

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> (b) has a legal right to be where he or she is at that time, and
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> * * *
>
> (c) has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent [death / great bodily harm / sexual assault] of [himself / herself] or another person.

concealment offense. Later that afternoon, the jury requested additional copies of the instructions. Before the trial court excused the jury for the evening, the court reminded the jury not to discuss the case or conduct any research.

On June 14, 2023, at 12:01 p.m., the prosecution and defense counsel addressed a jury question pertaining to the second-degree murder charge. Following resolution of the question, the trial court noted that the jury had, the day before at approximately 2:30 p.m., requested the opportunity to walk the hallways because the jurors "were getting claustrophobic." The court had denied the request but provided the jury with fans to assist with the airflow. Later that day on June 14, 2023, at 1:58 p.m., the trial court read the following jury note on the record, "We have come to an agreement on three counts out of the five. There are two counts that we cannot come to a unanimous decision. There has been no movement for 24 hours. We are looking for guidance on how to proceed." The prosecution suggested that the trial court read the deadlocked-jury instruction. Defense counsel argued that he always objected to an *Allen*[3] charge because it increased pressure on the jury and the jury had already expressed that it was deadlocked. The trial court determined that it would iterate M Crim JI 3.12 in its entirety and, accordingly, did so. The court concluded its instruction with the statement that no juror "should give up [his or her] honest beliefs about the weight or the effect of the evidence only because of what [his or her] fellow jurors [thought] or only for the sake of reaching agreement."

At 4:23 p.m., defense counsel noted that the jury had been deliberating for approximately 17 hours, and 2 $^1/_2$ hours had elapsed since the last jury note. Defense counsel requested that the trial court question the jury foreperson if "it would do [the jurors] any good to send them home for the night to have them come back tomorrow." The trial court agreed to send the jury home because the jurors "may have been able to return and have constructive deliberations" after the *Allen* charge. The following morning on June 15, 2023, at 8:59 a.m., the jury sent another note seeking clarification of the definitions of murder and manslaughter, but the prosecution and defense counsel agreed that the jury instructions already included that information.

Later that day at 4:26 p.m., defense counsel objected to the trial court's plan to send the jury home for the evening. Defense counsel argued that the jury had been deliberating for more than 25 hours, and it had not made progress since the *Allen* charge. Defense counsel requested that the court declare a mistrial if the jury indicated it would fail to reach a verdict given another day. The trial court responded that the jury's earlier note that morning demonstrated that the jury was still "actively deliberating." The court opined that if the jury informed the trial court a second time that the jury was deadlocked, then the trial court "would probably" grant the request for a mistrial, but it would not otherwise stop the deliberations.

The next day, on June 16, 2023, at 4:03 p.m., the trial court noted that the jury had been deliberating since 8:30 a.m., but the court had not heard from the jury. Defense counsel requested that the trial court "consider the jury hung and declare a mistrial" on the counts for which the jury remained undecided. With the attorneys' agreement, the trial court asked the jury if additional time would assist the jury in reaching a verdict, to which the jury responded affirmatively. The trial court sent another note to the jury to inquire whether it wanted to continue deliberating that

[3] *Allen v United States*, 164 US 492; 17 S Ct 154; L Ed 528 (1896).

day or if the jury desired to return after the long weekend, and the jury indicated that it wanted additional time the following Tuesday. On June 20, 2023, the trial court reconvened at 9:03 a.m. because the jury reached its verdict. The jury found Hyne guilty of the offenses of mutilation of a dead body, concealing the death of an individual, voluntary manslaughter,[4] and felony-firearm. The jury found Hyne not guilty of possession of a short-barreled rifle. Each juror confirmed the verdict.

Hyne subsequently moved for a new trial or evidentiary hearing, arguing that two jurors had submitted sworn affidavits detailing juror misconduct and extraneous influences on the jury. In her affidavit, juror LMM contended that another juror discussed the case with his son-in-law, who is an attorney, and this juror shared his son-in-law's thoughts on the matter with the rest of the jury. LMM further asserted that certain members of the jury had subjected her to bullying and harassment, to the point that the jury foreperson, ZA, had to intervene. LMM additionally "felt forced to surrender [her] honest conviction that [Hyne] was not guilty" because of the trial court's supplemental deadlock instructions, the bullying, and the length of the deliberations. LMM also alleged that she "was physically and emotionally exhausted" during deliberations, and she felt "held hostage" until she changed her vote. In his affidavit, ZA similarly alleged that a juror had shared information with his son-in-law and that the other jurors were hostile toward LMM.

The trial court held an evidentiary hearing regarding Hyne's motion, during which the prosecution argued that MRE 606(b)[5] prohibited juror testimony regarding jury deliberations except for statements pertaining to extraneous influences. The prosecution further asserted that MCL 750.422 criminalized perjury, and that juror LMM needed to be advised concerning the possible implications of her testifying. Following LMM's conversation with a public defender, LMM opted not to testify at the hearing. The trial court further barred testimony regarding jury deliberations unrelated to extraneous influences. Jury foreperson ZA testified regarding the juror who spoke with his son-in-law, but ZA could not remember the information the other juror shared during deliberations. ZA asserted that the information "may have" influenced his verdict.

Following the parties' arguments, the trial court denied Hyne's motion opining, "The information contained in the affidavits was not anymore clear than the information that was presented by the witness today that lacked any assertion of specificity, and clearly based on hearsay." The court further stated:

> Additionally, there's a lack of particularity regarding who the attorney was, which juror provided the information outside of this physical description that we got today for the first time, and what type of information was allegedly shared with the jury, other than it was about law.

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[4] The jury was permitted to find Hyne guilty of first-degree or second-degree murder, but it opted to find Hyne guilty of the lesser offense of voluntary manslaughter.

[5] The Michigan Rules of Evidence were substantially amended on September 20, 2023, effective January 1, 2024. See ADM File No. 2021-10, 512 Mich lxiii (2023). We rely on the rules as they were at the time of Hyne's trial in June 2023.

> Thus, even if I assumed that the jury was exposed to this extraneous information, there's no way of showing how this extraneous influence created a real and substantial possibility that could have affected the jury's verdict.

The trial court entered an order consistent with its statements on the record. This appeal ensued.

II. ANALYSIS

A. OTHER-ACTS EVIDENCE

First, Hyne contends that the trial court improperly admitted evidence of Hyne's purportedly unlawful marijuana business. We disagree.

We review for an abuse of discretion a trial court's decision to admit evidence. *People v Henry*, 315 Mich App 130, 143; 889 NW2d 1 (2016). We review de novo, however, any preliminary questions of law. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Finally, we will not reverse a nonconstitutional evidentiary error unless it is more probable than not that the error was outcome-determinative. *People v Douglas*, 496 Mich 557, 565-566; 852 NW2d 587 (2014).

Generally, relevant evidence is admissible. MRE 402. At the time of Hyne's trial, MRE 404(b)(1) provided:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

This list of permitted uses is illustrative, rather than exhaustive. *People v Engelman*, 434 Mich 204, 212; 453 NW2d 656 (1990). MRE 404(b) is a rule of inclusion rather than a rule of exclusion. *People v Vandervliet*, 444 Mich 52, 64; 508 NW2d 114 (1993), amended in other part, 445 Mich 1205 (1994). For evidence to be admissible under MRE 404(b): (1) the prosecution must offer the evidence for a proper purpose, (2) the evidence must be relevant, (3) the probative value of the evidence must not be substantially outweighed by unfair prejudice, and (4) "the trial court may, upon request, provid[e] a limiting instruction to the jury." *Id*. at 55.

In this case, the prosecution offered the other-acts evidence for a proper purpose. As opined by the Michigan Supreme Court, the prosecution "must first establish that the evidence is logically relevant to a material fact in the case, as required by MRE 401 and MRE 402, and is *not* simply evidence of the defendant's character or relevant to his propensity to act in conformance with his character." *People v Mardlin*, 487 Mich 609, 615; 790 NW2d 607 (2010). The prosecution provided proof of Hyne's allegedly unlawful marijuana business to demonstrate Hyne's intent or motive in shooting the decedent and disposing of his body rather than calling the police.

The contested other-acts evidence was also relevant. See *Vandervliet*, 444 Mich at 55. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. "Evidence is *inadmissible* under this rule *only* if it is relevant *solely* to the defendant's character or criminal propensity." *Mardlin*, 487 Mich at 616. In the present case, the evidence corroborated the testimonies of Hyne's employees regarding Hyne's prior threats to kill and dispose of the body of anyone who attempted to steal from his property, as well as the substantial number of firearms kept in both his residence and the barn. Further, the subject evidence demonstrated that Hyne initially went to significant lengths to hide what transpired, even if he ultimately admitted to shooting the decedent and directing the police as to pertinent evidentiary items. Rather than contact the police, Hyne moved the decedent's body to a burn pile on his property, disposed of the decedent's personal items in the trash, deleted the pertinent security footage, and cleaned up and repaired the damage resulting from the incident. Additionally, while the prosecution referred to the unlawfulness of Hyne's marijuana business in its opening statement, in questions to witnesses, and in closing argument, the references were ultimately consistent with the prosecution's contention that Hyne acted that night with the purpose of protecting his enterprise as opposed to in defense of himself or his family.

Hyne contends that there was a lack of substantive evidence demonstrating that the growth and distribution of marijuana on his property was unlawful. But the witnesses' testimonies indicated otherwise. Adam Howes, one of Hyne's employees since 2016, testified that while Hyne acted as if his business was legal, the enterprise maintained between 500 and 1,000 clients, some of whom were not registered medical marijuana patients. Howes further asserted that Hyne sold THC to recreational marijuana customers onsite, in addition to shipping THC to online consumers. Howes further contended that Hyne instructed Howes several times throughout the years to avoid speaking with the police. While Hyne's employees testified that they believed that Hyne's marijuana business was lawful, there was proof that the business was growing and distributing more marijuana than permitted by law. Detective Thomas Sinks, of the Washtenaw County Sheriff's Office, further testified that while Hyne's business was registered, neither Hyne nor his employees maintained additional licensure to allow for large commercial grow operations.

"[A] registered qualifying patient who is his or her own caregiver and the caregiver to five other qualifying patients is allowed to possess up to 72 marijuana plants and up to 15 ounces of usable marijuana." *People v Hartwick*, 498 Mich 192, 219 n 54; 870 NW2d 37 (2015); see also MCL 333.26424(b)(2) ("For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility."). While Hyne correctly notes that neither the state nor the federal governments had yet charged Hyne with any offenses related to his marijuana business, there is no requirement that Hyne face charges for the trial court to admit the purported acts.

Next, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. See *Vandervliet*, 444 Mich at 55; see also MRE 403. Although the prosecution questioned the lawfulness of Hyne's marijuana business during trial, there was also evidence presented that Hyne was never criminally charged regarding his marijuana business, and he did not have any recent violations of his medical marijuana license. Hyne's employees also testified that they believed the business was lawful, despite the size of the operation, and Hyne did not

attempt to conceal his enterprise. Accordingly, there is no reasonable likelihood that the jury convicted Hyne because of his allegedly unlawful marijuana business. Further, we note that the trial court is in the best position to make an MRE 403 determination. See *People v Katt*, 48 Mich App 282, 306-307; 639 NW2d 815 (2001).

Lastly, the trial court provided limiting instructions to the jury. See *Vandervliet*, 444 Mich at 55. A limiting instruction is generally sufficient to ensure that the jury properly considers the evidence for its proper purposes. *Mardlin*, 487 Mich at 629. But even assuming the trial court improperly admitted the other-acts evidence, it is not more probable than not that this error was outcome-determinative. See *Douglas*, 496 Mich at 565-566. There was significant evidence presented against Hyne regarding the shooting and disposal of the decedent, in addition to testimony regarding the decedent's and Battle's targeting of Hyne's property for the theft of marijuana. Ultimately, Hyne has not established that he is entitled to relief on this basis.

B. JURY INSTRUCTIONS

Next, Hyne contests the trial court's omission of portions of the self-defense jury instructions. A defendant, however, waives a claim of instructional error by expressly approving the instructions. *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011). In the instant case, defense counsel expressly approved the jury instructions and stated that the trial court's decision to read M Crim JI 7.16(2) resolved his objections to the instructions. Accordingly, this issue is waived, and we need not address it. See *id*. at 504. Regardless, the trial court included instructions that "a person is never required to retreat if attacked in his own home, nor if the person reasonably believes that an attacker is about to use a deadly weapon, nor if the person is subject to a sudden fierce and violent attack," such that the jury was adequately informed to determine whether Hyne acted in self-defense. See *People v Eisen*, 296 Mich App 326, 330; 820 NW2d 229 (2012). This is further substantiated by the fact that the jury opted to find Hyne guilty of the lesser offense of voluntary manslaughter as opposed to first-degree or second-degree murder.

C. SELF-DEFENSE ACT

Relatedly, Hyne argues that the SDA is unconstitutional for vagueness and because it violates his Second Amendment rights. We disagree.

Hyne did not contend in the trial court that the SDA is unconstitutional, but we may still review unpreserved constitutional challenges to a criminal statute. *People v Noble*, 238 Mich App 647, 651; 608 NW2d 123 (1999). We review de novo the constitutionality of a statute. See *People v Fawaz*, 299 Mich App 55, 64; 829 NW2d 259 (2012). "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n v Bruen*, 597 US 1, 24; 14 S Ct 2111; 213 L Ed 2d 387 (2022). There exists a presumption that a statute is constitutional unless its unconstitutionality is "clearly apparent." *Noble*, 238 Mich App at 651.

The Second Amendment to the United States Constitution guarantees an individual "the right to possess and carry weapons in case of confrontation." *Dist of Columbia v Heller*, 554 US 570, 592; 128 S Ct 2783; 171 L Ed 2d 637 (2008). The Michigan Constitution also protects a

person's "right to keep and bear arms for the defense of himself and the state." Const 1963, art 1, § 6. This right is not without limits, however, *Heller*, 554 US at 626, and Hyne has not demonstrated that the SDA infringed his rights under the Second Amendment. This Court has repeatedly held, for example, that prohibiting persons who have been convicted of felonies from possessing firearms does not violate the Second Amendment, even after recent caselaw from the United States Supreme Court. See *People v Hughes*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 367172); slip op at 14, 16. See also *Heller*, 554 US at 626-627. In the present case, the prosecution did not charge Hyne simply because he carried a firearm for self-defense purposes, rather Hyne was charged in response to his shooting and disposal of the decedent without proper cause.

As to Hyne's vagueness argument, this Court reviews "vagueness challenges in light of the facts at issue." *People v Wilson*, 230 Mich App 590, 593; 585 NW2d 24 (1998). The United States and Michigan Constitutions guarantee that the state may not deprive a person of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17. A party may challenge a statute for vagueness on the grounds that the statute does not "provide fair notice of the conduct proscribed" or because the statute is "so indefinite that it confers unlimited and unstructured discretion on the trier of fact to determine whether an offense has occurred." *People v Lockett*, 295 Mich App 165, 174; 814 NW2d 295 (2012) (quotation marks and citation omitted). Fair notice gives a person of ordinary intelligence a reasonable opportunity to know what behavior the statute prohibits or requires. *Noble*, 238 Mich App at 652. Further, an overbroad statute is one that will likely chill constitutionally protected behavior. *People v Hicks*, 149 Mich App 737, 742; 386 NW2d 657 (1986).

The SDA is not vague or overbroad when it provides that there is no duty to retreat in certain circumstances for individuals who were "not engaged in the commission of a crime *at the time* he or she uses deadly force." MCL 780.972(1) (emphasis added). While Hyne contends that the statute precludes any person from relying on its protections if the trial court finds that the person has committed any offense at any time, the plain language of the statute provides otherwise. Further, as recognized by the Michigan Supreme Court in *People v Leffew*, 508 Mich 625, 641; 975 NW2d 896 (2022), the SDA expanded, rather than reduced, the circumstances under which a person is permitted to use self-defense without a duty to retreat. Thus, Hyne's challenge fails.

D. *ALLEN* CHARGE

Hyne argues that he was denied his right to an impartial jury because of the trial court's provision of a deadlocked-jury instruction and the length of the jury deliberations. We disagree.

This Court reviews a trial court's decision regarding a mistrial for an abuse of discretion. *People v Manning*, 434 Mich 1, 7; 450 NW2d 534 (1990). A trial court should grant a mistrial only when there is "an irregularity that is prejudicial to the rights of the defendant and impairs the defendant's ability to get a fair trial." *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995). A deadlocked jury is a "classic basis for a proper mistrial," and we grant significant deference to a trial court's finding that a jury is deadlocked. *People v Lett*, 466 Mich 206, 219-220; 644 NW2d 743 (2002) (quotation marks and citation omitted). "The trial court is in the best position to assess all factors that might affect whether the jury would be able to reach a verdict on further deliberation." *People v Ackah-Essien*, 311 Mich App 13, 35; 874 NW2d 172 (2015).

Further, we review de novo instructional error. *People v Spaulding*, 332 Mich App 638, 652; 957 NW2d 843 (2020).

When a trial court "fails to discharge a jury which is unable to reach a verdict after protracted and exhausting deliberations, there exists a significant risk that a verdict may result from pressures inherent in the situation." *Lett*, 466 Mich at 220 (quotation marks and citation omitted). The trial court may, instead of a mistrial, give the jury a supplemental instruction commonly known as an *Allen* charge to encourage the jury to continue its deliberations. *People v Caddell*, 332 Mich App 27, 37-38; 955 NW2d 488 (2020). "The goal of such an instruction is to encourage further deliberation without coercing a verdict." *People v Walker*, 504 Mich 267, 277; 934 NW2d 727 (2019). If the *Allen* charge will force a juror to surrender his or her honest conviction, then "it is coercive" and constitutes error requiring reversal. *People v Sullivan*, 392 Mich 324, 334; 220 NW2d 441 (1974) (quotation marks and citation omitted). The purpose of the jury process, however, is "to secure unanimity by comparison of views, and by arguments among the jurors themselves." *Id*. at 330 (quotation marks and citation omitted).

In the present case, the length of deliberations after the *Allen* charge was not unreasonable considering the complexity of the case and the five days of trial proceedings before the jury convened. Further, the trial court did not require, or threaten to mandate, that the jury deliberate for an extensive amount of time. See *Caddell*, 332 Mich App at 39; see also *People v Hardin*, 421 Mich 296, 318-319; 365 NW2d 101 (1984). The length of time that a jury deliberates after the trial court provides a deadlocked-jury instruction may be indicative of whether the instruction was coercive, but when a jury continues "to debate in earnest after receiving the supplemental instruction," reversal is not warranted. *People v Bookout*, 111 Mich App 399, 403-404; 314 NW2d 637 (1981). Additionally, given that deliberations continued for three days after the trial court's supplemental instructions, it is unlikely that the *Allen* charge coerced the jury's verdict. The jury was obligated to consider five charges, including the charge of open murder, which included consideration of the lesser offenses of second-degree murder and voluntary manslaughter. Moreover, the jury was further required to examine the matter of self-defense.

While Hyne contends that the trial court's denial of the jurors' request to walk the hallways was improper, the court provided the jury with fans to assist with the airflow, and there is no indication that the jury was barred from lunch breaks, access to water, or use of the bathroom. The court further dismissed the jury each day of deliberations, and there was a break for the weekend. Lastly, the trial court's supplemental instruction, consistent with M Crim JI 3.12, was also not coercive. See *Walker*, 504 Mich at 277. Considering the foregoing, we cannot conclude Hyne's right to an impartial jury was compromised.

E. JUROR MISCONDUCT

Hyne further challenges the impartiality of the jury because of alleged juror misconduct. We disagree.

We review for an abuse of discretion a trial court's decision regarding a motion for new trial. *People v Gaines*, 306 Mich App 289, 296; 856 NW2d 222 (2014). A trial court abuses its discretion when it chooses an outcome outside of the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). We review a trial court's factual

findings for clear error. *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012). Clear error exists when we are left with a definite and firm conviction that the trial court made a mistake. *People v Jessie Johnson*, 466 Mich 491, 497-498; 647 NW2d 480 (2002). Finally, we review de novo constitutional issues. *People v Idziak*, 484 Mich 549, 554; 773 NW2d 616 (2009).

"A defendant tried by jury has a right to a fair and impartial jury." *People v Budzyn*, 456 Mich 77, 88; 566 NW2d 229 (1997). During their deliberations, jurors may only consider evidence that the parties presented during trial. *Id*. A jury's consideration of extraneous information deprives a defendant of his or her right of confrontation, cross-examination, and assistance of counsel. *Id*. It is the trial court's duty to properly instruct the jury on the applicable law. See *People v Traver*, 502 Mich 23, 31; 917 NW2d 260 (2018). To warrant reversal, a defendant must demonstrate that the jury was exposed to extraneous influences and that the "extraneous influences created a real and substantial possibility" of influencing the jury's verdict. *People v Fletcher*, 260 Mich App 531, 540; 679 NW2d 127 (2004) (quotation marks and citation omitted). Generally, the extraneous influence must be "substantially related to a material aspect of the case," and there must be "a direct connection between the extrinsic material and the adverse verdict." *Budzyn*, 456 Mich at 89. If the defendant establishes this, then the burden shifts to the prosecution to demonstrate that the error was harmless beyond a reasonable doubt. *Id*. However, the existence of juror misconduct "will not warrant a new trial unless the party seeking the new trial can show that the misconduct [was] such as to affect the impartiality of the jury or disqualify them from exercising the powers of reason and judgment." *People v Dunigan*, 299 Mich App 579, 586; 831 NW2d 243 (2013) (alteration in original; quotation marks and citation omitted).

In the instant case, although Hyne demonstrated that a juror introduced extraneous information into the deliberation process, Hyne has not established a direct connection between that information and the jury's verdict. While a juror may not generally impeach his or her own verdict with an affidavit alleging misconduct in the jury room, the trial court may consider evidence regarding extraneous influences on the jury. *Budzyn*, 456 Mich at 91. When the purported juror "misconduct relates to influences internal to the trial proceedings, courts may not invade the sanctity of the deliberative process." *Fletcher*, 260 Mich App at 539. At the time of Hyne's trial, MRE 606(b) provided:

> Inquiry into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jury's attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in entering the verdict onto the verdict form. A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying.

"Any conduct, even if misguided, that is inherent in the deliberative process is not subject to challenge or review." *Fletcher*, 260 Mich App at 540. This Court has recognized the policy considerations weighing against the admission of evidence concerning jury deliberations,

including the potential for juror harassment to secure the vacatur of an adverse verdict. *Id*. at 539-540.

In this case, juror LMM's allegations of bullying are unrelated to extraneous influences on the jury but, instead, pertain to incidents that occurred during the deliberative process. The trial court could not use that information to set aside the verdict. See *id*. at 540. Hyne asserts that bullying is "not directly related to evidence presented at trial, the law presented to the jury, or to communications and discussions that are part of the deliberative process." However, LMM's contentions relate to the other jurors' statements to her during the jury deliberations. Thus, while these statements should not be condoned, they were part of the internal proceedings of the jury, and the trial court cannot invade that deliberative process. See *id*. at 539.

Further, Hyne has not demonstrated that extraneous information influenced the jury. The trial court repeatedly informed the jury that it could not discuss the case with others or research the case. Generally, it is presumed that a jury will follow the trial court's instructions. See *People v Mahone*, 294 Mich App 208, 212; 816 NW2d 436 (2011). In this case, the juror who spoke to his son-in-law did not, apparently, adhere to these instructions. Jury foreman ZA testified that this juror relayed his son-in-law's legal perspective for approximately 10 seconds, and it "may have" influenced ZA's verdict. But ZA could not recall the nature of the information with any specificity in either his affidavit or during the evidentiary hearing. In the absence of proof regarding what this extraneous information was, or any indication that there was a real and substantial possibility that the information influenced the verdict, Hyne is not entitled to relief. See *Budzyn*, 456 Mich at 88-89. Moreover, even if the jury heard certain extraneous information, it is unlikely that such affected the impartiality of the jury or disqualified it from exercising the powers of reason and judgment, *Dunigan*, 299 Mich App at 586, considering the significant evidence presented against Hyne regarding his perpetration of the underlying offenses, and the jury's consideration of self-defense as a mitigating circumstance with respect to the open murder charge. Thus, Hyne is not entitled to relief.

F. INEFFECTIVE ASSISTANCE OF COUNSEL

Hyne argues that he was denied the effective assistance of counsel during the lower court proceedings. We disagree.

"Whether a defendant has been denied the effective assistance of counsel is a mixed question of fact and constitutional law." *People v Solloway*, 316 Mich App 174, 187; 891 NW2d 255 (2016). We review "unpreserved claims of ineffective assistance of counsel for errors apparent on the record." *People v Angelo Johnson*, 293 Mich App 79, 90; 808 NW2d 815 (2011).

A defendant's right to counsel is guaranteed by the United States and Michigan Constitutions. See US Const, Am VI; Const 1963, art 1, § 20. This right includes the right to the effective assistance of counsel. *People v Cline*, 276 Mich App 634, 637; 741 NW2d 563 (2007). To establish a claim of ineffective assistance of counsel, a defendant must show that defense counsel's performance was deficient, and the deficient performance prejudiced the defense. *People v Taylor*, 275 Mich App 177, 186; 737 NW2d 790 (2007). Defense counsel's performance is deficient if it falls below an objective standard of professional reasonableness. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). A "defendant must overcome a strong

presumption that counsel's performance constituted sound trial strategy." *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Defense counsel's performance is prejudicial if there is a reasonably probability that, but for counsel's error, the result of the proceeding would have been different. *Jordan*, 275 Mich App at 667. "Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases." *Unger*, 278 Mich App at 242. This Court does not substitute its judgment on matters of trial strategy or use hindsight to assess defense counsel's competence. *Id*. at 242-243.

First, defense counsel's failure to argue that the SDA was unconstitutional did not fall below an objective standard of professional reasonableness because the failure to raise a meritless argument does not constitute ineffective assistance of counsel. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). It is not clearly apparent that the SDA unconstitutionally violated Hyne's rights under the Second Amendment. See *Noble*, 238 Mich App at 651. There is also no basis from which to find that defense counsel's argument would have been successful in the trial court. Moreover, Hyne cannot demonstrate prejudice by defense counsel's failure to raise the issue, particularly when the trial court thoroughly instructed the jury on self-defense, including the circumstances under which Hyne was not required to retreat.

Second, defense counsel was not ineffective for neglecting to raise a duress instruction. See *Jordan*, 275 Mich App at 667. For the trial court to provide a duress instruction, a defendant must produce evidence that: (1) the "threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm," (2) the conduct actually caused the defendant to fear death or serious bodily harm, (3) the fear was on the defendant's mind at the time of the purported act, and (4) "[t]he defendant committed the act to avoid the threatened harm." *People v Reichard*, 505 Mich 81, 88; 949 NW2d 64 (2020) (quotation marks and citation omitted). Duress is not always an available defense to homicide. *People v Gafken*, 510 Mich 503, 513; 990 NW2d 826 (2022).

Although failing to request a jury instruction may constitute deficient performance, *People v Yeager*, 52 Mich 478, 490; 999 NW2d 490 (2023), Hyne has not established that the defense of duress was applicable to Hyne's shooting of the decedent, let alone the disposal of the decedent's body and the concealment of his death. Specifically, as to the open murder charge, it was sound trial strategy for defense counsel to prioritize self-defense as a mitigating circumstance as opposed to duress. Further, it is unlikely that the jury would resolve that the conduct of the decedent and Battle as trespassers created a reasonable fear of death or serious bodily harm or that Hyne's action would avoid that threatened harm, as required for duress. See *Reichard*, 505 Mich at 88. Additionally, while Hyne claims to have disposed of the decedent's body out of fear that his family would be targeted in retaliation for the decedent's death, it is unclear how that goal would be accomplished considering Battle was present during the shooting and escaped with the knowledge of what transpired. Even if defense counsel should have requested the duress instruction, there is not a reasonable likelihood that defense counsel's allegedly deficient performance affected the outcome of the proceedings. See *Jordan*, 275 Mich App at 667. The jury ultimately resolved that Hyne did not act in self-defense, as evidenced by his voluntary manslaughter conviction, and it is not evident that the jury was more likely to excuse Hyne's actions under a duress instruction. Therefore, Hyne was not denied the effective assistance of counsel.

G. CUMULATIVE ERROR

Lastly, Hyne argues that he is entitled to a new trial because of cumulative error. We disagree.

This Court reviews a cumulative-error claim by examining the actual errors identified on appeal to determine whether the errors cumulatively deprived defendant of a fair trial. *People v LeBlanc*, 465 Mich 575, 591 n 12; 640 NW2d 246 (2002). "A ruling or action that is almost wrong does not become an error on the ground that, in the same case, other rulings or actions were almost wrong, too." *Id*. A new trial is warranted when the cumulative effect of the actual errors undermines confidence in the reliability of the verdict. *People v Dobek*, 274 Mich App 58, 106; 732 NW2d 546 (2007). The cumulative effect of several minor errors may constitute error requiring reversal. *People v Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999). "Absent the establishment of errors, there can be no cumulative effect of errors meriting reversal." *Dobek*, 274 Mich App at 106. Because Hyne has failed to establish error affecting the validity of the verdict, particularly given the substantial evidence supporting his convictions, he is not entitled to relief.

Affirmed.

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