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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v THOMAS WILLIAM HATFIELD, Defendant-Appellant.	UNPUBLISHED November 02, 2026 2:10 PM No. 373189 Lapeer Circuit Court LC No. 2023-014607-FH

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

PER CURIAM.

Defendant Thomas William Hatfield appeals as of right his convictions and sentences for assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84; assault with a dangerous weapon (felonious assault), MCL 750.82; and concealing or tampering with evidence, MCL 750.483a(6)(a). Defendant was sentenced to 4 to 10 years' imprisonment for the AWIGBH conviction, 1 year and 11 months' to 4 years' imprisonment for the felonious-assault conviction, and 1 year and 5 months' to 4 years' imprisonment for the tampering with evidence conviction. We affirm.

I. FACTUAL BACKGROUND

This case arose from an altercation between defendant and Nickolas Utley at defendant's house in April 2023. Defendant and Nickolas were friends. After spending the evening fishing and getting drinks at the local convenience store, defendant and Nickolas returned to defendant's house. At some point, defendant and Nickolas were in a physical altercation. Defendant cut Nickolas's throat. Nickolas pressed a T-shirt to his neck and stumbled out the front door. He tried to call 911, but his phone was covered in blood. Nickolas called his father, stating that he was bleeding and needed to be picked up. Nickolas's father picked him up at an intersection four houses away from defendant's house. Nickolas had blood on his hands, around his face, on his neck, and on his clothing. Nickolas's father brought Nickolas to the hospital, where he had surgery for the 10-centimeter laceration on his neck that clipped an artery.

Lapeer County Sheriff's Deputy Christopher Keller was dispatched to the hospital where he talked with Nickolas and observed his injuries.[1] After obtaining defendant's name from Nickolas, he found defendant's address and went to defendant's house with Deputy Thomas Durant. Defendant was cleaning Nickolas's blood inside and outside of his house. When the deputies approached defendant's house, they smelled bleach. The pavement in front of the porch was wet and had soap suds. There were blood stains on the porch.

Defendant consented to the search of his house and was in the locked patrol car while the deputies looked inside. The deputies found a bloody T-shirt, alcohol bottles, and blood-soaked paper towels in the garbage can. The floor appeared to have been cleaned because there were swirled smudge marks with a film of blood. A few hours later, Sergeant Robert Wells interviewed defendant at the Lapeer County Sheriff's Office, and then at defendant's house.

Defendant moved to exclude the statements that he made to the police on the basis that he was intoxicated, including his statements to the officers when they initially arrived at his house, along with his statements at the Lapeer County Sheriff's Office and at his house again. Deputy Keller, Deputy Durant, and Sergeant Wells testified at the *Walker*[2] hearing. The trial court denied defendant's motion.

At trial, defendant admitted that he cut Nickolas's neck but claimed that he did so because he "feared for [his] life." He admitted that he was cleaning the blood in his house but did not think he did anything wrong, so he did not consider the house to be a crime scene. The jury found defendant guilty of the charged offenses.[3]

At sentencing, defendant argued that Offense Variable (OV) 3 should have been assessed at 10 points instead of 25 points because Nickolas's injuries were not life threatening. The trial court disagreed, assessing 25 points because of Nickolas's "massive blood loss." Defendant was sentenced as described above.

Defendant moved for a new trial, arguing that his counsel was ineffective for failing to object to the standard jury instruction for evidence tampering because it did not include the "knowingly" element of that crime. See MCL 750.483a(5)(a). The trial court denied defendant's motion. This appeal followed.

II. INEFFECTIVE ASSISTANCE

[1] Those injuries included a broken nose, bruising around his eye and on his arm, a wound on his arm and elbow, and a carpet burn along his back.

[2] *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).

[3] With counsel's approval, the trial court provided the standard jury instruction for the crime of evidence tampering, M Crim JI 37.11, that was in effect at the time.

Defendant argues that the jury was not properly instructed regarding the elements of evidence tampering and, because defense counsel failed to object to those instructions, he was deprived of the effective assistance of counsel. We disagree.

A. STANDARD OF REVIEW

"A claim of ineffective assistance of counsel presents a mixed question of fact and constitutional law." *People v Isrow*, 339 Mich App 522, 531; 984 NW2d 528 (2021) (quotation marks and citation omitted). "All findings of fact are reviewed for clear error, while the legal questions are reviewed de novo." *Id*. (quotation marks and citation omitted). "When the reviewing court is left with a definite and firm conviction that the trial court made a mistake, there is clear error." *Id*. (quotation marks and citation omitted). However, when the trial court does not conduct a *Ginther*[4] hearing, this Court's review "is limited to mistakes that are apparent on the record." *People v Anderson*, 322 Mich App 622, 628; 912 NW2d 607 (2018) (quotation marks and citation omitted).

B. ANALYSIS

A criminal defendant has a right to a fair trial, including the effective assistance of counsel. *Isrow*, 339 Mich App at 531, citing US Const, Am VI, and Const 1963, art 1, § 17. "To establish ineffective assistance of counsel, a defendant must show (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Shaw*, 315 Mich App 668, 672; 892 NW2d 15 (2016), citing *Strickland v Washington*, 466 US 668, 687-688, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

"Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise." *People v Eisen*, 296 Mich App 326, 329; 820 NW2d 229 (2012) (quotation marks and citation omitted). "This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight." *People v Petri*, 279 Mich App 407, 411; 760 NW2d 882 (2008) (quotation marks and citation omitted). "Trial counsel's failure to request a jury instruction may constitute an unreasonably deficient level of performance." *People v Yeager*, 511 Mich 478, 490; 999 NW2d 490 (2023).

In this case, to determine whether defense counsel performed deficiently, we must consider whether defense counsel should have objected to the standard jury instruction for the crime of evidence tampering, M Crim JI 37.11, that was in effect at the time of trial. "A criminal defendant has the right to have a properly instructed jury consider the evidence against him." *People v Head*, 323 Mich App 526, 537; 917 NW2d 752 (2018) (quotation marks and citation omitted). Thus, "[a] criminal defendant has a constitutional right to have a jury determine his or her guilt from its consideration of every essential element of the charged offense." *People v Kowalski*, 489 Mich 488, 501; 803 NW2d 200 (2011).

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

MCL 750.483a(5)(a) provides that "[a] person shall not . . . [k]nowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding." Consistent with the version of M Crim JI 37.11 in effect at the time of trial, the trial court instructed the jury on the elements of evidence tampering as follows:

> The Defendant is charged with intentionally removing, altering, concealing, destroying, or tampering with evidence to be offered at an official proceeding. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt.
>
> First, that there was some evidence to be offered in a present or future official proceeding. An official proceeding is a hearing held before a legislative, judicial, administrative, or other governmental agency, or a hearing before an official authorized to hear evidence under oath, including a referee, a prosecuting attorney, a hearing examiner, a commissioner, a notary, or another person taking testimony in a proceeding.
>
> Second, that the Defendant removed, altered, concealed, destroyed, or otherwise tampered with that evidence.
>
> Third, that when the Defendant removed, altered, concealed, destroyed, or otherwise tampered with that evidence, he did so on purpose and not by accident.

In *People v Walker*, 330 Mich App 378; 948 NW2d 122 (2019), the defendant argued that the evidence against him was insufficient to prove the crime of evidence tampering because "the prosecution was required to prove that [he] knew the items of evidence at issue would be offered in an official proceeding." *Id*. at 388. We rejected that argument, first noting that "[w]e accept for purposes of this appeal, although we need not decide, that the word 'knowingly' in the statute likely includes knowledge of an official proceeding." *Id*., citing *Rehaif v United States*, 588 US 225; 139 S Ct 2191, 2194-2197; 204 L Ed 2d 594 (2019) (holding that "knowingly" under 18 USC 922(g) requires the defendant to know that he engaged in the relevant conduct and also that he fell within the relevant status). We ultimately concluded that the evidence was sufficient to prove that element because "[i]t is incredible that any person would believe that a violent killing would *not* certainly be the eventual subject of an official proceeding." *Id*.

Consistent with *Walker*, in September 2026, the Committee on Model Criminal Jury Instructions amended M Crim JI 37.11 to include the following additional element:

> Fourth, that the defendant knew that the evidence would be offered in a present or future official proceeding at the time [he/she] removed, altered, concealed, destroyed, or otherwise tampered with it.

The Use Note to this additional element states as follows:

> The Michigan Court of Appeals has assumed without deciding "that the word 'knowingly' in the statute likely includes knowledge of an official proceeding." *People v Walker*, 330 Mich App 378, 388; 948 NW2d 122 (2019).

> The Michigan Court of Appeals has also indicated that this element "may be proved with '[m]inimal circumstantial evidence.'" *Id*. (quoting *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001)).

However, as stated, at the time of defendant's trial, the standard jury instruction, M Crim JI 37.11, did not include the newly-added element that defendant knew that the evidence would be offered in a present or future official proceeding at the time he tampered with it. Thus, the jury was not instructed on that element.

The standard jury instructions are not binding. *People v Carroll*, 514 Mich 851, 851 n 2 (2024). However, MCR 2.512(D)(2) provides that the standard jury instructions should presumptively be given when they "accurately state" the law:

> Pertinent portions of the instructions approved by the Committee on Model Civil Jury Instructions or the Committee on Model Criminal Jury Instructions or a predecessor committee must be given in each action in which jury instructions are given if
>
> (a) they are applicable,
>
> (b) they accurately state the applicable law, and
>
> (c) they are requested by a party.

Simply put, the question before us is whether defense counsel may be deemed ineffective for failure to object to the version of M Crim JI 37.11 in effect at the time of trial, when *Walker* suggested a few years earlier that an additional knowledge element may be required. In *People v Himmelein*, 177 Mich App 365; 442 NW2d 667 (1989), we concluded that the defense attorney was not ineffective for failure to object to the standard jury instruction in effect at the time of trial notwithstanding that the instruction was later determined to be incorrect because the case disavowing the instruction "was not decided until after the trial in the instant case. The defense attorney's failure to object here cannot be attributed to deficient legal representation." *Id*. at 378. Other courts similarly have suggested that defense counsel generally cannot be deemed ineffective for failure to object to a standard instruction in effect at the time of trial. See *Smith v McKee*, 598 F3d 374, 384 (CA 7, 2010) ("Pattern Jury Instruction 3.15 was codified in 1992 and remained in use until 2001. Defense counsel did not act in an objectively unreasonable manner by not objecting to the use of an applicable pattern jury instruction."); *Lukehart v State*, 70 So3d 503, 520 (Fla, 2011) ("[I]t is not deficient performance when counsel fails to object to a standard instruction that has not been invalidated by this Court.") (quotation marks and citation omitted). On the other hand, defense counsel may be deemed ineffective for failure to object to a standard jury instruction when one or more cases decided by the time of trial indicated that the instruction was "flawed." See *State v Kyllo*, 166 Wash2d 856, 866; 215 P3d 177 (2009) ("[A]t the time of Kyllo's trial there were several cases that should have indicated to counsel that the pattern instruction was flawed.").

Here, there is no dispute that M Crim JI 37.11 had not been expressly disavowed by this Court or our Supreme Court at the time of trial. See *Himmelein*, 177 Mich App at 378. Further, and critically for purposes of this case, *Walker* did not go so far as to explain that the standard jury

instruction was flawed or otherwise incorrect. See *Kyllo*, 166 Wash2d at 866. Indeed, *Walker* did not discuss the standard jury instruction whatsoever. Rather, *Walker* addressed a sufficiency argument, "accept[ed]" without "decid[ing]" that the crime of evidence tampering included knowledge of an official proceeding, and then reached the straightforward conclusion that a jury could easily find beyond a reasonable doubt that the defendant tampered with bloody clothing with knowledge that the clothing may be offered in a future murder proceeding. See *Walker*, 330 Mich App at 388. Thus, defense counsel did not perform deficiently by failure to object to M Crim JI 37.11 in effect at the time of trial, as *Walker* did not compel such an objection. This is particularly true where *Walker* was decided in 2019, yet trial in this case did not occur until 2024. Under these circumstances, assuming that defense counsel was aware of *Walker*, he could certainly be forgiven for believing that the failure to amend M Crim JI 37.11 for the five years after *Walker* was decided indicated that M Crim JI 37.11 was an accurate instruction. See MCR 2.512(D)(2)(b).

Accordingly, we conclude that defense counsel did not perform deficiently by failure to object to the version of M Crim JI 37.11 in effect at the time of trial. See *Shaw*, 315 Mich App at 672. Having so concluded, we need not address whether defendant showed prejudice. See *id*.

III. CONFESSION

Defendant next argues that the trial court erroneously denied his motion to suppress because his statements to the police were made while intoxicated. We disagree.

A. STANDARD OF REVIEW

"We review de novo a trial court's determination that a waiver was knowing, intelligent, and voluntary." *People v Gipson*, 287 Mich App 261, 264; 787 NW2d 126 (2010). "[W]e review the entire record de novo to determine whether the trial court properly admitted a confession." *People v Kimble*, 252 Mich App 269, 272; 651 NW2d 798 (2002). "Findings of fact made after a suppression hearing are reviewed for clear error, while the ultimate decision on a motion to suppress is reviewed de novo." *People v Vaughn*, 344 Mich App 539, 549; 1 NW3d 414 (2022).

B. ANALYSIS

Both the United States and Michigan Constitutions protect the right against self-incrimination. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005). "Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his or her Fifth Amendment rights." *Gipson*, 287 Mich App at 264, citing *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). "[T]he prosecution has the burden of establishing a valid waiver by a preponderance of the evidence." *People v Daoud*, 462 Mich 621, 634; 614 NW2d 152 (2000).

"Whether a waiver of *Miranda* rights is voluntary depends on the absence of police coercion." *Gipson*, 287 Mich App at 264 (citation modified). "In contrast to the voluntary prong, determining whether a suspect's waiver was knowing and intelligent requires an inquiry into the suspect's level of understanding, irrespective of police behavior." *Daoud*, 462 Mich at 636. "A defendant does not need to understand the consequences and ramifications of waiving his or her rights. A very basic understanding of those rights is all that is necessary." *Gipson*, 287 Mich App

at 265. "Accordingly, the required analysis focuses on whether the defendant has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *People v Soriano*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167373); slip op at 9 (quotation marks and citations omitted). In considering whether a *Miranda* waiver is valid, this Court must assess "all the circumstances surrounding the interrogation, including the suspect's age, experience, education, background, and intelligence, and consideration of whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Id*. (quotation marks and citations omitted).

In this case, according to the deputies who first responded to defendant's house on the night of the incident, defendant was not slurring his words or having any problems walking. Defendant claimed that he had been drinking but that he normally drinks a lot. Deputy Durant was not concerned that defendant did not understand surrounding events due to his level of intoxication. A few hours later, Sergeant Wells interviewed defendant at the Lapeer County Sheriff's Office. Before speaking with Sergeant Wells, defendant signed a *Miranda* waiver form. Sergeant Wells could tell that defendant had been drinking and asked defendant whether he was intoxicated. Defendant said, "as of an hour ago absolutely not." Sergeant Wells, who had experience dealing "with a lot of drunk people," did not "feel that [defendant] was overly intoxicated." Defendant voluntarily spoke to Sergeant Wells without force or coercion. Sergeant Wells would have stopped the interview if he thought that defendant was intoxicated. Defendant was following Sergeant Wells's "line of questioning fairly accurately," and he did not have "slurred speech, bloodshot eyes. He looked okay."

At the *Walker* hearing, Dr. Overbeek testified as an expert that defendant's repetitive speech, mood swings, and emotional affect in the police interview showed "signs of a moderate level of alcohol intoxication . . . ." Dr. Overbeek did not believe that defendant could intelligently waive his rights because of his level of intoxication and inability to understand the consequences of waiving them. On cross-examination, Dr. Overbeek admitted that he did not know how much alcohol defendant consumed on a regular basis or the time frame in which defendant had consumed the alcohol that night, which were relevant considerations in determining his ability to understand the situation. Dr. Overbeek also admitted that he did not review the video where defendant was read his *Miranda* rights.

The police officers' respective testimonies established that although defendant was intoxicated, defendant seemed oriented to his surroundings, his answers seemed rational and responsive to the questions, and he repeatedly and expressly stated that he understood his rights. See *Soriano*, ___ Mich at ___; slip op at 11. Consistent with these testimonies, the trial court found that after "hearing all three of the recordings and looking at all two of the videos that [defendant] certainly had the capacity to, for the minimal purposes here, understand and knowingly waive his rights." The trial court's review of the recordings, videos, and determination of witness credibility is entitled to deference on appeal. See *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997). The trial court essentially found the officers credible concerning defendant's intoxication level and ability to understand. There is nothing in the record that causes us to doubt its findings. Thus, the trial court's determination that defendant's waiver was knowing and intelligent despite his consumption of alcohol was not clearly erroneous. See *Vaughn*, 344 Mich App at 549. Further, while not expressly noted by the trial court, the record does not show that the police coerced

defendant into waiving his rights or that the circumstances of the waiver were otherwise coercive. Therefore, defendant's waiver was voluntary as well. See *Soriano*, ___ Mich at ___; slip op at 19 n 11.

Accordingly, because defendant validly waived his *Miranda* rights, the trial court did not err by denying his motion to suppress.

IV. SENTENCING

Finally, defendant argues that he is entitled to resentencing because the trial court erred by assessing 25 points for OV 3. 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). "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

The sentencing guidelines are advisory, but "a sentencing court must determine the applicable guidelines range and take it into account when imposing a sentence." *People v Lockridge*, 498 Mich 358, 365; 870 NW2d 502 (2015). A defendant is entitled to be resentenced if a scoring error affected the scoring of the sentencing guidelines. *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006).

"Offense variable 3 is physical injury to a victim." MCL 777.33(1). OV 3 is properly scored at 25 points when "[l]ife threatening or permanent incapacitating injury occurred to a victim." MCL 777.33(1)(c). The term "life-threatening," as used in MCL 777.33, 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, 589-591; 935 NW2d 66 (2019) (quotation marks and citation omitted). "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) (emphasis omitted).

In this case, the trial court assessed 25 points for OV 3. Although there were no signs of airway penetration or major vessel compromise, Nickolas suffered a "10 centimeter laceration with venous bleeding . . . ." Nickolas's artery had been clipped. In emergency surgery, the doctors performed an "exploration of the neck wound" and "ligation of an artery." The doctors stopped the bleeding on Nickolas's neck by using sutures to tie the artery off. Also, during the surgery, a blood clot was removed. Further, as noted, there was testimony indicating that Nickolas was substantially bleeding immediately after the assault. The trial court determined that OV 3 was

properly scored at 25 points because of Nickolas's "massive blood loss." The trial court considered the massive blood loss to be "obviously life threatening . . . ." Because of Nickolas's blood loss from the cut artery and his need for emergency surgery, a preponderance of the evidence supports the finding that Nickolas's injuries were life-threatening. See *Thompson*, 314 Mich App at 708. Accordingly, we conclude that the trial court did not err by assessing 25 points for OV 3. *Id*.

V. CONCLUSION

There were no errors warranting relief. Consequently, we affirm.

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