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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v SADARIE DESHAWN DONALSON, Defendant-Appellant.	UNPUBLISHED August 14, 2026 2:21 PM No. 374291 Oakland Circuit Court LC No. 2024-288714-FC

Before: LETICA, P.J., and O'BRIEN and REDFORD, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317; carrying a firearm in during the commission of a felony (felony-firearm), MCL 750.227b; carrying a concealed weapon (CCW), MCL 750.227; and resisting or obstructing a police officer, MCL 750.81d(1). Defendant was sentenced to 30 to 60 years' imprisonment for second-degree murder, two years' imprisonment for felony-firearm, one year imprisonment for CCW, and one year imprisonment for resisting or obstructing a police officer. Finding no error on the record before us, we affirm defendant's convictions and sentences.

I. FACTS

This case arises out of the February 21, 2024 shooting and death of Cornelius Jones. On that day, Jones had eight or nine people over to his apartment in Pontiac, Michigan for drinks and to listen to music. The apartment was small, about 375 square feet—with few internal walls. Defendant was at the party with his friend, Dewuan Benion, who knew Jones. Defendant did not know Jones well. While in the apartment, defendant spat in Jones's sink and was asked to leave. Though he initially left with Benion, Benion then went back into the apartment and engaged in a physical fight with Jones.

Defendant also went back into the apartment and claimed that he saw Jones choking Benion. He alleged that several other people at the party became involved in the fight. Other witnesses at the party gave conflicting versions of what took place. Some said no one else got involved, while others said two people tried to separate Benion and Jones. Neither Jones nor Benion had a weapon. Defendant pulled out a pistol and fired twice, hitting Jones in the face and

the lower abdomen. Defendant stated he was frightened for his and Benion's lives. Defendant and Benion then fled. Jones was later declared dead.

Benion was quickly found by the Oakland County Sheriff's Office. When approached by officers, defendant fled. He later denied hearing any commands to stop. Defendant continued to evade the Oakland County Sheriff's Office by running through yards. He was eventually apprehended. Following a jury trial, defendant was found guilty and sentenced as indicated above. This appeal followed.

II. DISCUSSION

A. SELF-DEFENSE

Defendant argues that the prosecution failed to disprove the possibility that he acted in self-defense beyond a reasonable doubt. We disagree.

1. STANDARD OF REVIEW

A claim of insufficient evidence is reviewed de novo in the light most favorable to the prosecution. *People v Lowrey*, 342 Mich App 99, 122; 993 NW2d 62 (2022). This Court must "determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *Id*. (citation and quotation marks omitted). "[T]his Court must defer to the fact-finder's role in determining the weight of the evidence and the credibility of the witnesses." *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010).

2. ANALYSIS

"Due process requires that, to sustain a conviction, the evidence must show guilt beyond a reasonable doubt." *People v Railer*, 288 Mich App 213, 216; 792 NW2d 776 (2010). The elements of the crime may be established through circumstantial evidence and the reasonable inferences that arise. *Bennett*, 290 Mich App at 472. Any conflicts in the evidence must be resolved in the prosecution's favor. *Id*. Minimal circumstantial evidence is sufficient to establish a defendant's state of mind. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). The trier of fact, not this Court, determines the inferences that may be drawn from evidence and the weight that should be given to those inferences. *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018).

To establish the elements of second-degree murder, the prosecution must show "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse."[1] *People v Gafken*, 510 Mich 503, 511; 990 NW2d 826 (2022) (citation and quotation marks omitted). Malice may be established "by showing (1) the intent to kill, (2) the intent to cause great bodily harm, or (3) the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id*. This final method

[1] "[W]ithout justification or excuse is not a true element of second-degree murder. Instead, it is part of the cluster of ideas about the act of murder that our Legislature adopted in 1846 by enacting the homicide statutes." *People v Spears*, 346 Mich App 494, 522; 13 NW3d 20 (2023).

of demonstrating malice may also be shown by the defendant's intent to "create a very high risk of death or great bodily harm with the knowledge that death or great bodily harm is the probable result." *Id*. (citation and quotation marks omitted).

We address each element of second-degree murder in turn.

First, there is no dispute that Jones died.

Second, the prosecution provided sufficient evidence that defendant's actions caused Jones's death. Dr. Anna Castiglione Richmond testified that the cause of Jones's death was multiple gunshot wounds, and the manner of death was homicide. Firearm analysis supported the contention that the firearm found after defendant was arrested matched the casings found in Jones's apartment. DNA analysis strongly supported the hypothesis that the pistol contained DNA from defendant. Defendant and two witnesses all testified that defendant fired twice into Jones's apartment. There was no evidence that another firearm was present at Jones's apartment. A rational trier of fact could find beyond a reasonable doubt that Jones's death was caused by defendant discharging his firearm twice into Jones's apartment. *Id*.

Defendant does not challenge the third element of second-degree murder.

The central issue at trial and on appeal was and is whether defendant acted in lawful self-defense or the lawful defense of others. Defendant claims that there was insufficient evidence to prove beyond a reasonable doubt that he did not act in self-defense. Self-defense may justify murder at common law "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) (citation and quotation marks omitted). If the defendant produces some evidence that would allow a jury to conclude that the elements needed to establish a claim of self-defense existed, the prosecution then has the burden of proof to disprove beyond a reasonable doubt the possibility that the defendant acted in self-defense. *Id*. at 709-710. MCL 780.972, which codifies self-defense, 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.

Defendant testified that he acted in self-defense and in the defense of others because Jones was choking Benion, and defendant feared for his and Benion's lives.[2] Through his cross-

[2] "Michigan courts have repeatedly recognized the common-law defense-of-others doctrine." *People v Leffew*, 508 Mich 625, 638; 975 NW2d 896 (2022).

examination of prosecution witnesses and in testimony on his own behalf, defendant raised the issue of self-defense and produced some evidence that would allow a trier of fact to determine that the prima facie elements of self-defense existed. *Dupree*, 486 Mich at 709-710. Therefore, the prosecution had the burden to disprove self-defense. *Id*.

There was sufficient evidence presented by the prosecution for a rational trier of fact to reject defendant's claim of self-defense. Though defendant testified that he was scared for Benion's life when he fired his gun twice, this was contrasted by the testimony from one witness that the fight between Jones and Benion was not serious. Neither Jones nor Benion had a weapon. Defendant and one witness stated that Benion was choked during the fight. There was no indication as to how long Benion was choked or if he lost consciousness at any point. Defendant acknowledged that he did not know where he was aiming and could have hit Benion. A rational juror could have found that defendant was not reasonably afraid for his life or Benion's life when he fired his weapon.

Defendant also testified there were several men fighting Benion and that defendant was prevented from interfering by another man. Defendant could not identify any of the men allegedly involved. One witness testified that no one else was involved in the fight between Benion and Jones, and another witness testified that two people tried to separate Jones and Benion.

It was the jury's duty to determine which witnesses and what evidence was more credible. The jury spoke through its unanimous verdict of guilty on all counts. Our nation and our state's system of jurisprudence and this Court defer to the credibility assessments of the fact-finder. *Bennett*, 290 Mich App at 472. "But more importantly, [t]he standard of review is deferential: a reviewing court is *required* to draw all reasonable inferences and make credibility choices in support of the jury verdict." *Oros*, 502 Mich at 239 (quotation marks and citation omitted; alteration and emphasis in original).

The facts clearly established there were several opportunities for defendant to leave Jones's apartment. Indeed, he initially left when asked. Defendant was being pushed out of the apartment when he fired, indicating that he likely could have left without facing further danger. Some testimony suggested that the fight was over at the time defendant fired. Defendant did not mention being afraid for his life or Benion's life when speaking with the police. On a review of the entire record, the evidence shows there was not an imminent risk of death or great bodily harm to Benion or defendant, and defendant's use of deadly force was unnecessary. Additionally, by returning to the apartment after being asked to leave, defendant was no longer in a place where he had the legal right to be,[3] as required for self-defense under MCL 780.972(1). Thus, defendant could not have met the statutory requirements needed for self-defense without the duty to retreat, regardless if he believed there was an imminent risk of harm to him or Benion.

[3] A person commits trespass if they "[r]emain without lawful authority on the land or premises of another after being notified to depart by the owner or occupant or the agent of the owner or occupant." MCL 750.552(1)(b).

In summary, regarding self-defense, viewing the evidence in the light most favorable to the prosecution, the record demonstrates beyond a reasonable doubt that defendant did not act in lawful self-defense.

B. OFFENSE VARIABLE (OV) 3

Defendant argues that his OV 3 score was incorrect because the Michigan Supreme Court's decision in *People v Houston*, 473 Mich 399; 702 NW2d 530 (2005), was erroneous. We disagree.

"[W]e are bound to follow Michigan Supreme Court decisions except where those decisions have been clearly overruled or superseded . . . ." *People v Armstrong*, 344 Mich App 286, 299; 1 NW3d 299 (2022) (citation and quotation marks omitted), aff'd ___ Mich ___; ___ NW3d ___ (2025) (Docket No. 165233). *Houston* has not been overruled or superseded. *Houston* holds that OV 3 is appropriately scored at 25 points when death is caused by a life-threatening or permanently incapacitating injury. *Id*. at 405-407. *Houston* is controlling. The trial court was correct to assess 25 points for OV 3 under MCL 777.33, which means that defendant is not entitled to resentencing on this ground. Defendant's argument is without merit.

C. OV 5

Defendant argues that OV 5 was incorrectly scored because there was insufficient evidence that the Jones family suffered serious psychological injury which may require professional treatment. In the alternative, defendant argues that his trial counsel was ineffective for failing to object to OV 5. We disagree and conclude OV 5 was scored correctly. Additionally, we conclude that defendant's trial counsel was not ineffective regarding this issue.

1. SENTENCING HEARING TESTIMONY AND PRESENTENCE INVESTIGATION REPORT (PSIR) RELATED TO OV 5

At sentencing, the victim's mother and father both made statements to the court which spanned four full pages of the transcript. In her statement, the mother said,

> It's so hard knowing that my child is not coming. I have been . . . to the gravesite and talked to him. He was a wonderful boy. I raised my baby to be a good boy. I miss him so much. It hurts. Our family is hurting over this. . . . He had three kids. . . . [I]t's hard, it's hard on them. It's so hard . . . .

The victim's father, reading a letter from the victim's sister:

> February 21, 2024, changed our entire family, and the community for life. Some of us was angry, some of us was confused and in denial, and in shock. Most of us was even hurt. The night left no one feeling a sense of normalcy.
>
> It has been extremely difficult to live life without him. . . . [S]ome days we were a complete mess.

The victim's father added on his own behalf,

> I just want Donalson to know that I am a holy man, and it's taken everything out of me to say the words that I'm about to say because it's that evil spirt that's in me that's fightin' so hard, but that holy spirit have taken control. And I forgive him for takin' my son's life.

In addition to this in-person allocution in open court, the PSIR contained the letter read by the victim's father, the family background, personal information about the victim, and a description of the offense. After these statements were completed, the court inquired of both counsel of their position regarding OV 5. Both the prosecutor and defense counsel stated they agreed OV 5 was scored correctly.

The trial court stated:

> That they're correctly scored, okay. And, obviously—and, obviously, I agree to (sic). I would just note on that point, certainly, you know, the serious psychological injury requiring professional treatment occurred to a victim's family. The note says scored 50 (sic 15) points if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive. MCL 777.35(2). So I think what's in the PSI, the statement that was read into the record by the gentleman, by Mr. Jones' father, as well as the statements of mother and father just now, I think, clearly, meet that standard.

2. STANDARD OF REVIEW

When the issue is properly preserved, the trial court's decisions regarding sentencing guidelines scoring are reviewed for an abuse of discretion when determining whether the trial court properly exercised its discretion in scoring the guidelines and whether the record evidence adequately supports a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

When reviewing an unpreserved claim of error in a criminal case, appellate courts must determine whether there was a plain error that affected the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), reh den 461 Mich 1205 (1999). The defendant bears the burden to demonstrate that an error occurred, that the error was clear or obvious, and that the error affected his or her substantial rights. *Id*. In order to establish the last element, the defendant must show that the error "affected the outcome of the lower court proceedings." *Id*. Even if the defendant established a plain error that affected his or her substantial rights, the appellate court will not automatically grant relief. *Id*. Rather, the appellate court "must exercise its discretion in deciding whether to reverse." *Id*. Reversal will be "warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant" or when the error "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. (citation and quotation marks omitted; alteration in original). When an alleged error is waived, as in this case, the alleged error is extinguished.

3. WAIVER AND PRESERVATION

In this case, defendant waived any challenge to the scoring of OV 5. Waiver is "the intentional relinquishment or abandonment of a known right." *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (citation and quotation marks omitted). If a defendant has waived a right, appellate review may not be conducted because the waiver extinguished the error. *Id*. When a defendant clearly expresses satisfaction with a decision of the trial court, they have waived that right. *Id*. While defense counsel at the sentencing hearing initially indicated he did not believe OV 5 applied, he agreed to address the issue further after the victim's family members made their statements. As set forth above, after the statements of the victim's family, defendant expressly agreed that the scoring of OV 5 was correct. He therefore waived his right to appeal this OV.

However, we may still analyze his argument regarding OV 5 because of defendant's claim of ineffective assistance of counsel related to this OV. See *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006) (stating that if a defendant fails to preserve the issue of sentencing, they "cannot raise the error on appeal except where otherwise appropriate, as in a claim of ineffective assistance of counsel").

A defendant's claim of ineffective assistance of counsel is preserved if defendant moves for a new trial or an evidentiary hearing in the trial court. *People v Head*, 323 Mich App 526, 538-539; 917 NW2d 752 (2018). Filing a motion in this Court to remand for an evidentiary hearing on the issue of ineffective assistance of counsel also preserves a defendant's claim. *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020). Because defendant did not move for a new trial or an evidentiary hearing, even this issue is unpreserved.

4. STANDARD OF REVIEW

"Generally, whether a defendant had the effective assistance of counsel is a mixed question of fact and constitutional law." *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012) (citation and quotation marks omitted). When a claim of ineffective assistance of counsel is unpreserved, "our review is limited to mistakes apparent on the record." *People v Unger*, 278 Mich App 210, 253; 749 NW2d 272 (2008).

5. ANALYSIS

As set forth above, first, we conclude OV 5 was correctly scored by the trial court. Second, we conclude that defense counsel's agreement with the scoring of OV 5 waives any claim of error. Third, the issue is unpreserved by defendant. Understanding because of the above-stated conclusions, we are not required to continue our analysis, we do so for purposes of completeness.

While the error raised was waived, as discussed above, defendant also contends that his trial counsel was ineffective in failing to challenge the scoring of OV 5. "Accordingly, appellate review of the scoring issue, as it relates to ineffective assistance of counsel, is appropriate." *People v Harmon*, 248 Mich App 522, 530; 640 NW2d 314 (2001).

The United States and Michigan Constitutions guarantee effective assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20. To prevail on a claim of ineffective assistance of

counsel, the defendant must demonstrate "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 the outcome would have been different." *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). A reasonable probability is one that undermines confidence in the result of the trial. *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984). The defendant must identify specific actions by their counsel that constitute ineffective assistance. *Id*. at 690. Counsel is presumed to be effective. *Id*. The defendant bears the burden of proving any deficiency of counsel. *Head*, 323 Mich App at 539.

We begin by addressing whether trial counsel erred by failing to object to the assessment of points for OV 5. We conclude he did not.

"OV 5 is scored when a homicide or homicide-related crime causes psychological injury to a member of a victim's family." *People v Baskerville*, 333 Mich App 276, 292; 963 NW2d 620 (2020) (citation omitted). If a victim's family incurred serious psychological injury that requires professional treatment, OV 5 should be assessed at 15 points. MCL 777.35(1)(a). If not, it should be assessed at 0 points. MCL 777.35(1)(b). In the context of OV 5, " 'serious' is defined as 'having important or dangerous possible consequences.' " *Baskerville*, 333 Mich App at 292 (citation omitted). Considerations include the severity of the injury; the consequences of the injury, such as how the injury has manifested and how it will do so in the future; and whether professional treatment was sought. *Id*. Whether treatment was sought for a psychological injury is not conclusive. MCL 777.35(2). However, the psychological injury to a family member must be sufficiently severe that they *may* seek treatment in the future. *Baskerville*, 333 Mich App at 293 (stating that though the victim's family had not yet sought psychological treatment, "it may be necessary in the future"). Grief is not necessarily equivalent to "the type of serious psychological trauma contemplated in MCL 777.35." *People v Bailey*, 330 Mich App 41, 62; 944 NW2d 370 (2019) (finding that an OV 5 score of 15 points was inappropriate when the victim's wife expressed her grief but did not show other psychological injury).

Less than a month ago, regarding OV 5, our Court, in *People v Felton*, ___ Mich App ___, ___; ___ NW3d ____ (2026) (Docket No. 375518); slip op at 5, Judge CAMERON wrote:

> OV 5 addresses "psychological injury to a member of a victim's family." MCL 777.35(1). 15 points for OV 5 are assessed if "[s]erious psychological injury requiring professional treatment occurred to a victim's family." MCL 777.35(1)(a). Defendant argues that although the victim's family suffered grief, the evidence here did not establish that their grief rose to the level of "serious" psychological injury, and the trial court improperly presumed serious psychological harm based solely on the nature of the offense.
>
> Defendant mischaracterizes the trial court's reasoning. In explaining its decision, the trial court emphasized the victim impact statements it had reviewed, specifically noting the family's statements concerning the victim's recent loss of his father and the cumulative emotional toll on the family. Although the court happened to reference "the nature of the case," it made clear that its ruling rested on the evidence submitted by the victim's family, not a presumption that serious psychological injury necessarily accompanies every homicide. The trial court

> further recognized that professional treatment need not actually have been sought to support assessing OV 5.
>
> The record also refutes defendant's claim that he family suffered only ordinary grief as opposed to "serious" psychological injury. For purposes of OV 5, the word "serious" is defined "as having important or dangerous possible consequences." *People v Calloway*, 500 Mich 180, 186; 895 NW2d 165 (2017) (quotation marks and citation omitted). The victim impact statements describe profound and lasting emotional harm. The victim's aunt stated that the loss "destroyed" her life, leaving her unable to describe her pain and emptiness she was experiencing. The victim's grandmother explained that defendant's actions "left a huge hole in this family that will never close[,]" and his brother discussed the fact that while other kids in his class were "worried about what college they were going to or thinking about their futures[,]" he was "stuck thinking about if [his] family was going to make it through another day." The victim's mother stated that defendant "destroyed" her and "ripped [the victim's family] in half." Most significantly, the victim's parents reported that their daughter had sought counseling because of the psychological impact of the homicide. Thus, there was ample evidence to support the trial court's 15-point assessment for OV 5.

In this case at sentencing, Jones's mother stated that it had been "so hard knowing that my child is not coming. . . . I miss him so much. It hurts." She also said that Jones's death was hard on his three children. Jones's sister expressed that his death "changed our entire family, and the community for life. Some of us was angry, some of us was confused and in denial, and in shock. Most of us was even hurt." Jones's father stated that he forgave defendant and prayed defendant would take steps to become a better person.

While the statements of the victim's family at sentencing in this case were not as detailed as in *Felton,* they were nonetheless more than sufficient to demonstrate that the Jones family members experienced serious psychological injury that may require professional treatment beyond the grief caused by losing a family member. There was discussion of the generational impact this will have on the victim's family, including his three young children. The unobjected conclusion of the trial judge set forth above was by no means an abuse of discretion. It was a sound, well-reasoned and principled decision, adequately supported by the record and statements the trial court judge—who presided over the entire jury trial—had just heard from the murder victim's family, in addition to the PSIR statements.[4]

[4] We acknowledge that defense counsel at sentencing, immediately before he indicated he no longer objected to OV 5, cited the court to *People v Jaber*, unpublished opinion of the Court of Appeals, issued March 11, 2021 (Docket No. 352092), stating that it was "exactly what happened here where the mother's tears and inability to speak at sentencing convey a serious psychological injury . . . ." even though our Supreme Court had vacated and reversed the relevant portion of *Jaber* by the time of this sentencing hearing. *People v Jaber*, 511 Mich 895, 895-896 (2023). The

We find that OV 5 was scored properly. We further find defense counsel was not ineffective for not objecting to its scoring because it is not ineffective assistance of counsel to not raise a meritless objection. See *People v Ericksen,* 288 Mich App 192, 201; 793 NW2d 120 (2010) ("Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel.").

D. OV 6

Defendant argues that the trial court erred in assessing OV 6 because its determination was not supported by evidence in the record. This issue is waived because defendant failed to include it in his statement of the questions presented. *Unger*, 278 Mich App at 262. Unlike OV 5, defendant does not challenge trial counsel's effectiveness with respect to the trial court's assessment of points for OV 6. Thus, we will not consider this issue.

III. CONCLUSION

Because we find no errors warranting relief for defendant in the trial court below, either in the findings portion or sentencing portion of the case, we affirm.

/s/ Anica Letica
/s/ Colleen A. O'Brien
/s/ James Robert Redford

Court wrote "[P]sychological injury cannot be inferred from the fact that the victim's mother did not speak at sentencing, as the record is silent as to why she did not speak."

Had the trial court relied solely, or even in principal part, on a family member being too upset to speak as a basis for OV 5, our result might be different; but that is not the case in the matter at bar. The trial court did not abuse its discretion in awarding 15 points for OV 5.