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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 26, 2026 1:51 PM
v	No. 369682 Washtenaw Circuit Court
PARKER ISAAC ADAMS, Defendant-Appellant.	LC No. 22-000678-FC

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions and resulting sentences for second-degree murder, MCL 750.317, and unlawfully driving away a motor vehicle (UDAA), MCL 750.413. The trial court sentenced defendant to serve concurrent terms of 37 to 60 years' imprisonment for murder and 5 years' imprisonment for UDAA.[1] We affirm.

I. BACKGROUND

This case arises from the murder of Gavin Carney (the victim). On January 15, 2022, defendant and his girlfriend, and also codefendant, Emily Gordon,[2] were at a gas station in Canton Township when they saw the victim. Defendant and the victim had attended the same high school, and according to defendant, he and the victim were on good terms. They had a friendly conversation at the gas station; they exchanged phone numbers and then parted. However, after the victim left, Gordon told defendant that the victim had previously raped her.

Later that night, defendant invited the victim to smoke marijuana at Peninsular Park in Ypsilanti Township. Defendant and Gordon arrived at Peninsular Park in Gordon's vehicle at 9:38 p.m., and the victim arrived in his own vehicle at about 10:17 p.m. According to defendant,

[1] Defendant was later resentenced with respect to his UDAA conviction to serve 702 days' imprisonment.

[2] Gordon ultimately pleaded no-contest to second-degree murder. She is not a party to this appeal.

the events at the park occurred as follows. Defendant entered the victim's vehicle and offered him some marijuana, which he declined. Defendant then asked the victim whether he had raped Gordon. The victim responded that he "felt like death" and retrieved a butcher's knife from the driver's side door. The victim placed the knife on his lap, at which point defendant got out of the vehicle.

Defendant then went back to Gordon's vehicle on the passenger side, opened the door, and told Gordon that the victim was "acting weird." The victim then exited his car, knife in hand, and began to approach the driver's side of Gordon's car. Gordon produced a pocketknife from her purse, which defendant took before walking around to the driver's side of the car to confront the victim. The victim then swung his knife at defendant but missed. Defendant then stabbed the victim twice in his left shoulder. At that point, the victim dropped the knife and retreated to his own car.

Gordon then quickly exited her car and got into the backseat of the victim's vehicle. Inside, Gordon began to yell and claw at the victim. The victim put his car into reverse, backing up until he crashed. Defendant ran to the victim's car and opened the driver-side door. Defendant yelled, "Get your fuckin' hands off her," before pulling the victim out of the car. When the victim stood up, he and defendant got into a verbal argument. Gordon then picked up the pocketknife from the ground and leaped onto the victim's back and began stabbing him. Gordon repeatedly shouted that the victim had raped her as she stabbed him. The victim was stabbed over 100 times.

Once the victim appeared dead, defendant and Gordon wrapped the victim's body in a comforter from Gordon's car and dragged him into the brush by the river. Defendant then drove the victim's car to another park. Defendant kept the key fob to the victim's car and a credit card that belonged to the victim's mother. Defendant used that credit card on Monday, January 17, 2022, to buy gas at the same gas station where he had previously seen the victim. Shortly thereafter, defendant and Gordon fled to Florida. Gordon returned to Michigan, but defendant was arrested in Florida. Defendant and Gordon were both charged with open murder, armed robbery, and UDAA.

Relevant to an issue on appeal, before trial, defendant moved to exclude a "to-do" list that was found during the search of his car on the grounds that it was irrelevant and improper character evidence. The list read as follows:

Today's Plan:

- Murder EYG[3]
- Make 8,700 dollars
- Bury her body in the woods

[3] EYG are Gordon's initials.

- Find the guy[s] she's been sliding with; kill them in fabulous fashion
- Bury body in the woods

The prosecution argued that the to-do list was admissible as a statement by a party-opponent and was relevant in establishing defendant's state of mind and intent to kill. The trial court denied defendant's motion and allowed the to-do list to be admitted at trial.

At trial, defendant admitted to driving away the victim's car and then using the victim's mother's credit card. In addition, defendant testified in his own defense about the earlier discussed events. However, the prosecution theorized that defendant had fabricated his story based on blood stains in the victim's car that suggested that the victim was stabbed to death while defendant was with the victim in his car. The jury acquitted defendant of the charge of armed robbery but found defendant guilty of second-degree murder and UDAA. The trial court sentenced defendant as stated earlier. As an additional condition of his sentence, the court ordered that defendant have no contact with Gordon either directly or through another person because the court was concerned about the to-do list that defendant had written that suggested he intended to harm Gordon. Defendant subsequently moved in the trial court for a new trial or to correct his sentence; the trial court denied defendant's motion. Defendant now appeals.

II. JURY INSTRUCTIONS

Defendant argues, in both his brief filed by counsel and in his Standard 4 brief[4], that the trial court abused its discretion by not instructing the jury on the duty to retreat and providing M Crim JI 7.16. In his Standard 4 brief, defendant also argues that the trial court abused its discretion by not providing M Crim JI 7.16a regarding the rebuttable presumption concerning fear of death or great bodily harm. Further, defendant, through counsel, argues that his trial counsel was ineffective for failing to request M Crim JI 7.16. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

We first address whether this issue has been properly preserved.[5] In the present case, defendant did not object to the jury instructions provided in the trial court or request M Crim

[4] A "Standard 4" brief refers to a brief filed on behalf of an indigent criminal defendant under Michigan Supreme Court Administrative Order 2004-6, Standard 4.

[5] The prosecution argues that defendant has waived the issue of the trial court's error by failing to preserve it. However, this conflates when a defendant waives an instructional error versus when a defendant merely fails to preserve the issue. Waiver is "the intentional relinquishment of a known right," whereas forfeiture is "the failure to make the timely assertion of a right." *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (quotation marks and citations omitted). Express approval of jury instructions can constitute waiver that "extinguish[es] any error"; however, merely failing to object or request a particular jury instruction constitutes forfeiture and does not extinguish the error. *Id*. at 215-216. Here, the record reflects that defense counsel did not expressly approve the jury instructions, so this claim of error was merely forfeited.

JI 7.16 or 7.16a. However, defendant raised the issue regarding the jury instructions in his motion for a new trial and, therefore, argues that the issue was preserved.

As an initial matter, caselaw is clear that if a party objects to the jury instructions or requests a given jury instruction at trial, it is properly preserved for review. *People v Sabin (On Second Remand)*, 242 Mich App 656, 657; 620 NW2d 19 (2000). However, this Court has reached different conclusions, in unpublished caselaw, regarding whether a defendant can adequately preserve an instructional issue by raising it for the first time in a motion for a new trial.[6] Those cases that have found an instructional issue preserved in this manner have relied on this Court's holding in *People v Mayfield*, 221 Mich App 656, 660; 562 NW2d 272 (1997). In *Mayfield*, 221 Mich App at 660, this Court explained that "[t]he purpose of the appellate preservation requirements is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record for the error and its prejudice."

In the present case, defendant relies on *People v Christianson*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2023 (Docket No. 359421), pp 3-4.[7] In that case, this Court held that an instructional issue was preserved by being raised for the first time in a motion for new trial because the trial court had an opportunity to hear the defendant's argument on the issue and rule on those arguments. *Id*. at 3 n 2. But more recently this Court has emphasized that the analysis surrounding the previously cited quote in *Mayfield* actually "made clear that the purpose of the preservation requirement is to raise the issue at a time when the error can be avoided and its prejudice alleviated." *People v Butsinas*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 364778), slip op at 11-12. Thus, raising an evidentiary issue for the first time in a motion for a new trial does not preserve the evidentiary issue "because the opportunity for the trial court to correct the error and its prejudice has passed." *Id*.

Like an evidentiary error, there are numerous times at trial that a party may raise an instructional error by objecting to the jury instructions or requesting a specific instruction. Further, the necessity of requesting an instruction at trial is clear from MCL 768.29, which states, in relevant part, "The failure of the court to instruct on any point of law shall not be ground for setting aside the verdict of the jury unless such instruction is requested by the accused." The necessity of timely requesting an instruction or raising an objection at trial is also clear from MCR 2.512(C):

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[6] *People v Christianson*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2023 (Docket No. 359421), pp 3-4 (holding that the instructional issue was preserved by raising it in a motion for a new trial); *People v Perrigo*, unpublished opinion of the Court of Appeals, issued January 18, 2024 (Docket No. 360567) (holding that the instructional issue was not preserved by raising it in a motion for a new trial); *People v Palacios*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2017 (Docket No. 331909), pp 5-6 (concluding that the defendant's claim of instructional error raised in a motion for a new trial had merit, but ruling that the error was waived by counsel's express approval of the jury instructions).

[7] Unpublished opinions are not binding on this Court but may be persuasive. MCR 7.215(C)(1); *People v Kloosterman*, 296 Mich App 636, 641 n 2; 823 NW2d 134 (2012).

> A party may assign as error the giving of or the failure to give an instruction only if the party objects on the record before the jury retires to consider the verdict (or, in the case of instructions given after deliberations have begun, before the jury resumes deliberations), stating specifically the matter to which the party objects and the grounds for the objection. Opportunity must be given to make the objection out of the hearing of the jury.

Accordingly, keeping in mind the purpose of the appellate preservation requirements as articulated in *Mayfield* and the law and court rules requiring a party to object or raise a given instruction at trial, we hold that raising an instructional error in a posttrial motion alone does not preserve the issue.

Therefore, the instructional errors defendant raises on appeal were not preserved and we review the unpreserved issues for plain error affecting substantial rights. "Plain error exists when 1) an error . . . occurred [;] 2) the error was plain, i.e., clear or obvious[;] 3) and the plain error affected substantial rights." *People v Beck*, 510 Mich 1, 27; 987 NW2d 1 (2022) (quotation marks and citation omitted).

B. SELF-DEFENSE INSTRUCTIONS

We conclude that the trial court did not plainly err by instructing the jury on the issue of self-defense and not providing M Crim JI 7.16 or 7.16a because those instructions were not supported by the evidence.

"A defendant in a criminal trial is entitled to have a properly instructed jury consider the evidence against him or her." *People v Guajardo*, 300 Mich App 26, 34; 832 NW2d 409 (2013) (quotation marks and citation omitted). "The instruction to the jury must include all elements of the crime charged, and must not exclude from jury consideration material issues, defenses, or theories if there is evidence to support them." *People v Traver*, 502 Mich 23, 31; 917 NW2d 260 (2018) (quotation marks, brackets, and citations omitted). When reviewing jury instructions, we consider the instructions as a whole, rather than piecemeal. *People v Richardson,* 490 Mich 115, 119; 803 NW2d 302 (2011). "Even if somewhat imperfect, reversal is not warranted if the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights." *People v Thigpen*, 349 Mich App 437, 449; 27 NW3d 647 (2023) (quotation marks and citation omitted).

In the present case, defendant argued at trial that he acted in self-defense and in defense of others. Accordingly, the trial court instructed the jury on the use of deadly force and nondeadly force in defense of self and others and the burden of proof for self-defense by providing M Crim JI 7.15, 7.20, 7.21, and 7.22. However, defendant argues that the jury should also have been provided M Crim JI 7.16 and 7.16a.

M Crim JI 7.16 addresses when a person has the duty to retreat before using deadly force and provides, in relevant part:

> (1) A person can use [force / deadly force] in self-defense only where it is necessary to do so. If the defendant could have safely retreated but did not do so,

> you may consider that fact in deciding whether the defendant honestly and reasonably believed [he / she] needed to use [force / deadly force] in self-defense.

Further, M Crim JI 7.16 provides that "a person is never required to retreat under some circumstances," including when he "reasonably believes that an attacker is about to use a deadly weapon" or he "is subjected to a sudden, fierce, and violent attack." The instruction also states that a person is not required to retreat if he has not engaged in the commission of a crime, has a legal right to be where he is at the time, and "has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent [death / great bodily harm / sexual assault] of [himself / herself] or another person." This instruction is consistent with the duty to retreat as contemplated in MCL 780.972(1) of the Self-Defense Act, MCL 780.971 *et seq*.

Relatedly, M Crim JI 7.16a addresses the rebuttable presumption that a person had an honest and reasonable belief that imminent death or great bodily harm, which may arise under certain circumstances. The instruction, which reflects principles found in MCL 780.951, provides that the stated presumption arises if the jury finds both that: the deceased was in the process of breaking and entering a business or dwelling, or committing home invasion, or was unlawfully attempting to remove a person from a dwelling, business, or vehicle against the person's will, and the defendant honestly and reasonably believed the deceased was engaged in any of the conduct just described. M Crim JI 7.16a.

In the present case, providing M Crim JI 7.16 on the duty to retreat was not supported by defendant's own testimony. Although self-defense and whether defendant had a duty to retreat was arguably applicable when the victim approached the driver's side of Gordon's vehicle with a knife and defendant confronted him, the victim then dropped his weapon and retreated to his own vehicle after being stabbed by defendant. From that point forward, defendant had no reasonable belief that he or Gordon was in danger of being killed or faced imminent great bodily harm. Based on defendant's own testimony about what happened that evening, after the victim retreated, Gordon pursued him, she entered the victim's vehicle, and defendant then pulled the victim from his own vehicle. Gordon then stabbed the victim to death. On these facts, an instruction on the duty to retreat was inappropriate and, even if given, very likely would not have benefited defendant at trial.

Defendant argues that M Crim JI 7.16 was critical because there was a possibility that the jury concluded the two stab wounds to the victim's shoulder inflicted by defendant were in fact fatal wounds, but this is not consistent with the testimony at trial. The medical examiner testified that there were 100 stab wounds to the body, including to the victim's head, torso, neck, shoulders, stomach, groin, and upper extremities, and that the "most fatal" injuries were two clusters" of stab wounds on the right and left side of the neck. Consistent with these injuries, defendant testified that Gordon stabbed the victim in the neck and shoulders repeatedly, whereas he stabbed the victim in the shoulder. Contrary to the argument that defendant did not specify where he stabbed the victim in the shoulder, when asked if the injury was to the victim's "left shoulder, chest area," defendant replied, "Yeah, his, like, left shoulder." Therefore, it is unlikely the jury found that the two wounds defendant inflicted, which the victim allegedly walked away from, were in fact fatal or were the "most fatal" clusters of stab wounds to the victim's neck, when also presented with evidence that Gordon had stabbed the victim countless times, causing him to fall to the ground and never get up.

M Crim JI 7.16a is also not applicable to the present case because there were no facts that demonstrated that the victim broke into a dwelling or business or attempted to forcibly remove defendant or Gordon from a dwelling, business, or vehicle. In fact, it was defendant that forcibly removed the victim from his own vehicle. As the circumstances that would lead to a rebuttable presumption that defendant had an honest and reasonable belief that imminent death or great bodily harm were clearly not present, the trial court did not plainly err in not instructing the jury with M Crim JI 7.16a.

Accordingly, because defendant did not request the instructions and the evidence does not support the instructions, the trial court had no obligation to provide them and, therefore, did not plainly err. See *Traver*, 502 Mich at 31. The self-defense instructions that were provided at defendant's request adequately addressed the issue, protected the defendant's rights, and allowed the jury to consider whether he acted in self-defense or defense of others. See *Thigpen*, 349 Mich App at 449.

C. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant also argues, through counsel, that his trial counsel was ineffective for failing to request M Crim JI 7.16 at trial. We disagree.

Unlike his claim of instructional error, defendant preserved his claim of ineffective assistance of counsel when he moved for a new trial. See *Sabin*, 242 Mich App at 658-659. "Claims of ineffective assistance of counsel present mixed questions of fact and law. Factual findings are reviewed for clear error, and legal conclusions are reviewed de novo." *People v Urbanski*, 348 Mich App 90, 97; 17 NW3d 430 (2023). However, when there has not been an evidentiary hearing regarding a claim of ineffective assistance of counsel, our review is limited to mistakes apparent on the record. *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020).

"Criminal defendants are entitled to the assistance of counsel under both the Michigan and United States Constitutions." *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023). Effective assistance of counsel is presumed, and a defendant bears a heavy burden to prove otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). To prevail on a claim of ineffective assistance, a defendant must "show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that [the] outcome [of the defendant's trial] would have been different." *Yeager*, 511 Mich at 488 (quotation marks and citation omitted). " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *People v Ackley*, 497 Mich 381, 389; 870 NW2d 858 (2015), quoting *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984). Relevant here, "failure to request a jury instruction may constitute an unreasonably deficient level of performance." *Yeager*, 511 Mich at 490. However, a defendant is not entitled to a jury instruction that is not supported by the evidence. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995).

As discussed, neither instruction was supported by the evidence presented at trial. Accordingly, trial counsel was not ineffective for failing to request either instruction because the requests would have been futile. See *Traver*, 502 Mich at 31; *People v Isrow*, 339 Mich App 522,

532; 984 NW2d 528 (2021). Defense counsel cannot have been ineffective for failing to request an instruction to which defendant was not entitled. See *Isrow*, 339 Mich App at 532. We are also not convinced that there was a reasonable probability that the outcome would have been different had the jury been given M Crim JI 7.16. See *Yeager*, 511 Mich at 488. After reviewing all the evidence presented at trial, our confidence in the verdict remains firm. See *Ackley*, 497 Mich at 389.

III. ADMITTANCE OF THE TO-DO LIST

Defendant next argues that the trial court abused its discretion by admitting the to-do list found in defendant's car because it was irrelevant, unfairly prejudicial, and violated the prohibition on other-acts evidence under MRE 404(b). We disagree.

We review for an abuse of discretion a trial court's decision to admit or exclude evidence. *People v Thorpe*, 504 Mich 230, 251-252; 934 NW2d 693 (2019). The trial court abuses its discretion when its decision "falls outside the range of principled outcomes." *Id*. at 252 (quotation marks and citation omitted). "A decision on a close evidentiary question ordinarily cannot be an abuse of discretion." *Id*.

As an initial matter, the to-do list does not constitute other-acts evidence. Our Supreme Court has recognized that a defendant's prior statements of intent do not constitute a "prior act" within the meaning of MRE 404(b) but are, instead, considered admissions by a party-opponent under MRE 801(d)(2). *People v Goddard*, 429 Mich 505, 514-515, 518; 418 NW2d 881 (1988). See also, *People v Rushlow*, 179 Mich App 172, 176; 445 NW2d 222 (1989). Although defendant may have engaged in the act of writing the to-do list, it is the content of the to-do list, i.e., defendant's own statements, that was admitted as evidence. Therefore, the to-do list is a prior statement of defendant's intent that is not subject to the prohibition against other acts evidence in MRE 404(b). Accordingly, the trial court did not abuse its discretion by failing to exclude the to-do list under MRE 404(b). See *Thorpe*, 504 Mich at 252.

Nonetheless, the evidence still must be relevant and cannot be unfairly prejudicial. Evidence is relevant if it has any tendency to make any fact relevant to the resolution of a case more or less probable than that fact would be absent the evidence. MRE 401.[8] Relevant evidence is admissible unless otherwise provided by the United States Constitution, the Michigan Constitution, the rules of evidence, or other rules adopted by the Michigan Supreme Court. Irrelevant evidence is not admissible. MRE 402. "In a murder case, proof of motive is always relevant, even if not always necessary." *People v Smith*, 336 Mich App 79, 113; 969 NW2d 548 (2021). Nonetheless, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403.

[8] The Michigan Rules of Evidence were substantially amended on September 20, 2023, effective January 1, 2024. See 512 Mich lxviii (2023). We rely on the version of the Rules of Evidence in effect at the time of trial.

In the present case, although the to-do list does not name the victim, the list was relevant to defendant's motive. The statements in the to-do list suggested that defendant had a motive to kill both Gordon and individuals with whom she was "sliding," i.e., having sex. As there was no evidence that defendant and the victim did not get along, the prosecution used the to-do list to provide a crucial link in the chain of inference regarding motive. To make sense of the events leading to the victim's death, the prosecution offered the theory that defendant was willing to kill anyone who disrespected him by having sex with Gordon and to kill Gordon for not being faithful to him. A reasonable jury could easily infer that if defendant was willing to kill a person and Gordon for having consensual sex, then defendant would similarly be motivated to kill a person who allegedly raped Gordon. Accordingly, the to-do list had some tendency to demonstrate defendant's motive to commit murder, which is sufficient to meet the minimal threshold for relevance under MRE 401.

Although the to-do list was probative of defendant's motive, to be admissible it cannot be unfairly prejudicial. All relevant evidence is inherently prejudicial to some extent. See *Mills*, 450 Mich at 75. However, "[e]vidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Horton*, 341 Mich App 397, 404; 989 NW2d 885 (2022). When weighing probative value against prejudicial effect, we balance several factors including:

> the time required to present the evidence and the possibility of delay, whether the evidence is needlessly cumulative, how directly the evidence tends to prove the fact for which it is offered, how essential the fact sought to be proved is to the case, the potential for confusing or misleading the jury, and whether the fact can be proved in another manner without as many harmful collateral effects. [*People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008).]

As discussed, the to-do list was highly probative of defendant's motive for murder, and we conclude that it was not unfairly prejudicial. The presentation of the list was quick and did not add any undue delay to the proceeding. The list was not needlessly cumulative because it provided insight to defendant's motive that other offered evidence did not provide and it was essential to rebutting defendant's claims that he did not intend to kill the victim. Further, the to-do list was unlikely to confuse or mislead the jury as the primary issue at trial was whether defendant killed the victim or whether Gordon killed the victim. Lastly, the list was presented in a way intended to reduce any harmful collateral effects. The testimony was brief, and it did not contain any facts that were more inflammatory or graphic than the details of the victim's death. See *People v Railer*, 288 Mich App 213, 220; 792 NW2d 776 (2010) (noting that MRE 403 did not preclude admission of evidence when the testimony is brief and not nearly as graphic or violent as the testimony for the charged offense).

In sum, the to-do list was properly admitted because it was relevant and not unfairly prejudicial. Therefore, the trial court did not abuse its discretion by allowing its admission. See *Thorpe*, 504 Mich at 252.[9]

IV. NO-CONTACT ORDER

Next, defendant argues that the trial court erred by ordering defendant to have no contact of any kind with Gordon as a condition of defendant's sentence because the court lacked the authority to impose such a condition. We conclude that this issue is moot.

Mootness is a threshold question we consider before reaching the merits of the no-contact order because we lack the authority to decide moot issues. *People v Richmond*, 486 Mich 29, 34-36; 782 NW2d 187 (2010), reh gtd in part on other grounds 486 Mich 1041 (2010). An issue is moot if our resolution of the issue would, for any reason, have no "practical legal effect upon a then existing controversy." *Id*. at 34-35 (quotation marks and citation omitted).

MCR 6.427 provides that the trial court must sign the judgment of sentence within seven days after sentencing, and that the judgment of sentence must include, among other information, "the conditions incident to the sentence." MCR 6.427(9). The judgments of sentence in the record do not include the trial court's no-contact order. Although the trial court stated the no-contact order on the record at sentencing, it is well established that "a court speaks through its written orders and judgments, not through its oral pronouncements." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009). Accordingly, because the trial court failed to include the no-contact order in the judgment of sentence as required by MCR 6.427(9), we conclude that the no-contact order is not a condition of defendant's sentence. See *People v Hill*, 69 Mich App 41, 41-43; 244 NW2d 357 (1976). Therefore, this issue is moot because no such requirement exists and any decision on this issue would have no practical legal effect. *Richmond*, 486 Mich at 34.

V. ACQUITTED CONDUCT

Defendant, through counsel, also argues that the trial court erred by considering acquitted conduct at sentencing, violating his Fourteenth Amendment right to due process as announced in *People v Beck*, 504 Mich 605; 939 NW2d 213 (2019). We disagree.

This issue is preserved because defendant raised it in his motion to correct his invalid sentence. See *People v Clark*, 315 Mich App 219, 223; 888 NW2d 309 (2016). We review de novo this constitutional question. *People v Brown*, 339 Mich App 411, 419; 984 NW2d 486 (2021).

The Fourteenth Amendment of the United States Constitution provides, in relevant part, "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor

[9] Defendant also argues that the prosecution committed misconduct by having a police officer read the to-do list from defendant's car at trial because the to-do list was irrelevant and constituted argument on a collateral matter. Because the to-do list was relevant evidence, the prosecution did not err in this regard.

deny to any person within its jurisdiction the equal protection of the laws." US Const, Am XIV, § 1. In *Beck*, 504 Mich at 626-627, our Supreme Court recognized that an aspect of due process is the presumption of innocence that applies until the prosecution proves that the defendant is guilty of a crime beyond a reasonable doubt. "[W]hen a jury has specifically determined that the prosecution has not proven beyond a reasonable doubt that a defendant engaged in certain conduct, the defendant continues to be presumed innocent." *Id*. at 626. On this basis, our Supreme Court held that the presumption of innocence extends to sentencing and that "due process bars sentencing courts from finding by a preponderance of the evidence that a defendant engaged in conduct of which he [or she] was acquitted." *Id*. at 629. However, "[w]hen a jury has made no findings (as with uncharged conduct, for example), no constitutional impediment prevents a sentencing court from punishing the defendant as if he engaged in that conduct using a preponderance-of-the-evidence standard." *Id*. at 626.

This Court has "struggle[ed] with the boundaries of [the] holding in *Beck*." *People v Skippergosh*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 364127); slip op at 14 (quotation marks and citation omitted; second alteration in original). Because a trial court's mere reliance on acquitted conduct is sufficient to violate *Beck*, this Court has refrained "from requiring more than an express reference to acquitted conduct in advance of sentencing as evidence that acquitted conduct was relied upon in issuing a sentence." *Id*. at ___; slip op at 14. We apply a "rational jury" approach to determine what constitutes "acquitted conduct"; under this approach, a sentencing court may "consider facts and circumstances that were not, in a practical sense, put in dispute at trial, as long as those facts and circumstances were otherwise consistent with the jury's acquittal on a particular charge." *Brown*, 339 Mich App at 425.

In the present case, the trial court made the following statement at sentencing: "What appears is that you took advantage of a disadvantaged or diminished friend or classmate. It appears that you robbed him, you killed him, and then tried to blame your girlfriend, you know." Defendant, through counsel, argues that the trial court's statement that defendant "robbed" the victim demonstrates that the trial court improperly considered the acquitted conduct of armed robbery when determining defendant's sentence. We disagree, concluding that the trial court's use of the word robbed was not an express reference to armed robbery, but rather a reference to the fact that defendant had admittedly taken the victim's car and credit card after the murder.

A person commits robbery when he or she uses force, or a threat of force to put another person in fear, in the course of committing or attempting to commit a larceny. MCL 750.530.[10]

[10] MCL 750.530 provides as follows:

> (1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.
>
> (2) As used in this section, "in the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.

More specifically, a person commits armed robbery by committing robbery while in possession of a dangerous weapon. MCL 750.529.[11] In contrast, the dictionary defines the word "rob" simply as "to take away as loot" or "steal." *Merriam-Webster's Collegiate Dictionary* (11th ed). Notably, defendant was convicted of UDAA and admitted to taking, and later using, the victim's credit card at trial. Taking the victim's car and credit card was consistent with the general dictionary definition of the word "rob" and did not satisfy the elements of armed robbery, which would have required the jury to find that defendant used a weapon and the threat of force in the course of stealing or attempting to steal from the victim. The fact that defendant took items from the victim after the fact was "not, in a practical sense, put in dispute at trial." *Brown*, 339 Mich App at 425. Accordingly, it was not inconsistent with the jury's verdict acquitting defendant of armed robbery for the trial court to find that defendant had "robbed" the victim.

The trial court's statement in this case does not compare to other cases in which this Court has concluded the trial court improperly relied on acquitted conduct. For example, in *People v Wells*, 22 NW3d 549, 551 (Mich, 2025),[12] the trial court stated that bags and a scale presented as evidence showed that the defendant had an intent to distribute methamphetamine, even though the defendant had been convicted of simple possession but acquitted of possession with intent to distribute methamphetamine. And in *Skippergosh*, ___ Mich App at ___; slip op at 13, the trial court stated at sentencing that the evidence supported a finding that defendant attempted to choke the victim even though the defendant had been acquitted of attempted assault by strangulation. Here, the trial court merely stated that defendant robbed the victim. The trial court did not state that it believed that defendant used a knife or deadly force to rob the victim, which would have been inconsistent with his acquittal on the charge of armed robbery. Rather, the trial court stated that defendant had robbed the victim, which was consistent with defendant's conviction for UDAA and his taking of the victim's credit card.

Notably, in the resentencing hearing, the trial court clarified that it did not consider the armed robbery as part of its calculation of defendant's sentencing guidelines, but "did consider the car and the credit card." Although a trial court's assertion that it did not actually base its sentencing determination on acquitted conduct carries little weight, see *Wells*, 22 NW3d at 551; *Skippergosh*, ___ Mich App at ___; slip op at 13-14, because there are multiple meanings of the term "robbed," and the trial court's statement in this case was not an "express reference to acquitted conduct" *Skippergosh*, ___ Mich App at ___; slip op at 14, there is no reason to question the trial court's clarification.

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[11] MCL 750.529 provides, in relevant part,

> (1) A person who engages in conduct proscribed under [MCL 750.530] and who in the course of engaging in that conduct does any of the following is guilty of armed robbery:
>
> (a) Possesses a dangerous weapon.

[12] Although *Wells* is an order, not an opinion, a Michigan Supreme Court order is binding when it constitutes a final disposition of an application and contains a "concise statement of the applicable facts and reasons for the decision." *People v Crall*, 444 Mich 463, 464 n 8; 510 NW2d 182 (1994).

Accordingly, the trial court did not improperly rely on the acquitted charge of armed robbery at sentencing; instead, it properly considered and referenced defendant's admitted acts of taking the victim's car and credit card.

VI. OTHER ISSUES RAISED IN DEFENDANT'S STANDARD 4 BRIEF

In addition to the issues we have already discussed, defendant also raises a series of arguments in his Standard 4 brief. For the reasons set forth each of defendant's arguments fail.

A. DR. WILSON'S TESTIMONY

Defendant first takes issue with Dr. Alicia Wilson's testimony at trial regarding the victim's injuries. Specifically, defendant argues that Dr. Wilson's testimony was not based on her personal knowledge and that she was not qualified to give an expert opinion that the victim had "defensive wounds" on his hands and forearms. We disagree.

Defendant failed to raise these arguments at trial. Accordingly, we review this unpreserved issue for harmless error. See *Thorpe*, 504 Mich at 252. A judgment or verdict will not be set aside or reversed or a new trial granted on the ground of improper admission or rejection of evidence "unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice." *Id*.

In the present case, Dr. Wilson was accepted as an expert in forensic pathology with the stipulation of defense counsel. She received her medical degree from the University of Michigan where she also studied anatomic pathology. She received further training in forensic pathology at the Miami-Dade County Medical Examiner's Office in Miami, Florida. She conducted over 4,000 autopsies and supervised nearly 10,000. In short, Dr. Wilson was qualified.

Dr. Wilson also affirmed that she conducted, or assisted in, the victim's autopsy. Even if Dr. Wilson did not conduct the autopsy herself, her testimony was clearly based on her personal observation of the autopsy and informed by her extensive expertise in autopsies and forensic pathology. In that same vein, Dr. Wilson testified that the victim had "defensive-type injuries" to his forearms and hands, and she testified that such injuries are called "defensive" injuries because they can occur when a person raises their arms reflexively to protect his or her head or neck when under attack. Dr. Wilson did not testify that the wounds on the victim's hands and forearms were definitively "defensive," merely that they were consistent with injuries commonly sustained when a person tries to protect themselves from an attack. This was appropriate expert opinion testimony under MRE 702.

Defendant also asserts that Dr. Wilson should have testified that the victim had committed a felony by driving on the day of the murder without taking his medication for the traumatic brain injury (TBI) he suffered nine years before the murder. Whether the victim was legally driving was irrelevant to this case, so such testimony would not have been admitted. See MRE 401; MRE 402. Accordingly, Dr. Wilson's testimony was proper, and defendant is not entitled to a new trial. See *Thorpe*, 504 Mich at 252.

B. OTHER CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant also raises several additional claims of ineffective assistance of counsel. As stated earlier, defendant must show that defense counsel committed an objectively unreasonable error and that, but for that error, there is a reasonable probability that the outcome of the proceeding would have been different. See *Yeager*, 511 Mich at 488. As there was no evidentiary hearing held on these claims, our review remains limited to mistakes apparent on the record. See *Abcumby-Blair*, 335 Mich App at 227.

Defendant first argues that trial counsel was ineffective because counsel failed to share discovery materials with him ahead of trial. We disagree. The record does not indicate what efforts trial counsel may have made to share discovery materials with defendant. Therefore, defendant has not established an objectively unreasonable error. See *People v Jackson*, 292 Mich App 583, 601; 808 NW2d 541 (2011). Further, defendant has not demonstrated prejudice by any alleged deficiency because he does not explain what would have been different if he had received the discovery materials sooner. See *id*. Accordingly, this argument fails.

Next, defendant argues that trial counsel was ineffective for not offering a plea agreement to the prosecution. We disagree. Again, the record does not show whether defense counsel engaged in any plea negotiations with the prosecution, so defendant has failed to establish an objectively unreasonable error. Further, defendant has not established that he was prejudiced by this alleged error because there is no indication that the prosecution would have accepted a plea agreement had trial counsel offered one.

Defendant also argues that defense counsel unreasonably failed to tell the trial court that defendant was innocent and that defendant feared for his life. We disagree. Defense counsel did, in fact, argue at trial that defendant was innocent of murder and that he honestly and reasonably feared for his life and Gordon's life. Defendant fails to establish any error or prejudice in this regard.

Defendant next argues that defense counsel was ineffective for failing to introduce evidence of the victim's character and criminal history at trial. We disagree. Although defense counsel could have offered evidence of the victim's character under MRE 404(a), if such evidence existed, the prosecution would have been able to offer evidence of defendant's character in rebuttal. It is not apparent from the record that it was an unreasonable strategy for defense counsel to refrain from offering such evidence to avoid opening the door for the prosecution to introduce evidence of defendant's character or other evidence of the victim's character. We presume that such strategic decisions were reasonable, and defendant has failed to demonstrate otherwise. See *Urbanski*, 348 Mich App at 97.

With respect to sentencing, defendant argues that defense counsel was ineffective because he failed to challenge the accuracy of the presentence investigation report (PSIR). We disagree. Defendant does not identify in what way he believes the PSIR to be inaccurate, so defendant cannot

establish that defense counsel's failure to challenge the PSIR was objectively unreasonable or that he suffered prejudice from this alleged error.[13]

C. OFFENSE VARIABLE SCORING

Defendant next argues that the trial court's assessment of his offense variable (OV) scores at sentencing were not based on sufficient evidence. We disagree.

We review for clear error the trial court's factual findings at sentencing; a preponderance of the evidence must support the court's factual findings. *People v Rodriguez*, 327 Mich App 573, 576; 935 NW2d 51 (2019). We review de novo the trial court's application of the facts as found in the statutory sentencing guidelines. *Id*.

Although the sentencing guidelines are only advisory, the trial court is required to score and consider the guidelines when imposing a sentence. *People v Lockridge*, 498 Mich 358, 365; 870 NW2d 502 (2015). To determine a minimum sentencing range under the legislative sentencing guidelines, the trial court must determine the offense category of the sentencing offense, determine which OVs are applicable to that category, and then score those OVs. See *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). A defendant is entitled to resentencing when the guidelines are improperly calculated and the error affected the applicable guidelines range. See *People v Francisco*, 474 Mich 82, 89, 92; 711 NW2d 44 (2006). OVs may only be scored for actions related to the sentencing offense unless the OV statute provides otherwise. *People v McGraw*, 484 Mich 120, 129; 771 NW2d 655 (2009).

In this case, the trial court assessed OV 1 (aggravated use of a weapon) at 25 points. OV 1 is properly assessed at 25 points when "[a] firearm was discharged at or toward a human being or a victim was cut or stabbed with a knife or other cutting or stabbing weapon[.]" MCL 777.31(1)(a). The victim was stabbed over 100 times with a knife; OV 1 was properly assessed.

The trial court assessed OV 2 (possession or use of a lethal weapon) at 5 points. OV 2 is properly scored at 5 points when, "The offender possessed or used a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon[.]" MCL 777.32(1)(d). Defendant admitted that he used a knife to stab the victim. OV 2 was properly assessed.

The trial court assessed OV 3 (physical injury to the victim) at 25 points. See MCL 777.33. First, the victim died, and defendant was sentenced for murder, which precluded the assessment of 100 points. Further, the victim did not die as the result of defendant operating a vehicle while under the influence of alcohol or a controlled substance, which precluded the assessment of

[13] To the extent that defendant generally argues that defense counsel was unprepared and "botched" his trial, defendant does not allege any other specific errors at trial. It is well established that defense counsel cannot be constitutionally deficient simply because a defendant did not fully prevail at trial. *People v Petri*, 279 Mich App 407, 412; 760 NW2d 882 (2008). Moreover, the record reflects that defense counsel performed well and managed to prevent defendant from being found guilty of first-degree murder and armed robbery.

50 points. Accordingly, the trial court was required to assess 25 points because the victim suffered life-threatening injuries. See MCL 777.33(1). OV 3 was properly assessed.

Next, the trial court assessed OV 5 (psychological injury to victim's family member) at 15 points. OV 5 is properly assessed at 15 points when "[s]erious psychological injury requiring professional treatment occurred to a victim's family[.]" MCL 777.35(1)(a). The victim's family member does not have to seek professional treatment for his or her psychological injury for OV 5 to be assessed at 15 points. MCL 777.35(2). In this case, the victim's mother gave a victim-impact statement at sentencing wherein she stated that she could not sleep for fear of recurring nightmares involving the victim's murder. She said that she was lucky to sleep more than two hours a night and that the medication her doctors had prescribed did little to help her. She also said that she lived in fear that she could be killed by someone that she knew like her son. She also told the court that she went to therapy because she felt that committing suicide so that she could see the victim again was preferable to living. OV 5 was properly assessed.

The trial court assessed OV 6 (intent to kill or injure) at 25 points. See MCL 777.36. At sentencing, defense counsel argued that OV 6 should have been assessed at 10 points because the victim was killed in a combative situation. However, the only evidence that the victim attacked defendant or Gordon was defendant's testimony, which the jury did not find credible. Defendant's PSIR indicated that Gordon told police that defendant killed the victim while sitting in the victim's car, and that the victim never attacked either of them. Given this evidence, the trial court's finding that the victim did not die in a combative situation was not clearly erroneous. Therefore, OV 6 was properly assessed.

The trial court next scored OV 7 (aggravated physical abuse) at 50 points. OV 7 is properly assessed at 50 points when "[a] victim was treated with sadism, torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety a victim suffered during the offense[.]" MCL 777.37(a). The victim's death was undoubtedly excessively brutal; his autopsy showed that he suffered over 100 wounds, most of which were superficial. So many superficial wounds would substantially increase the fear and anxiety of a victim. In particular, the victim suffered a large gash to his groin, which defendant attributed to Gordon wanting to dismember the victim. As such, we are not definitely and firmly convinced that the court erred by finding that the victim was subjected to excessive brutality designed to increase his fear and anxiety. See *People v Armstrong*, 305 Mich App 230, 242; 851 NW2d 856 (2014).

The trial court also assessed OV 10 (exploitation of vulnerable victim) at 10 points. OV 10 is properly assessed at 10 points when "[t]he offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status[.]" MCL 777.40(1)(b). At trial, the victim's mother testified that the victim's TBI caused him to suffer from memory problems and caused him to be highly trusting with a "childlike maturity." Defendant testified that he knew about the victim's TBI. On this record, the trial court did not clearly err by finding that defendant exploited the victim's mental disability resulting from his TBI. OV 10 was properly assessed.

The trial court assessed OV 14 (offender's role) at 10 points. OV 14 is properly assessed at 10 points when "[t]he offender was a leader in a multiple offender situation[.]" MCL 777.44(1)(a). Gordon told the police that she helped defendant murder the victim, but that

defendant did not tell her about his intent to kill the victim beforehand. Defendant was the one who asked the victim to come to the park to smoke marijuana and defendant killed him. This evidence preponderates to show that defendant and Gordon worked together to kill the victim, but defendant was the leader. The trial court did not clearly err by finding that defendant was the leader in a multiple-offender situation, and the court properly assessed OV 14 accordingly.

Lastly, the trial court assessed OV 19 (interference with the administration of justice) at 10 points. OV 19 is properly assessed at 10 points when "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice, or directly or indirectly violated a personal protection order[.]" MCL 777.49(c). "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). As discussed earlier, defendant took many actions that could be considered attempts to avoid being caught and held accountable for the victim's murder. Defendant disposed of the murder weapon, defendant drove the victim's car to another location, defendant hid the victim's body, and defendant fled to Florida. OV 19 was properly assessed.

In sum, the trial court did not err by assessing defendant's OV score at a total of 175 points.

D. PROSECUTORIAL MISCONDUCT, VINDICTIVE PROSECUTION, AND SELECTIVE PROSECUTION

Defendant next argues that the prosecution engaged in misconduct that denied him a fair trial and that he was selectively and vindictively prosecuted. We review these unpreserved issues for plain error. See *Carines*, 460 Mich at 763-764.

Defendant argues that the prosecution's statement in rebuttal to defense counsel's closing argument that defendant was the only person who testified at trial that Gordon had been raped by the victim was unprofessional misconduct. We disagree.

"The propriety of a prosecutor's remarks depends on all the facts of the case. A prosecutor's comments are to be evaluated in light of defense arguments and the relationship the comments bear to the evidence admitted at trial." *People v Dobek*, 274 Mich App 58, 63-64; 732 NW2d 546 (2007). Here, the prosecution's comment was not improper because it was true and made in response to defense counsel's assertion in closing argument that the victim had attacked defendant and Gordon after defendant asked the victim about the alleged rape.

Defendant next argues that the prosecution was both selective and vindictive because defendant was prosecuted for acting in self-defense and defense of Gordon. We disagree.

Vindictive prosecution involves the prosecution of a defendant as a punishment for exercising his or her procedural, statutory, or constitutional rights. *People v Ryan*, 451 Mich 30, 36; 545 NW2d 612 (1996). Vindictiveness can be actual or presumed. *Id*. "Actual vindictiveness will be found only where objective evidence of an 'expressed hostility or threat' suggests that the defendant was deliberately penalized for his exercise of a procedural, statutory, or constitutional right." *Id*. "The burden is on the defendant to affirmatively establish actual vindictiveness." *Id*. Presumed vindictiveness requires a "reasonable likelihood" that the prosecution acted vindictively. *United States v Goodwin*, 457 US 368, 373; 102 S Ct 2485; 73 L Ed 2d 74 (1982).

In contrast, to establish selective prosecution defendant must show (1) that he was " 'singled' out for prosecution while others similarly situated were not prosecuted for the same conduct and (2) that "this discriminatory selection in prosecution was based on an impermissible ground." *People v Ford*, 417 Mich 66, 102; 331 NW2d 878 (1982).

In the present case, defendant has not demonstrated that the prosecution engaged in vindictive or selective prosecution. The record does not show that the prosecution made any express threat or show of hostility toward defendant, nor is there any indication that the prosecution had an impermissible motive to prosecute defendant. Accordingly, there is no evidence of actual or presumed prejudice. Similarly, there is no evidence that defendant was singled out for prosecution for murder. Unfortunately, murder is a crime that needs to be prosecuted regularly. Moreover, defendant was not even singled out in this case, as defendant and Gordon were both charged with the victim's murder.

E. UNREASONABLE SEARCH AND SEIZURE

Defendant argues that the trial court erred by admitting evidence obtained without a warrant. Defendant does not identify which evidence he believes was wrongfully searched or seized. Regardless, the police acquired warrants to search defendant's personal property at the jail, his phone, his phone records, and his car. Therefore, we conclude that all the evidence in which defendant had an expectation of privacy was obtained with a warrant; defendant's constitutional rights were not violated in this regard.

F. SUFFICIENCY OF THE EVIDENCE

Defendant next argues that the evidence was insufficient for the jury to find beyond a reasonable doubt that defendant did not kill the victim in self-defense or defense of Gordon. We disagree.

We review de novo claims of insufficient evidence in a criminal case. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). We are "*required* to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018) (quotation marks and citation omitted). Circumstantial evidence and reasonable inferences arising from that evidence can be sufficient to prove the elements of a crime. *Id*.

As explained earlier, defendant did not present a prima facie defense of self-defense or defense-of-other at trial, so the prosecution did not need to disprove defendant's self-defense or defense-of-other claims beyond a reasonable doubt. See *People v Bailey*, 330 Mich App 41, 46-47; 944 NW2d 370 (2019). Nevertheless, the circumstances of the victim's death clearly show that he was murdered and that defendant and Gordon were the only persons present who could have committed that murder. Defendant's testimony was the only evidence that the victim attacked anyone or that Gordon alone killed the victim and the jury clearly did not find defendant credible. Drawing credibility determinations in favor of the jury's verdict, see *Oros*, 502 Mich at 239, the evidence was sufficient for the jury to find beyond a reasonable doubt that defendant killed the victim without justification.

G. PROPORTIONALITY OF DEFENDANT'S SENTENCE

Lastly, defendant argues that his sentence is disproportionate because the trial court failed to consider mitigating circumstances. We disagree.

We review for an abuse of discretion whether the trial court has imposed an unreasonable sentence. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). The trial court abuses its discretion when its decision "falls outside the range of reasonable and principled outcomes" or when the court "makes an error of law." *People v Christian*, 510 Mich 52, 75; 987 NW2d 29 (2022) (quotation marks and citation omitted).

"A sentence is unreasonable—and therefore an abuse of discretion—if the trial court failed to adhere to the principle of proportionality in imposing its sentence on a defendant." *People v Lampe*, 327 Mich App 104, 125; 933 NW2d 314 (2019). The principle of proportionality requires that a sentence be " 'proportionate to the seriousness of the circumstances surrounding the offense and the offender.' " *Steanhouse*, 500 Mich at 459, quoting *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). When reviewing a defendant's sentence for proportionality, we consider: "(1) the seriousness of the offense; (2) factors inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation." *Lampe*, 327 Mich App at 126 (quotation marks and citation omitted). There is a nonbinding presumption that within-guidelines sentences are proportionate. *People v Posey*, 512 Mich 317, 359; 1 NW3d 101 (2023) (opinion by BOLDEN, J.). A defendant must show unusual circumstances to overcome this presumption. See *People v Burkett*, 337 Mich App 631, 637; 976 NW2d 864 (2021).

As stated earlier, the trial court properly calculated defendant's total OV score. Accordingly, under MCL 777.61, the minimum sentencing guidelines range was 270 months to either 450 months or life imprisonment. Therefore, defendant's sentence of 37 years (444 months) to 60 years was a within-guidelines sentence.

Defendant fails to present unusual circumstances to overcome the presumption that his within-guidelines sentence is proportionate. See *Burkett*, 337 Mich App at 637. Although defendant asserts that the trial court failed to properly consider the mitigating circumstances in this case, we note that "trial courts are not required to expressly or explicitly consider mitigating factors at sentencing." *Bailey*, 330 Mich App at 63. Notably, defendant has committed the second most serious offense under the law in particularly brutal fashion. The record further reflects that defendant feels no remorse, and he places the blame for his conviction on Gordon's "duplicity" and the criminal justice system. In sum, we conclude that defendant's sentence is proportionate to the seriousness of the offense and offender. See *Steanhouse*, 500 Mich at 459.

Affirmed.

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado