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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v MARKEL RACHI STOKES II, Defendant-Appellant.	UNPUBLISHED November 02, 2026 3:00 PM No. 375094 Oakland Circuit Court LC No. 2022-281237-FC

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(e) (actor armed with a weapon); unlawful imprisonment, MCL 750.349b; and larceny in a building, MCL 750.360. He was sentenced to 285 to 600 months' imprisonment for each CSC-I conviction, five to 15 years' imprisonment for the unlawful-imprisonment conviction, and one to four years' imprisonment for the larceny in a building conviction. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arose when the victim was conducting business as a sex worker out of a hotel. After renting a room, the victim began making appointments with clients with her cellular phone. In the early morning, the victim left her room to get ice from the machine across the hall. As the victim left, she noticed defendant exiting the elevator. The victim took her ice and returned to her room when defendant approached her from behind. Defendant pressed a serrated knife to the victim's throat and told her to follow his commands.

Defendant forced the victim into her hotel room, ordered her to remove her clothes, and told her to get on her knees by the window. The victim complied, and defendant removed his pants. While armed with the knife, defendant forced the victim to perform oral sex on him. Defendant ejaculated in the victim's mouth, and she spat his ejaculate out on the floor by the window. Defendant then forcefully penetrated her vagina with his penis.

Defendant continued assaulting the victim for three hours. Periodically, defendant would stop and search through the victim's belongings. Defendant searched the victim's luggage, purse, and wallet, removing several items, including $400, the purse itself, her cellular phones, and some articles of clothing. Once defendant finished assaulting the victim, he forced her to take a shower and brush her teeth. The victim complied, and when she finished, defendant told her to clean the hotel room with the disinfecting wipes she had with her.

After cleaning the room, defendant tied the victim's arms and legs with an electrical cord taken from the iron and the computer in the hotel room. Defendant then placed one of the victim's adult toys in her mouth and wrapped a sheet around her head as a blindfold. Defendant left the room. The victim then waited about 20 minutes before freeing herself and calling the police.

Officer Daniel Palmateer of the Southfield Police Department (SPD) spoke with the victim at the hotel. Nick Cazan of the SPD photographed the hotel room and the victim's arms and legs, and collected DNA swabs from the area where the victim claimed she spat out defendant's ejaculate. Sergeant Lawrence Tomasino of the SPD collected the hotel's surveillance video and identified an individual matching the victim's description of her assailant entering and leaving the hotel.

The police obtained defendant's cellular phone number and a picture of him. Detective Sabahudin Livadic of the SPD generated a photographic array with defendant's picture, and the victim identified defendant as her assailant. Livadic sent an "emergency ping" to defendant's cellular phone and obtained its location. He sent officers to arrest defendant, but they were unable to locate him at that time. Later, Livadic was contacted by the Taylor Police Department (TPD) that they had defendant in custody on a separate matter. Livadic then arrested defendant and confiscated the items defendant had when he previously was arrested, including a folding, serrated knife.

The prosecution offered a plea bargain to defendant whereby he would plead guilty to two counts of third-degree criminal sexual conduct (CSC-III), MCL 750.520d, and the unlawful-imprisonment charge, with a sentencing agreement of 10 to 15 years' imprisonment and compliance with the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq*. The prosecution noted that defendant had a charge for "capital murder" in West Virgina and acceptance of the plea offer would result in West Virgina dropping that charge as well. Defendant confirmed that he spoke with his counsel about the plea offer and its consequences but rejected it, requesting a trial.

At trial, second-chair defense counsel[1] briefly asserted in her opening statement that this case was about consent. The victim provided her account of the assault and described the knife that defendant used as jagged. On cross-examination, the victim admitted that she was expecting a client when defendant assaulted her and could not provide a description of her stolen items.

Cazan noted that he did not observe any substance on the carpet where the victim said she spat out defendant's ejaculate, but he still swabbed for DNA. Livadic reported that the swab

[1] Defendant was represented by two attorneys from the Oakland County Public Defender office.

contained no seminal fluid. The knife recovered from defendant was entered into evidence through Livadic, and he described it as having a serrated edge.

Before closing arguments, the prosecution moved to preclude defendant from arguing the defense of consent, arguing that there was no evidence of the victim's consent introduced at trial. Defense counsel agreed and stated that he did not plan on raising such an argument. The trial court granted the prosecution's motion, and defendant was found guilty as charged. At sentencing, defendant maintained his innocence. He was sentenced as noted. This appeal followed.

II. INEFFECTIVE ASSISTANCE OF COUNSEL[2]

Defendant argues that defense counsel was ineffective during plea negotiations for failing to advise him of the collateral consequences of proceeding to trial, and at trial for discussing consent during opening statement but failing to actually present evidence of consent. We disagree.

A. STANDARD OF REVIEW

"The question whether defense counsel performed ineffectively is a mixed question of law and fact; this Court reviews for clear error the trial court's findings of fact and reviews de novo questions of constitutional law." *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012). However, because the trial court did not conduct a hearing under *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), this issue is unpreserved. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012). "This Court reviews unpreserved claims of ineffective assistance of counsel for errors apparent on the record." *People v Spaulding*, 332 Mich App 638, 656; 957 NW2d 843 (2020).

B. ANALYSIS

The Michigan and United States Constitutions guarantee criminal defendants the right to counsel. See Const 1963, art 1, § 20; US Const, Am VI. "The constitutional right to counsel is not merely the right to have a lawyer stand or sit nearby; rather, a criminal defendant has the right to the effective assistance of counsel." *People v Otto*, 348 Mich App 221, 231; 18 NW3d 336 (2023). "A defendant must meet two requirements to warrant a new trial because of the ineffective assistance of trial counsel." *People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 676 (2011). "To establish a claim of ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *People v Fyda*, 288 Mich App 446, 450; 793 NW2d 712 (2010). "Trial counsel's performance is deficient when it falls below an objective standard of professional reasonableness." *People v Hughes*, 339 Mich App 99, 105; 981 NW2d 182 (2021). "The performance prejudiced the defense if it is reasonably probable that, but for counsel's error, the result of the proceeding would have been different." *Fyda*, 288 Mich App at 450.

[2] In addition to the brief filed by appellate counsel, defendant submitted a Standard 4 brief on his own behalf. Because both briefs raise an issue of ineffective assistance, we will discuss those two issues together.

1. PLEA NEGOTIATIONS

"As at trial, a defendant is entitled to the effective assistance of counsel in the plea-bargaining process." *People v Douglas*, 496 Mich 557, 591-592; 852 NW2d 587 (2014). "A defendant seeking relief for ineffective assistance in this context must meet [*Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984)]'s familiar two-pronged standard[.]" *Id*. at 592. "In demonstrating prejudice, the defendant must show the outcome of the plea process would have been different with competent advice." *Id.* (quotation marks and citation omitted). "The defendant has the burden of establishing the factual predicate of his ineffective assistance claim." *Id*.[3]

Defendant argues that "defense counsel failed to fully inform him about the substance of the plea deal offered by the prosecution, or fully explain that a conviction [of CSC-I]" would result in lifetime electronic monitoring. See *People v Cole*, 491 Mich 325, 327; 817 NW2d 497 (2012).

Initially, we note that defendant was advised of the plea offer and rejected it on the record. The prosecution placed the plea offer on the record at a July 23, 2024 pretrial hearing. Under the terms of the plea offer, defendant would plead guilty to two charges of CSC-III and one charge of unlawful imprisonment, and the prosecution would dismiss the two CSC-I charges and the larceny-in-a-building charge. The sentence agreement also provided for 10 to 15 years' imprisonment and compliance with SORA. After the plea offer was placed on the record, the following exchange occurred:

> *The Court*: [Defendant], have you had an adequate opportunity to talk to your lawyer about what that offer means and the different possible outcomes?
>
> *The Defendant*: Yes.
>
> *The Court*: Okay. And you're comfortable—you don't want to—you do not want to accept that plea offer, and . . . you want this matter to stay on the trial calendar?
>
> *The Defendant*: Yes.

Thus, defendant affirmed on the record that he had discussed the matter with defense counsel, including the "different possible outcomes," and that he wanted to proceed to trial. In

[3] See also *Missouri v Frye*, 566 US 134, 145; 132 S Ct 1399; 182 L Ed 2d 379 (2012) ("[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused."); *Lafler v Cooper*, 566 US 156, 163; 132 S Ct 1376; 182 L Ed 2d 398 (2012) ("In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice.").

other words, defendant informed the trial court he was properly advised of the consequences of the plea offer, such as SORA registration, and asserted his desire to proceed to trial.[4]

Regardless, even if defense counsel failed to properly advise defendant about the possibility of lifetime electronic monitoring and was deficient as a result, there is nothing in the record to indicate that defendant would have accepted the plea offer. See *Douglas*, 496 Mich at 592. As noted, defendant rejected the plea offer on the record and affirmed his desire to proceed to trial. Further, in his affidavit, defendant asserts that he "wanted to testify to prove [his] innocence." Critically, defendant does not even claim in his affidavit that he would have accepted the plea offer. In fact, defendant insisted at sentencing that he was an "innocent man" and that he would be ready to forgive the victim when she decides to tell the truth. Thus, there is nothing in the record indicating a reasonable probability that defendant would have accepted the plea offer had he been advised of lifetime electronic monitoring (or any other such issues arising from the original charges) assuming, as defendant now claims, that defense counsel did not fully advise him of the plea terms beforehand. See *id*. Therefore, even if defense counsel was deficient, defendant cannot demonstrate any prejudice that resulted therefrom. *Id*.[5]

2. OPENING STATEMENT

"Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases." *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). "There is therefore a strong presumption of effective counsel when it comes to issues of trial strategy." *Id*. "We will not second-guess matters of strategy or use the benefit of hindsight when assessing counsel's competence." *Id*.

Defendant observes that second-chair defense counsel's opening statement included an argument about consent, but defense counsel failed to actually present any evidence of consent at trial. Thus, defendant argues, defense counsel performed deficiently by undermining his credibility before the jury. Defendant is correct that defense counsel stated in opening that "this case is rather

[4] In his Standard 4 brief, defendant implies that defense counsel never informed him about the SORA registration requirement before he rejected the plea offer. It is unclear whether defendant is referring to the registration requirement for CSC-I or CSC-III. In any event, the registration requirement is the same for both offenses. See MCL 28.722(v)(*iv*). More importantly, the pretrial transcript shows that defendant was advised of SORA registration on the record for CSC-III. Thus, it is only logical that he was aware that SORA registration also is a requirement for CSC-I.

[5] In his affidavit, defendant asserts that he "was not informed that by pleading guilty, [he] would be subjected to sentencing enhancement on any future felony convictions, under the habitual offenders statutes, nor was [he] informed about any potential defenses to the CSC charge . . . ." However, these allegations, if true, further undermine his *Lafler* claim. Indeed, these type of allegations are commonly made when a defendant seeks to have a guilty plea withdrawn, the exact opposite of a *Lafler* claim where a defendant seeks to have a plea offer reinstated. See *Padilla v Kentucky*, 559 US 356, 359; 130 S Ct 1473; 176 L Ed 2d 284 (2010).

simply straightforward and it, ultimately, kind of, comes down to consent." However, defendant ignores the entirety of counsel's opening statement and his attorneys' presentation of the case.

While defense counsel stated that this case involved consent, her comment was brief. Following her comment, she stated:

> And you're going to hear two sides of the story. And it's going to come from this witness stand, right here. And I'm going to ask you to listen closely to that testimony and what comes from this seat here, as well as the physical evidence that's going to be presented to you.
>
> And I ask that you use your common sense and everyday experiences, just like we talked about in voir dire. And I want you to determine, based upon your common sense and everyday experiences, what side do you believe and what corroborates with the evidence.
>
> And we talked a lot about . . . credibility of witnesses. We talked a lot about that in voir dire, about how you are going to observe somebody in the witness stand to determine whether they're telling the truth or not.
>
> * * *
>
> And again, ladies and gentlemen, I ask at the beginning that you pay close attention to the testimony that comes from the witness stand, as well as the physical evidence, and pay close attention to everything that you hear and see, take good notes, and you will find that [the victim], what she tells you, just doesn't add up.
>
> But the physical evidence tells the truth. And you'll find that the presumption of innocence never shifts in this case. And that the prosecutor had not met their burden of proof.

During trial, defense counsel drew attention to the inconsistencies and other issues in the victim's testimony. For example, the victim was unable to identify the number of clients with whom she met on the night of the assault. The victim did not have documentation of the items taken from her and claimed that the money she lost did not derive from her sex work. The victim was unable to recall how many cellular phones she had at the time.

In closing, defense counsel highlighted such issues and drew attention to the number of coincidences for the victim's testimony to make sense. Defense counsel reiterated the victim's testimony, noting that she was expecting a client at about the same time she claimed that defendant appeared, and the victim happened to leave the room at the exact time defendant exited the elevator. "Somehow, we're supposed to believe that [defendant] just happened to be prowling, that he happened to find [the victim] there, that he took her to the room without consideration of who or whomever might be in there, right." Defense counsel also discussed the lack of fingerprint and DNA evidence.

Accordingly, while defense counsel discussed consent in her opening statement, her comment was brief. Her complete statement indicates that the defense's primary theory was that

the victim was lying and there was no corroborating physical evidence of the alleged crimes. Defense counsel's cross-examination of the victim and closing argument aligned with that theory.

Further, even if defense counsel intended to establish a consent defense, it was a reasonable trial strategy to change that defense after hearing the victim's testimony. See *Odom*, 276 Mich App at 415. While there was evidence that defendant was at or near the hotel that night, there was no forensic evidence that defendant was inside the victim's hotel room. A consent defense would concede that defendant was present and had sexual intercourse with the victim, placing him in the room. By shifting the defense from consent, defense counsel used the inconsistencies in the victim's testimony and the lack of forensic evidence to argue that the prosecution did not meet its burden of proof.

While defense counsel may have intended to use a consent defense, it was reasonable for counsel to change defenses when presented with the victim's testimony and the physical evidence, or lack thereof. Defense counsel is not deficient when a sound trial strategy fails. *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001). Consequently, here, defense counsel was not ineffective. See *Fyda*, 288 Mich App at 450.

III. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the prosecution submitted insufficient evidence to sustain his convictions. We disagree.

A. STANDARD OF REVIEW

"This Court reviews de novo a defendant's challenge to the sufficiency of the evidence supporting his or her conviction." *People v Miller*, 326 Mich App 719, 735; 929 NW2d 821 (2019). "In examining the sufficiency of the evidence, this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012) (quotation marks and citation omitted). "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

B. ANALYSIS

"A challenge to the sufficiency of evidence underpinning a conviction implicates due process. Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to conclude that the defendant is guilty beyond a reasonable doubt." *People v Darga*, 349 Mich App 1, 14; 27 NW3d 298 (2023) (quotation marks and citation omitted). "The prosecution need not negate every reasonable theory of innocence; instead, it need only prove the elements of the crime in the face of whatever contradictory evidence is provided by the defendant." *People v Mikulen*, 324 Mich App 14, 20; 919 NW2d 454 (2018). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). "This Court will not interfere with the trier of fact's role of determining the weight of the

evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

Defendant challenges his convictions of two counts of CSC-I, unlawful imprisonment, and larceny in a building, arguing only that the evidence was insufficient to show his identity as the perpetrator or, relatedly, that the crimes to which the victim testified never occurred. See *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008) (explaining that "identity is an element of every offense").[6]

"[I]t has long been settled that a complainant's testimony regarding a defendant's commission of sexual acts is sufficient evidence to support a conviction for CSC-I." *People v Bailey*, 310 Mich App 703, 714; 873 NW2d 855 (2015). In this case, as noted in footnote six, *supra*, the victim's testimony identifying defendant as the perpetrator was itself sufficient to establish his guilt. See *id*. Nonetheless, defendant asserts that the victim's testimony was inconsistent and contradicted by the lack of DNA and fingerprint evidence, rendering it unbelievable. While defendant is correct about that particular lack of forensic evidence, he ignores other corroborating evidence.

The victim testified that defendant approached her from behind and held a knife to her throat. While the victim identified the knife as a camping knife or machete, she noted that the edge was serrated. The knife that defendant possessed when he was arrested had a serrated edge, which corroborated the victim's testimony. Further, while defendant is correct that there was no incriminating evidence of DNA or fingerprints, the victim explained that defendant forced her to clean the room with sterilizing wipes. Defendant also forced the victim to shower and brush her teeth. Moreover, there was some forensic evidence that supported her testimony. For example, the police confirmed that the victim had marks around her ankles and arms consistent with being tied up with an electrical cord.

Moreover, while Detective Livadic was unable to specifically identify defendant from the surveillance videos, Livadic noted that the individual in the surveillance video matched defendant's description. In addition, the cellular phone data report identified defendant's cellular phone in the area of the hotel during the relevant time frame. Further, the victim identified

[6] Defendant does not challenge the specific elements of his convictions. Regardless, we briefly note that the victim testified that defendant sexually penetrated her on a repeated basis while threatening her with a knife. This testimony was sufficient to sustain the two counts of CSC-I, each of which require sexual penetration accomplished while armed. See *People v Waltonen*, 272 Mich App 678, 687; 728 NW2d 881 (2006). This testimony also was sufficient to sustain the count of unlawful imprisonment, as it establishes that defendant restrained her in the hotel room to assault her. See *People v Kosik*, 303 Mich App 146, 151-152; 841 NW2d 906 (2013). Finally, the victim's testimony that defendant stole her belongings from the hotel was sufficient to sustain the count of larceny in a building. See *People v March*, 499 Mich 389, 401; 886 NW2d 396 (2016).

defendant from a photographic array. For these reasons, there was sufficient evidence supporting defendant's identity as the perpetrator of the offenses.[7]

IV. CONFRONTATION CLAUSE

In his Standard 4 brief, defendant argues that his right under the Confrontation Clause was violated when Detective Livadic testified that defendant possessed a knife when he was arrested, and when the trial court admitted the contents of the cellular phone data report, which indicated that he was in the vicinity of the hotel on the night in question. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

Generally, "[w]hether a defendant's Sixth Amendment right of confrontation has been violated is a question of constitutional law that this Court reviews de novo." *People v Washington*, 514 Mich 583, 592; 22 NW3d 507 (2024). To preserve a Confrontation Clause claim, a defendant must raise an objection in the trial court. See *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004). Because defendant never objected to the challenged testimony or the cellular phone data report on constitutional grounds, this issue is unpreserved. *Id*. Unpreserved Confrontation Clause challenges are "subject to review for plain error." *People v Moorer*, 262 Mich App 64, 68; 683 NW2d 736 (2004). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings." *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

B. ANALYSIS

The United States and Michigan Constitutions protect a defendant's right to confront the witnesses against him. See US Const, Am VI; Const 1963, art 1, § 20. "The right is implicated only for 'testimonial' evidence, because the Confrontation Clause applies to 'witnesses' against the accused—in other words, those who 'bear testimony.' " *People v Bruner*, 501 Mich 220, 227; 912 NW2d 514 (2018), quoting *Crawford v Washington*, 541 US 36, 51; 124 S Ct 1354; 158 L Ed 2d 177 (2004). "The specific protections the Confrontation Clause provides apply only to statements used as substantive evidence." *People v Nunley*, 491 Mich 686, 697; 821 NW2d 642 (2012) (quotation marks and citation omitted). "In particular, one of the core protections of the

[7] Defendant's argument challenging the sufficiency of the evidence might be better characterized as an argument regarding the great weight of the evidence. See *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003) ("The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand."). However, for the reasons explained herein, the verdict does not fail under this standard because it is generally consistent with the evidence.

Confrontation Clause concerns hearsay evidence that is testimonial in nature." *Id.* at 697-698 (quotation marks and citation omitted).

"The Confrontation Clause of the Sixth Amendment bars the admission of testimonial statements of a witness who did not appear at trial, unless the witness was unavailable to testify and the defendant had a prior opportunity to cross-examine the witness." *People v Walker (On Remand)*, 273 Mich App 56, 60-61; 728 NW2d 902 (2006) (quotation marks and citation omitted). "The threshold question for any Confrontation Clause challenge . . . is whether the proffered evidence is testimonial." *Bruner*, 501 Mich at 227. "Testimony is a solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Id*. (quotation marks and citation omitted). "A statement is testimonial if the declarant should reasonably have expected that her statement would be used in a prosecutorial manner and an objective witness would believe that the statement would be available for use at a later trial." *People v Clark*, 330 Mich App 392, 433; 948 NW2d 604 (2019).

1. KNIFE TESTIMONY

Defendant challenges the following brief testimony from Livadic: "Upon executing the search warrant, we learned from one of the police officers in Detroit that made the arrest on [defendant], that they had a knife in evidence that was on his person at the time of the arrest." According to defendant, this improper testimony tainted the chain of custody for the knife that was admitted at trial.

It is debatable whether this isolated statement actually was "testimonial" in nature for the purposes of the Confrontation Clause. See *Bruner*, 501 Mich at 227. Regardless, even assuming that admission of this statement was plainly erroneous under the Confrontation Clause, defendant cannot show prejudice. "In order to obtain the admission of real evidence, a prosecutor must lay a foundation identifying the items as what they are purported to be and displaying that the items are connected with the accused or the crime." *People v Jennings*, 118 Mich App 318, 322; 324 NW2d 625 (1982). "In short, there must be sufficient evidence of (1) the exhibit's identity and (2) its connection to the crime to support its admission at trial." *People v Hence*, 110 Mich App 154, 162; 312 NW2d 191 (1981). Detective Livadic's other testimony provided adequate foundation for the admission of the knife. In particular, Livadic explained that the knife was given to him in "the original package" by Officer Gilbert from the Detroit Police Department (DPD), presumably because Officer Gilbert or another DPD officer seized the knife from defendant when he was arrested. Livadic further explained that he placed the knife in a sealed package with a label and recorded the package "into a system called Beast" for tracking evidence, and that the knife introduced at trial was the same knife involved in this process. Further, defense counsel expressly stated that he had no objection to admission of the knife. Given these facts, there was no plain error by admitting the knife into evidence or by allowing Livadic to briefly testify that defendant possessed the knife when he was arrested. See *Carines*, 460 Mich at 763. Accordingly, even if Livadic's testimony concerning what he learned from the arresting officer was erroneously admitted, his testimony was sufficient for the trial court to admit the knife into evidence, and relief is not warranted for this issue.

2. CELLULAR PHONE DATA REPORT

Defendant argues that the prosecution discussed the contents of the cellular phone data report in his closing argument but the expert who authored the report was never called as a witness, thereby violating the Confrontation Clause. Defendant generally is correct that "a prosecutor cannot introduce an absent laboratory analyst's testimonial out-of-court statements to prove the results of forensic testing." *Smith v Arizona*, 602 US 779, 783; 144 S Ct 1785; 219 L Ed 2d 420 (2024). However, even assuming that this principle equally applies to the cellular phone data report, defendant waived this issue.

The cellular phone data report was admitted by stipulation of the parties. "A stipulation constitutes a waiver of any alleged error, so there is no error for us to review." *People v Eisen*, 296 Mich App 326, 328-329; 820 NW2d 229 (2012). Waiver is "the intentional relinquishment or abandonment of a known right." *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (quotation marks and citation omitted). "A waiver extinguishes the right, as well as any right to pursue an alleged error on appeal." *People v King*, 512 Mich 1, 9; 999 NW2d 670 (2023). Because defendant stipulated to admission of the cellular phone data report, he cannot claim that its admission or the prosecution's use of it during closing argument was erroneous. *Id*.

V. JUDICIAL BIAS

Finally, defendant argues in his Standard 4 brief that the trial judge was biased against him. We disagree.

A. STANDARD OF REVIEW

We review issues of judicial bias de novo. See *In re Susser Estate*, 254 Mich App 232, 236-237; 657 NW2d 147 (2002).

B. ANALYSIS

Under the United States Constitution, no state shall "deprive any person of life, liberty, or property, without due process of law." US Const, Am XIV, § 1. The Michigan Constitution also provides: "No person shall be . . . deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. "It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process." *People v Johnson*, 336 Mich App 688, 693; 971 NW2d 692 (2021) (quotation marks and citation omitted). "The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Id*. at 694 (quotation marks and citation omitted). "A defendant claiming judicial bias must overcome a heavy presumption of judicial impartiality." *People v Jackson*, 292 Mich App 583, 598; 808 NW2d 541 (2011) (quotation marks and citation omitted). "Judicial misconduct may come in myriad forms, including belittling of counsel, inappropriate questioning of witnesses, providing improper strategic advice to a particular side, biased commentary in front of the jury, or a variety of other inappropriate actions." *People v Stevens*, 498 Mich 162, 172-173; 869 NW2d 233 (2015).

Defendant cites two instances in the record for his claim of judicial bias: (1) the trial judge's comments at sentencing expressing her belief in the victim, and (2) the trial judge permitting a Confrontation Clause violation when she allowed the cellular phone data report to be admitted by stipulation.

At sentencing, the trial judge made the following comments:

> I think that [the victim] didn't matter to you. I think that her line of work, in your mind, justified doing whatever you wanted to do to her, without moral consequence. And she does matter, regardless of her line of work. And what she endured is unfathomable, really.
>
> I—I don't know, perhaps, over the next number of years you will have an opportunity to gain an understanding into how decimating what you did to her can be for a person.
>
> And she's a mother, and she's a daughter, and she may be a sister. So all of those—how you just tried to humanize yourself applies to her as well. She has all those people too in her life that love her. You're not the only one that's a human being in that dynamic. But you behaved as if you were the only one who was a human being in the dynamic.
>
> She was a highly credible witness. She was a very compelling witness. And as I indicated to her, and I'll indicate again for the record to you, I have tremendous respect for what she did, and I don't know a lot of people who would have that fortitude, confidence, sense of justice.

Defendant argues that the trial judge's comments show her bias against him because the comments indicate that she believed the victim and disbelieved his innocence. However, because defendant already had been found guilty by the jury, he no longer was presumed innocent. See *Herrera v Collins*, 506 US 390, 399; 113 S Ct 853; 122 L Ed 2d 203 (1993) ("Once a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears."). "Sentencing is the time for comments against felonious, antisocial behavior recounted and unraveled before the eyes of the sentencer." *People v Antoine*, 194 Mich App 189, 191; 486 NW2d 92 (1992). The trial judge expressed her belief that the victim was credible and also noted the victim's respectable behavior during trial. The trial judge's comments were appropriate in the context of sentencing, given the overall circumstances of this case. The comments were neither unfair nor unreasonably demeaning. Such comments at sentencing do not establish, or even suggest, judicial bias.[8]

Defendant further argues that the trial judge expressed bias when she admitted the cellular phone data report in violation of the Confrontation Clause. As discussed, however, because defendant stipulated to the admission of the cellular phone data report, the Confrontation Clause was not violated. See *Eisen*, 296 Mich App at 328-329. "It cannot be said that the trial court erred by failing to exercise [her] discretion when [she] was never requested to do so." *People v Hearn*, 159 Mich App 275, 284; 406 NW2d 211 (1987). When informed that the parties stipulated to the

[8] Defendant admits in his Standard 4 brief that "the record does not display any normal biasness" but "reflect[s] some type of judicial bias" in light of prejudicial rulings. However, defendant fails to cite instances where the trial judge may have ruled against him because of her alleged bias or belief in the victim, and we can identify none in the record.

admission of the report, the trial judge responded: "Thank you." Simply put, the trial judge did not express an opinion on the stipulation and simply was polite during the exchange with the prosecution and defense counsel. Nothing in this exchange indicates judicial bias.

VI. CONCLUSION

For the reasons stated above, we affirm.

/s/ Christopher M. Murray
/s/ Mark T. Boonstra
/s/ Michael J. Riordan