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

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v ADRIAN CALDWELL, Defendant-Appellant.	UNPUBLISHED August 13, 2026 1:29 PM No. 373281 Wayne Circuit Court LC No. 21-007506-01-FC

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

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to murder (AWIM), MCL 750.83, being a felon in possession of a firearm (FIP), MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and two counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced, as a second-offense habitual offender, MCL 769.10, to 216 to 336 months' imprisonment for the AWIM conviction, 14 months to 5 years' imprisonment for the FIP conviction, each to be served consecutively to the mandatory two-year prison term for their accompanying felony-firearm conviction, but concurrently with each other and a term of 14 months to 5 years' imprisonment for the CCW conviction. On appeal, defendant contends that his due process right to a fair trial was violated because the trial court erroneously admitted evidence that he was returned from Florida to face these charges, instructing the jury on flight. Defendant asserts that the trial court denied him his due process right to a fair trial by erroneously admitting evidence that he was subsequently found in possession of a 9mm firearm. Finally, defendant claims that he is entitled to resentencing because the trial court misscored several sentencing guidelines Offense Variables (OVs). Finding no error, we affirm.

I. FACTUAL BACKGROUND

This case arises from a shooting following an automobile accident in Detroit. On October 1, 2020, as the victim was attempting to make a left turn, another vehicle struck his vehicle. As the victim got out of his vehicle to talk to the other driver and exchange insurance

information, he heard defendant say, "I'm finna[1] kill this n****." The victim heard another voice say: "[C]hill out." But then he heard defendant respond: "[F]*** that * * * I'm finna kill this n****." Defendant walked across a parking lot toward the victim and said: "Imma[2] kill you." The victim responded: "What?" Defendant then repeated: "[N]****, you dead." When defendant was about eight or nine feet away from the victim, defendant raised a handgun and fired approximately six or seven shots. Two bullets struck the victim, and one struck his vehicle as he was running back to it. One bullet hit victim's right index finger; another, his right thigh. After firing the gun, defendant ran away. Videos from a gas station capturing the car accident and shooting were played for the jury.

The victim managed to get inside his vehicle and drive to his sister's house. 911 was contacted, and the police and emergency medical services responded. At the scene of the shooting, the police recovered seven 9mm cartridge casings.

On October 15, 2020, the prosecutor's office issued criminal charges against defendant. And, on November 18, 2020, defendant was extradited to Michigan from Florida to face these charges.

On August 2, 2023, Detroit Police Officer Diego Fragoso was on patrol and observed an imprint of a gun in defendant's pocket. Officer Fragoso asked defendant if he had a concealed pistol license. Defendant answered that he did not. Officer Fragoso recovered a black 9-millimeter handgun from defendant's right waistband and instructed defendant to put his hands behind his back.

A forensic scientist in the firearms and tool marks unit for the Michigan State Police examined the 9-millimeter handgun recovered from defendant and the seven shell casings recovered from the crime scene. She concluded that the seven recovered cartridge cases were "all identified as having been fired in the same firearm . . . ." And, after test firings, she concluded that it was possible that the seven casings were fired from the recovered handgun, but it was also possible that they were not fired from the handgun. The reason for this inconclusive result was that "[t]he marks were not reproducing well between the test shots and the fired evidence that [was] received."

On August 8, 2023, defendant failed to appear for a scheduled trial date in this case. But he was eventually extradited from Arizona back to Michigan in February 2024.

Before trial, defendant moved to exclude the evidence of his August 2023 arrest, including the evidence of the handgun. The trial court denied this motion. Additionally, defendant moved to exclude the evidence that he was extradited from Florida. The trial court granted this motion in part.

At the end of defendant's trial, the trial court instructed the jury about flight:

---

[1] In informal speech, "finna" means fixing to or about to or going to.

[2] "Imma" is a casual slang contraction of "I am going to" or "I'm gonna."

> There has been some evidence that the defendant ran away after the alleged crime. This evidence does not prove guilt.
>
> A person may run or hide for innocent reasons such as panic, mistake, or fear.
>
> However, a person may also run or hide because of consciousness of guilt. You must decide whether the evidence is true, and if true, whether it shows that the defendant had a guilty state of mind.

Defendant was found guilty of the charged offenses.

At sentencing, defendant objected to the scoring of OVs 3, 6, and 19. The trial court rejected defendant's challenges and sentenced defendant as described above. This appeal followed.

II. THE FLORIDA EXTRADITION AND THE FLIGHT INSTRUCTION

Defendant argues that the trial court deprived him of his constitutional right to a fair trial by admitting evidence that he was extradited from Florida and instructing the jury about flight. We disagree.

A. ISSUE PRESERVATION

"Generally, an issue is not properly preserved if it was not raised before, addressed, or decided by the trial court." *People v Butsinas*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 364778); slip op at 26. And "[a]n objection on one ground is insufficient to preserve an issue on a different ground." *Id*. Moreover, "[a] party must object or request a given jury instruction to preserve the error for review." *People v Sabin (On Second Remand)*, 242 Mich App 656, 657; 620 NW2d 19 (2000). See also MCL 768.29; MCR 2.512(C).

Before trial, defendant challenged the admission of evidence pertaining to his presence in Florida. Specifically, defendant claimed that he was not involved in the shooting, and that he was not "aware that he was a suspect in a criminal investigation" or of the "charges until he was arrested." Therefore, defendant's conduct was not flight because one could not flee from something he was unaware of, especially when he had the right to travel.

The prosecution opposed defendant's motion. After defendant was charged on October 15, 2020, he was arrested in Florida on November 18, 2020, and extradited to Michigan. And even though there was no requirement that defendant be aware of his status as a suspect in a criminal investigation before the flight instruction was given, the prosecution had established probable cause to believe that defendant committed the charged offenses because he was bound over after a preliminary examination.

At the hearing on defendant's motion, defense counsel continued to maintain that defendant was not the perpetrator; however, the prosecutor had two witnesses who had positively identified defendant as the shooter. The court agreed with defendant that "[a] witness singularly testifying that the arrest location was in Florida [would] not be allowed." But if the testimony "pertain[ed]

to the [defendant's] presence in Florida," the court would "hear motions on that testimony at the appropriate time." The court clarified that its ruling was conditional and depended on the testimony presented during trial.

At trial, defense counsel again challenged testimony about his presence in Florida. The trial court continued to prohibit testimony that "the arrest location was in Florida"; however, it permitted testimony about defendant's "presence in Florida, other than just the arrest . . . ." In other words, if an officer was testifying about the "progression of the investigation," that was allowed.

Thereafter, a sergeant with the Detroit Police Department testified, without objection, that he "learned that the defendant was extradited from Florida in November," 2020, which was about a month after the shooting took place. And a detective, who subsequently became the officer in charge in this case, testified that he had the opportunity to review photographs of defendant from the time he had to be extradited from Florida in 2020.

In closing argument, defense counsel maintained that defendant had been misidentified as the perpetrator and was not involved in shooting the victim. In fact, counsel recalled that during jury selection, it was recognized that a person who was falsely accused might have a flight response rather than a fight response.

In rebuttal, the prosecutor began discussing defendant's flight to Florida, drawing an objection, which the court sustained. The court explained it had determined that it could be mentioned that defendant "was found in Florida, not that it was flight." The court informed the prosecutor that she could say defendant was located or apprehended in Florida. The prosecutor then moved on, talking about defendant's flight to Arizona. The prosecutor later said that innocent men did not flee out of state twice, which drew an objection; however, the court permitted the prosecutor to say that they "don't have to be extradited twice."

After the jury was excused, defense counsel wanted to make a record about the prosecutor's argument. The prosecutor again apologized for using the word flee, explaining why she believed she had complied with the court's ruling. The court then explained that the "problem was that there was no evidence of the defendant's knowledge of the charges[.]" The prosecutor responded that defendant was seen on the video running away or fleeing. The court replied: "Now that I think about it, you could have said that. You could have said he made it all the way to Florida."

At sentencing, defense counsel again raised what occurred during the prosecutor's rebuttal argument. In response, the court remarked that "flight should have been mentioned." The court explained that when it made its pretrial ruling, it was unaware that an "exhibit [the video] was going to be entered showing flight from the scene. * * * If the Court would have been aware of flight at the scene, [it] probably – there's a high chance [it] would have ruled differently."

Thus, defendant preserved the evidentiary issue of his presence in Florida being characterized as flight via repeated objection. But defendant did not object that admitting the evidence would violate his constitutional due process right to a fair trial or to the jury instruction concerning flight. Consequently, those issues are not preserved. *People v Brown*, 326 Mich App 185, 191-192; 926 NW2d 879 (2018).

B. STANDARD OF REVIEW

"The decision whether to admit evidence falls within a trial court's discretion and will be reversed only when there is an abuse of that discretion." *People v Duncan*, 494 Mich 713, 722; 835 NW2d 399 (2013). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes" or "when it makes an error of law." *Id*. at 722-723.

Generally, "[w]e review a claim of instructional error involving a question of law de novo, but we review the trial court's determination that a jury instruction applies to the facts of the case for an abuse of discretion." *People v Everett*, 318 Mich App 511, 528; 899 NW2d 94 (2017) (quotation marks and citation omitted). But we review "unpreserved claim[s] for plain error affecting defendant's substantial rights." *People v Roscoe*, 303 Mich App 633, 648; 846 NW2d 402 (2014). In order to receive relief on a forfeited claim of constitutional or nonconstitutional error, a defendant must prove that (1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights. *People v Carines*, 460 Mich 750, 763-765; 597 NW2d 130 (1999). "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id*. at 763. "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (quotation marks and citation omitted).

C. ANALYSIS

"A criminal defendant is entitled to have a properly instructed jury consider the evidence against him." *People v Armstrong*, 305 Mich App 230, 239; 851 NW2d 856 (2014) (quotation marks and citation omitted). Jury instructions are reviewed "in their entirety to determine if there is error requiring reversal." *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997). "Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them." *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). "The trial court may issue an instruction to the jury if a rational view of the evidence supports the instruction." *Armstrong*, 305 Mich App at 240.

"Evidence that reflects a defendant's consciousness of guilt is relevant." *People v Parrott*, 335 Mich App 648, 680; 968 NW2d 548 (2021). "[E]vidence of flight is admissible to support an inference of 'consciousness of guilt' and the term 'flight' includes such actions as fleeing the scene of the crime." *People v Unger*, 278 Mich App 210, 226; 749 NW2d 272 (2008) (citation and quotation marks omitted; alteration in original). "The term 'flight' has been applied to such actions as fleeing the scene of the crime, leaving the jurisdiction, running from the police, resisting arrest, and attempting to escape custody." *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). "Evidence of an attempt to avoid arrest . . . in a criminal case is relevant, material, admissible, and can lead to an inference of guilt." *Parrott*, 335 Mich App at 680 (quotation marks and citation omitted).

To admit flight evidence, "the prosecutor is not required to prove that defendant left the jurisdiction because he was 'motivated' by fear of apprehension," because it is difficult to prove a person's motives and such a requirement would thus make flight evidence rarely admissible.

People v Smelley, 485 Mich 1023, 1023 (2010). "It is ultimately for the jury to determine whether a defendant's conduct was indicative of consciousness of guilt." *Parrott*, 335 Mich App at 680.

In this case, there was evidence that defendant fled the scene of the crime and left the jurisdiction. In the surveillance video, defendant can be seen running away from the victim after firing his gun several times and he was not present at the crime scene when officers arrived. And defendant was extradited twice from other jurisdictions after the incident giving rise to this case. About a month after the shooting incident, defendant was extradited from Florida back to Michigan. And, after defendant again failed to appear for trial, he was extradited from Arizona. Because there was adequate evidence of defendant's flight, the trial court did not abuse its discretion when it read the flight instruction.

Defendant, however, contends that there was no evidence that he left the jurisdiction to avoid detection or apprehension by police when he traveled to Florida. Again, the prosecutor was not required to show that defendant was motivated by a fear of apprehension. See *Smelley*, 485 Mich at 1023. Because the trial court's instruction was amply supported by a rational view of the evidence and the evidence was properly presented to the jury, defendant has not established that plain error occurred, and he is not entitled to relief on these grounds. *Carines*, 460 Mich at 763-764.

III. FIREARM EVIDENCE

Defendant also argues that he was denied his constitutional due process right to a fair trial when the trial court admitted evidence that he was involved in a collateral crime and possessed an unrelated firearm. We disagree.

A. ISSUE PRESERVATION

Before trial, defendant filed a motion in limine to exclude evidence pertaining to the 9mm firearm seized from him on August 2, 2023. Defendant argued that this evidence was not probative under MRE 401 because the firearms examiner could not conclusively determine that the recovered 9mm shell casings were fired from it. But, even if this evidence was probative, defendant contended that any probative value was substantially outweighed by the danger of unfair prejudice under MRE 403. The trial court denied defendant's motion.

On appeal, defendant raises a constitutional issue, relying in part on MRE 404(b). These arguments are unpreserved.

B. ANALYSIS

"As a starting point, it is important to recognize that all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, [the rules of evidence], or other rules adopted by the Supreme Court." *People v Kroll*, 341 Mich App 217, 234; 989 NW2d 822 (2022) (quotation marks and citation omitted). "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." MRE 401. "A material fact is one that is in issue in the sense that it is within the range of litigated matters in

controversy." *People v Sabin (After Remand)*, 463 Mich 43, 57; 614 NW2d 888 (2000) (quotation marks and citations omitted). MRE 403 provides: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

Under MRE 404(b)(1), "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." However, "[i]f it is material, the evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident." MRE 404(b)(2).

In *People v Hall*, 433 Mich 573, 575; 447 NW2d 580 (1989), the defendant was involved in committing an armed robbery with a sawed-off shotgun at a videotape rental store. The defendant was arrested over seven months later, and officers found a sawed-off shotgun in the defendant's vehicle. *Id*. at 575–577. On appeal, our Supreme Court considered whether MRE 404(b) precluded the admission of evidence surrounding the defendant's arrest, including his possession of the shotgun. *Id*. at 575. The Court held that, "as direct physical evidence of the commission of the armed robbery, the shotgun was properly admitted notwithstanding the fact that mere possession of it was a distinct criminal offense." *Id*. And it further held that "the testimony of the various witnesses to the circumstances surrounding the defendant's arrest was admissible to establish the defendant's possession and control of both the shotgun and a vehicle similar to the one used in the charged robbery." The Court then concluded that "[i]n both instances, admissibility [was] governed by MRE 401 and not, as defendant claims, by MRE 404(b). *Id*. The Court explained that evidence of the defendant's "possession of a weapon of the kind used in the offense with which he is charged is routinely determined by courts to be direct, relevant evidence of his commission of that offense." *Id*. at 580-581.

Thus, "[i]n *Hall*, the Supreme Court determined that both the gun and the testimonial evidence of defendant's possession of it and the car . . . were clearly relevant to make the defendant's identity as the gunman in the charged robbery more probable . . . than it would be without the evidence." *People v Murphy (On Remand)*, 282 Mich App 571, 579-580; 766 NW2d 303 (2009) (quotation marks and citation omitted). And "the appropriate test is not whether sufficient evidence existed to convict defendant of constructively possessing the shotgun, but whether the circumstances surrounding the gun's discovery tended to establish defendant's connection to it." *Id*. at 580.

In this case, Officer Fragoso observed defendant with a gun in his waistband on August 2, 2023. After defendant stated that he did not have a concealed pistol license, Officer Fragoso recovered a black 9-millimeter handgun from defendant's right waistband. Though defendant was separately charged for that incident, his additional charges were not presented at trial. Instead, the forensic examiner who analyzed the 9-millimeter handgun and the seven shell casings found at the scene of the October 1, 2020 shooting, concluded that the 9-millimeter handgun recovered from defendant in August 2023 was not ruled out as having possibly fired the shell casings. In other words, it was possible that the seven casings were fired from the recovered handgun, but it was also possible that they were not fired from the firearm.

Even though the shell casings were not conclusively determined to be from the handgun, the evidence of defendant's arrest and the firearm analysis demonstrated that defendant was in control of a weapon of the same kind that was used in the shooting and that could have been used in the shooting. The evidence tended to prove defendant's identity as the shooter. *Murphy*, 282 Mich App at 579-580. The admissibility of the circumstances surrounding defendant's arrest was governed by MRE 401, not MRE 404(b). *Hall*, 433 Mich at 575. As in *Hall*, the circumstances surrounding defendant's arrest were admissible to establish his possession and control of the handgun similar to the one used in the shooting. *Id*. This evidence was direct and relevant evidence of the commission of the offense. *Hall*, 433 Mich at 580-581.

Recognizing that the firearm evidence might be relevant, defendant argues that its admission was substantially more prejudicial than probative and should have been excluded under MRE 403. We disagree.

"All relevant evidence will be damaging to some extent. The fact that evidence is prejudicial does not make its admission unfair." *Murphy*, 282 Mich App at 582-583 (citation omitted). "Unfair prejudice may exist where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence." *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008). Defendant has not shown that unfair prejudice substantially outweighed the probative value of the evidence.

Moreover, the trial court read a limiting instruction to the jury:

> You heard evidence that was introduced to show the defendant was in possession of a firearm, 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 if the gun recovered from the defendant on August 2nd, 2023, was the same gun used in the shooting back on October 1st of 2020.
>
> You must not consider this evidence for any other purpose. For example, you must not decide that it shows that the defendant is a bad person, or that he is likely to commit crimes.

"A limiting instruction generally suffices to enable the jury to compartmentalize evidence and consider it only for its proper purpose." *People v Mardlin*, 487 Mich 609, 629; 790 NW2d 607 (2010) (quotation marks, brackets, ellipsis, and citation omitted). And a jury is presumed to have followed the trial court's instructions. *People v Zitka*, 335 Mich App 324, 348; 966 NW2d 786 (2020). Moreover, the record supports that the prosecutor never argued to the jury that an aspect of defendant's character, or that his alleged participation in a different crime, established his guilt in the charged crimes in the present matter. Consequently, the trial court did not abuse its discretion by admitting evidence of defendant's arrest and the firearm recovered from him and defendant has not established that he was denied his due process right to a fair trial.

IV. SENTENCING

Defendant further argues that he is entitled to resentencing because the trial court erred when it assigned points to OVs 3, 6, and 19. We disagree.

A. STANDARD OF REVIEW

"Under the sentencing guidelines, a trial court's findings of fact are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Thompson*, 314 Mich App 703, 708; 887 NW2d 650 (2016). "Clear error is present when the reviewing court is left with a definite and firm conviction that an error occurred." *People v Fawaz*, 299 Mich App 55, 60; 829 NW2d 259 (2012) (quotation marks and citation omitted). But "we review de novo whether the facts as found were adequate to satisfy the statutory scoring conditions." *People v Carlson*, 332 Mich App 663, 666; 958 NW2d 278 (2020). "When calculating the sentencing guidelines, a court may consider all record evidence, including the contents of a [presentence investigation report], plea admissions, and testimony presented at a preliminary examination." *People v McChester*, 310 Mich App 354, 358; 873 NW2d 646 (2015).

B. ANALYSIS

Although the sentencing guidelines are advisory, trial courts must still properly score the guidelines and must consider them when sentencing a defendant. *People v Steanhouse*, 500 Mich 453, 474-475; 902 NW2d 327 (2017). A defendant is entitled to be resentenced if "there was a scoring error" that "altered the appropriate guidelines range[.]" *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006).

1. OV 3

Defendant argues that the trial court erred in assessing OV 3. We disagree.

OV 3 addresses physical injury to a victim. MCL 777.33(1). The sentencing court must assess 25 points when "[l]ife threatening or permanent incapacitating injury occurred to a victim." MCL 777.33(1)(c). But the trial court must assess 10 points when "[b]odily injury requiring medical treatment occurred to a victim." MCL 777.33(1)(d). By definition, "OV 3 does not assess whether a *defendant's actions* were life-threatening; rather, OV 3 assesses whether a *victim's injuries* were life-threatening." *People v Rosa*, 322 Mich App 726, 746; 913 NW2d 392 (2018). The term "life-threatening" means "capable of causing death: potentially fatal," and requires "some evidence indicating that the injuries were, in normal course, potentially fatal." *People v Chaney*, 327 Mich App 586, 589, 590-591; 935 NW2d 66 (2019) (footnote omitted). For example, "in the context of a shooting for which a defendant is charged with assault with intent to murder[,] [i]f the gunshot resulted in the victim's nearly bleeding to death, the victim suffered a life-threatening injury, and OV 3 should be scored accordingly." *Rosa*, 322 Mich App at 746.

In advocating for 25 points to be assessed, the prosecutor observed that the victim told her that "he still has issues today with his hand," but she did not believe that it was permanently incapacitating. But she maintained that he suffered life-threatening injuries at the time he was shot, spending time in the hospital and enduring follow-up medical treatment.

Defense counsel objected because there was no testimony to support that the victim suffered a permanent incapacitating injury. Nor did the victim suffer a life-threatening injury.

The prosecutor again agreed that the victim's injuries were not permanently incapacitating. But, because the victim was shot in the upper thigh and several arteries run through one's leg, this was a life-threatening injury. And, after the court interjected that it thought that the victim had "referenced some nerve problems," the prosecutor affirmed that occurred with the victim's hand. That injury, the prosecutor contended was also life-threatening, noting that the victim's 350-page medical record demonstrated the extent of his injuries.

Defense counsel responded that the possibility of a life-threatening injury was not the issue. A tourniquet was placed on the victim's leg and the victim said that he felt fine in that moment and there was no indication that his life was in danger.

The trial court assessed 25 points for OV 3. It concluded that the victim suffered a permanent incapacitating injury, evidenced by his "testifying about problems with his nerves." And, "but for him being shot, his nerves would not be incapacitated."

Our review of the record does not establish that the victim testified about nerve issues with his hand. Instead, the prosecutor's sentencing memorandum reflects: "In conversation with [the victim], he indicated . . . that he still has issues with his hand to this date, nearly four years later." Curiously, the prosecutor opined that the victim's finger injury was not permanently incapacitating, but life-threatening. Although we do not agree with the trial court's analysis, the record reflects that the victim was bleeding from his injuries, required emergency responders to apply a tourniquet to stem the bleeding from his thigh, and lost consciousness before being hurriedly transported to the hospital. Because the trial court reached the right result, albeit for the wrong reason, we affirm its decision to assess 25 points for OV 3.[3]

2. OV 6

Defendant challenges the trial court's finding that he had premeditated intent warranting an assessment of 50 points for OV 6. We disagree.

OV 6 addresses "the offender's intent to kill or injure another individual." MCL 777.36(1). OV 6 is scored when a defendant is convicted of "homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with the intent to commit murder." MCL 777.22(1). The sentencing court must assess 50 points for OV 6 when "[t]he offender had premeditated intent to kill . . . ." MCL 777.36(1)(a). But when "[t]he offender had unpremeditated intent to kill, the intent to do great bodily harm, or created a very high risk of death or great bodily harm knowing that death or great bodily harm was the probable result," the sentencing court must assess 25 points for OV 6. MCL 777.36(1)(b). "The sentencing judge [must] score this variable consistent with a

[3] We note that defendant would not be entitled to resentencing even if we accepted his argument that the evidence supported only a 10-point assessment for OV 3 because the resultant 15-point reduction would not alter his sentencing guidelines grid. See *Francisco*, 474 Mich at 88.

jury verdict unless the judge has information that was not presented to the jury." MCL 777.36(2)(a).

"The elements of assault with intent to commit murder are: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005) (quotation marks, citation, and footnote omitted). Because murder can occur absent premeditation, premeditation is not an element of assault with intent to murder. Compare MCL 750.316(1)(a) (First-degree murder includes "[m]urder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.") with MCL 750.317 ("All other kinds of murder shall be murder of the second degree.").

"Premeditation is not statutorily defined and cannot be evaluated in 'a rigid and mechanical' manner." *People v Walker*, 330 Mich App 378, 383; 948 NW2d 122 (2019), quoting *People v Oros*, 502 Mich 229, 240-241; 917 NW2d 559 (2018). "[P]remeditation may be established by circumstantial evidence tending to show that a defendant had an opportunity to think about, evaluate, or take a 'second look' at their actions." *Id*., quoting *Oros*, 502 Mich at 242-244. "[F]actors that may be considered to establish premeditation include: (1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; and (3) the circumstances of the [crime] itself, including the weapon used and the location of the wounds inflicted." *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). "Premeditation, which requires sufficient time to permit the defendant to take a second look, may be inferred from the circumstances surrounding the killing." *People v Coy*, 243 Mich App 283, 315; 620 NW2d 888 (2000). "To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem." *People v Woods*, 416 Mich 581, 599 n 2; 331 NW2d 707 (1982) (quotation marks and citation omitted).

> Premeditation and deliberation may be established by an interval of time between the initial homicidal thought and ultimate action, which would allow a reasonable person time to subject the nature of his or her action to a 'second look.' . . . While the minimum time necessary to exercise this process is incapable of exact determination, it is often said that premeditation and deliberation require only a "brief moment of thought' or a "matter of seconds." [*Oros*, 502 Mich at 242-243 (brackets, quotation marks, and citations omitted).]

Although defendant and the victim did not have a relationship, the trial court determined that there was sufficient time for defendant to have a second look. Defendant got out of his car and was urged by another to chill out, before he repeated that he wanted to kill the victim. Defendant then walked across a gas station parking lot toward the victim. Defendant retrieved his gun from his pocket, telling the victim that he was going to kill him and that the victim was "dead" before firing shots at him. The surveillance footage shows that about a minute passed between the car accident and defendant firing the gunshots. Defendant continued to fire as the victim ran to his vehicle. Defendant fired seven shots before running away.

A preponderance of the evidence supports the conclusion that there was sufficient time between the accident and the shooting for a reasonable person to subject his actions to a second look. And, after determining that defendant had premeditated intent to kill the victim, the trial court did not clearly err by assessing 50 points for OV 6.

3. OV 19

Defendant argues that the trial court improperly assessed 10 points for OV 19. We disagree.

A sentencing court must assess 10 points for OV 19 when defendant "otherwise interfered with or attempted to interfere with the administration of justice[.]" MCL 777.49(c). "[T]he plain and ordinary meaning of 'interfere with the administration of justice' for purposes of OV 19 is to oppose so as to hamper, hinder, or obstruct the act or process of administering judgment of individuals or causes by judicial process." *People v Hershey*, 303 Mich App 330, 343; 844 NW2d 127 (2013). "Because OV 19 specifically provides for the 'consideration of conduct after completion of the sentencing offense,' conduct that occurred after an offense was completed may be considered when scoring the offense variable." *People v Smith*, 488 Mich 193, 202; 793 NW2d 666 (2010), quoting *People v McGraw*, 484 Mich 120, 133-134; 771 NW2d 655 (2000). "OV 19 is generally scored for conduct that constitutes an attempt to avoid being caught and held accountable for the sentencing offense." *People v Sours*, 315 Mich App 346, 349; 890 NW2d 401 (2016).

The trial court assessed 10 points for OV 19, stating: "There were two extraditions in this case. [Defendant] was unaccounted for on the day of trial." In November 2020, a month after the incident, defendant was found in Florida and extradited back to the state. And, after defendant failed to appear for an August 2023 trial date, he was found in Arizona and extradited back to Michigan in February 2024. Consequently, the trial court properly assessed 10 points for OV 19 because it did not clearly err in determining that defendant's actions amounted to attempts to avoid accountability for the sentencing offense and interfere with the administration of justice.

Affirmed.

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