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

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v TRAVIS RANDELL CROWLEY, Defendant-Appellant.	UNPUBLISHED August 20, 2026 10:33 AM No. 369514 Saginaw Circuit Court LC No. 22-049275-FC

Before: CAMERON, P.J., and MALDONADO and WALLACE, JJ.

PER CURIAM.

Defendant was accused of using one of his three Facebook accounts to negotiate the sale of a motor vehicle through an online marketplace, and when the purchaser and his brother arrived, of robbing them gunpoint, with the assistance of another man. A jury convicted defendant of two counts of armed robbery, conspiracy to commit armed robbery, being a felon in possession of a firearm (felon-in-possession), and four counts of carrying a firearm during the commission of a felony. Defendant appeals by right. Because none of his arguments on appeal have merit, we affirm.

I. FACTUAL BACKGROUND

Dean Jearls testified that his brother, William, earned money by buying used vehicles, fixing them up, and reselling them for a profit. In October 2021, he accompanied William to a house in Saginaw, where William intended to purchase a car that had been listed for sale on an online marketplace. According to Dean, William took about $5,000 with them. When they arrived at the house, William called the seller to inform him that they were waiting. After a couple of minutes, two men came from around the side of the home. William told Dean that one of the men was the person selling the car, and when they left the truck and introduced themselves, the seller said that his name was Dell.

After the introductions, Dean started to turn toward the backyard to look at the car, but he saw that the second man was pointing a gun at him. Dean and William went into the backyard, where they were robbed. After the men left, Dean and William eventually hopped the back fence, located a main road, and borrowed a phone to call 911. During the 911 call, William stated that

one of the robbers had called himself Dell. The responding officer testified that William indicated that he had been communicating with "Dell" over Facebook.

Saginaw Police Department Sergeant Jeffrey Doud testified that he contacted a Michigan State Police analyst to determine whether the owner of the Facebook profile could be identified. The analyst testified in detail about her efforts to locate the individual associated with the Facebook account "Hbm Dell Certified," which she ultimately determined was linked to defendant, along with accounts called "Trav Hbm and "Crowley Hbm." Sgt. Doud testified that, after obtaining the Facebook records, he conducted a photographic lineup for Dean and William. Dean selected defendant's photo; William declined to make a selection. However, during questioning by defense counsel, Sgt. Doud testified that, after William learned that Dean had made a selection, William indicated that he would have selected the photograph that belonged to defendant. At trial, Dean again positively identified defendant as one of the people who robbed him.

The jury found defendant guilty of the crimes listed above. This appeal followed.

II. HEARSAY

Defendant raises several hearsay arguments through counsel and in his brief filed pursuant to Michigan Supreme Court Order 2004-6, Standard 4. We conclude that none of defendant's arguments have merit.

This Court reviews preserved challenges to the trial court's evidentiary rulings for an abuse of discretion. *People v Duncan*, 494 Mich 713, 722; 835 NW2d 399 (2013). The trial court abuses its discretion when it makes an error of law or when its decision falls outside the range of reasonable outcomes. *Id*. at 722-723. This Court reviews de novo the preliminary questions of law concerning the admission of evidence, such as issues regarding the interpretation of a rule of evidence. *Id*. at 723.

Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Former MRE 801(c).[1] Hearsay is inadmissible unless it is subject to a hearsay exception. *Duncan*, 494 Mich at 724. Exceptions apply when a declarant is unavailable as a witness because the declarant is deceased. Former MRE 804(a)(4). These exceptions include, in pertinent part, the declarant's former testimony given at another hearing, former MRE 804(b)(1); statements given under the declarant's belief of impending death, former MRE 804(b)(2); statements offered against a party that caused the declarant to be unavailable, former MRE 804(b)(6); and statements with sufficient indicia of trustworthiness that meet several additional requirements, former MRE 804(b)(7). None of these exceptions applied in this case because William passed away before he could offer any testimony for reasons unrelated to defendant's case.

[1] The Michigan Rules of Evidence were substantially amended on September 20, 2023, effective January 1, 2024. See 512 Mich lxiii (2023). Defendant was convicted on March 7, 2023. This opinion relies upon the earlier version of the rules in effect at the time of defendant's trial.

First, defendant argues through counsel and in his Standard 4 brief that the trial court erred by admitting Sgt. Doud's testimony about William's statements during a photographic lineup. We conclude that defendant waived this issue.

A party may not appeal an error that the party created. *People v Szalma*, 487 Mich 708, 726; 790 NW2d 662 (2010). A waiver is an intentional abandonment of a known right. *People v King*, 512 Mich 1, 9; 999 NW2d 670 (2023). A waiver extinguishes any error, leaving nothing for this Court to review. *Id*. An issue is waived when counsel makes affirmative statements that are an express indications of approval of the trial court's action. *People v Kowalski*, 489 Mich 488, 504-505; 803 NW2d 200 (2011).

In this case, William passed away before defendant's preliminary examination. Before trial, the prosecution sought to prevent defense counsel from questioning Sgt. Doud about anything that William stated to him, and the prosecution renewed its objection during trial. Defense counsel responded that he should be allowed to question Sgt. Doud about the investigation. During cross-examination, Sgt. Doud was asked whether Willam circled or identified anyone in the photographic lineup, and he testified "no." Defense counsel then asked "[w]as he unable to identify, or was he not 100 or 1000 percent sure of that individual?" In response, Sgt. Doud testified that William initially indicated that he did not want to guess, but after he learned that Dean made a selection, he wanted to redo the selection and indicated that he would have selected defendant's photograph. Thus, defendant created any error in the admission of these statements.[2]

Second, defendant argues that the court erred by admitting hearsay evidence from a Facebook account and that the evidence was improperly authenticated. An admission by a party opponent includes "a statement of which the party has manifested an adoption or belief in its truth." Former MRE 801(d)(2)(B). A statement by a party-opponent that is offered against that party is not hearsay. *People v Smith*, 336 Mich App 79, 110; 969 NW2d 548 (2021), citing former MRE 801(d)(2). When there is a question regarding whether a defendant is the owner of a Facebook account, the trial court must first decide whether such evidence has been properly authenticated under MRE 901(a), which at the time of trial stated, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."[3] *Id*. at 106-107. If so, then the jury determines the reliability and weight of the evidence. *Id*. at 107.

In this case, William indicated that he had been robbed by someone he had been communicating with over Facebook. The Michigan State Police analyst testified that she had attempted to identify the person associated with a Facebook account called "Hbm Dell Certified."

---

[2] At trial, defendant objected to Sgt. Doud's statement on discovery-related grounds. To the extent that defendant raises a discovery-based argument on appeal, it concerns only whether the information was properly disclosed such that it would have been admissible under former MRE 804(b)(7).

[3] As this Court has previously stated, "we are mindful that in the age of fake social-media accounts, hacked accounts, and so-called deep fakes, a trial court faced with the question whether a social-media account is authentic must itself be mindful of these concerns." *Id*. at 107.

She identified additional accounts that had "Hbm" in the name and that were frequently tagged along with the "Hbm Dell Certified" account. She noticed consistencies among the accounts, including the use of "Hbm" in the display name and that the accounts had posted the same or similar photographs. Further, two of the accounts were associated with defendant's birthday, and all three were tagged in a post indicating that the accounts' user(s) had been discharged from parole on the same date that defendant was. We conclude that the court did not err by admitting the Facebook evidence because sufficient evidence was presented to support a finding that the items were what the prosecution claimed them to be, as required by MRE 901(a), which were Facebook pages affiliated with defendant. While defendant also argues that the messages contained therein were hearsay, they were admissible as party admissions. Former MRE 801(d)(2).

Third, defendant argues that the court erred by admitting hearsay statements in the 911 call because the call did not concern an ongoing emergency. We conclude that William's statements were admissible as excited utterances under former MRE 803(2).

Hearsay is admissible is if it is "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Former MRE 803(2). "[T]here is no express time limit for excited utterances." *People v Smith*, 456 Mich 543, 551-552; 581 NW2d 654 (1998). The trial court considers indications that the witness was still in shock and under the stress of the event when determining whether a statement was an excited utterance. See *id*. at 552-553. In this case, when listening to the 911 call, stress is clearly apparent in William's voice; he speaks quickly, repeats himself, and more than once the operator has to interrupt to ask questions or redirect him. The trial court did not abuse its discretion by admitting this evidence.

Fourth, defendant asserts that the court erred by allowing Sgt. Doud to testify about statements that a parole agent made to him regarding defendant's phone number. Sgt. Doud testified that he was aware that defendant may have a record with the Department of Corrections and that he asked a parole agent to search for a phone number connected to defendant. He then testified that the "Hbm Dell Certified" account was associated with defendant's phone number and that, after obtaining the Facebook records, he followed up by conducting a photographic lineup for Dean and William.

Defendant did not object to this testimony at the time of trial and raises this issue for the first time on appeal, so the issue is unpreserved. This Court reviews "unpreserved evidentiary errors for plain error affect[ing] substantial rights." *People v Sattler-VanWagoner*, ___ Mich App ___, ___; ___NW3d ___ (2024) (Docket No. 362433); slip op at 4. "To obtain relief under the plain-error rule, a defendant must prove that (1) an error occurred, (2) the error was plain, and (3) that the plain error affected substantial rights—in other words, the error affected the outcome of the proceedings." *Id*. Even if we accepted defendant's argument that Sgt. Doud's testimony about the statements of the parole agent were hearsay, defendant cannot demonstrate that the testimony affected the outcome of the proceedings, because Sgt. Dowd had already established that this phone number was affiliated with defendant before ever mentioning the statement of the parole agent. Thus, the jury would have been aware of the connection between defendant's phone number and the Facebook page even if this testimony had been disallowed by the trial court.

Fifth, defendant raises arguments regarding his constitutional rights to confront the witnesses against him. US Const, Am VI; Const 1963, art 1, § 20. Defendant did not raise this constitutional issue in the trial court. Unpreserved claims of constitutional error are reviewed for plain error. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). The erroneous admission of hearsay evidence may violate a defendant's constitutional right to confront the witnesses against him. *People v Bruner*, 501 Mich 220, 227; 912 NW2d 514 (2018). Defendant alleges that he was not allowed to confront the custodian of records for the Facebook evidence and the admission as evidence of Facebook messenger conversations between William Jearls, who died prior to trial, and a person alleged to be defendant. However, at no point does defendant even attempt to argue how excluding this evidence would have changed the outcome of the trial. Put another way, defendant does not explain how excluding this evidence would have led to a different result by the jury in a case in which one of the victims identified defendant as one of the robbers at the time of trial. As a result, he is not entitled to relief under plain error review. *Carines*, 460 Mich at 763-764.

III. OTHER-ACTS EVIDENCE

Defendant argues that the trial court improperly admitted evidence that he previously had been on parole. We conclude that defendant has not established that the court plainly erred by admitting this evidence because this fact was material to establishing defendant's identity as the perpetrator, and it was not unduly prejudicial when the jury was aware that defendant previously had been convicted of a felony. Though the court erred by admitting the evidence when the prosecution had not provided notice of its intent to admit the prior bad acts, defendant cannot meet the plain-error standard because the error was not prejudicial.

Once again, this issue is not preserved. "To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal." *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019). Defendant did not object to admission of the evidence that he had been on parole. As previously noted, this Court reviews unpreserved issues for plain error affecting a party's substantial rights. *People v Davis*, 509 Mich 52, 67-68; 983 NW2d 325 (2022). An error is plain if it is clear or obvious, and it affects substantial rights if it affected the outcome of the lower court proceedings. *Carines*, 460 Mich at 763. Additionally, a criminal defendant must show actual innocence or that the error seriously affected the fairness of the proceedings. *Davis*, 509 Mich at 67-68.

Generally, MRE 404(b)(1) prohibits a party from introducing evidence of another party's other crimes, wrongs, or acts to prove that person's propensity to engage in that type of action. *People v Galloway*, 335 Mich App 629, 637; 967 NW2d 908 (2020). If a defendant concedes the fact of prior convictions, admission of the evidence beyond the fact of the conviction may constitute prejudicial error. *People v Swint*, 225 Mich App 353, 377-378; 572 NW2d 666 (1997). However, evidence of prior convictions may be admissible for other, proper purposes. *Galloway*, 335 Mich App at 638. Proper purposes include

> proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material . . . . [Former MRE 404(b)(1).]

In this case, evidence regarding defendant's parole status was offered to prove defendant's identity. The analyst testified that there were two other Facebook accounts that were tagged in several posts with the "Hbm Dell Certified" account. According to the analyst, in April 2021, the "Crowley Hbm" account made a post indicating he had been released from parole. All three of the "Hbm" accounts were tagged with that post. She testified that she conducted a search with the Department of Corrections and learned that defendant had been discharged from parole in April 2021. We conclude that the parole-related evidence was offered for the noncharacter purpose of connecting defendant with the "Hbm Dell Certified" account.

If other-acts evidence is offered for a noncharacter purpose, the evidence must also be logically relevant, i.e., it must be material and have probative value. *Galloway*, 335 Mich App at 638-639. Evidence is material when it is "related to a fact or issue of consequence in the determination of the case," and it has probative value when it has "a tendency to make the purported fact of consequence more or less probable than it would be without that evidence." *Id*. at 639. Materiality and probative value must be considered in light of the elements of the charge, theory of admissibility, and asserted defenses. *Id*. The perpetrator's identity is an element of every offense. *Id*. at 641.

The identity of the perpetrator was a crucial issue in this case, and the evidence regarding defendant's parole was of consequence to determining whether he was the person who used the "Hbm Dell Certified" account to set up the robbery. Defendant's primary theory of the case was that the government did not sufficiently investigate the crime. The parole-related evidence was used to link the three accounts to defendant. Therefore, the probative value of this evidence rendered it logically relevant.

Further, the probative value of the other-acts evidence must not be substantially outweighed by the risk of unfair prejudice. *Id*. at 638. Unfair prejudice exists "where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence." *People v Thurmond*, 348 Mich App 715, 731; 20 NW3d 311 (2023) (quotation marks and citation omitted).

In this case, there is no indication from the record that there was a danger that the jury gave undue or preemptive weight to defendant's being on parole until April 2021. During the case, defendant stipulated that he had previously been convicted of a felony. Further, defense counsel used the fact that defendant had previously been on parole in his defense, asserting that defendant had successfully navigated parole, would not want another mistake to result in his imprisonment, and would not have tagged himself in a Facebook post as a criminal perpetrator. We conclude that the probative value of the parole-related identity evidence was not substantially outweighed by the risk of unfair prejudice.

Lastly, defendant argues that the court erred by admitting the evidence because the prosecution failed to notify him of its intent to admit it. The trial court clearly erred by admitting other-acts evidence that the prosecution presented without notice, but we conclude that this error did not prejudice defendant under the plain-error standard.

The prosecution is required to provide notice of its intent to admit other-acts evidence it intends to introduce at trial and the rationale for seeking to admit the evidence. Former MRE

404(b)(2); *People v Lowrey*, 342 Mich App 99, 116; 993 NW2d 62 (2022). "[A]lthough failure to provide notice constitutes plain error, it may be deemed harmless and therefore not grounds for reversal." *Lowrey*, 342 Mich App at 117. Once again, a plain error only affects the defendant's substantial rights when the error likely affected the outcome of the proceedings. *Carines*, 460 Mich at 763. When notice would not have any effect on whether the evidence should have been admitted, any error in the failure to provide notice is harmless. *Lowrey*, 342 Mich App at 117. Again, the parties stipulated that defendant had previously been convicted of a felony, and the jury was reminded of this stipulation during jury instructions. We conclude that any prejudice caused by the jury's potential use of defendant's parole status as character evidence was not likely to have affected the outcome of the proceedings when the jury was already aware that defendant had committed a felony.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant raises numerous arguments in which he asserts that counsel provided ineffective assistance. These arguments lack merit.

A defendant's claim that counsel provided ineffective assistance is a mixed question of fact and law. *People v Thigpen*, 349 Mich App 437, 446; 27 NW3d 647 (2023). "[T]his Court reviews for clear error the trial court's findings of fact and reviews de novo questions of constitutional law." *Id*. (quotation marks and citation omitted). A finding of fact is clearly erroneous when, even though there may be evidence to support it, this Court is definitely and firmly convinced that the trial court made a mistake. *Id*. at 446-447.

A criminal defendant has a fundamental right to the effective assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20; *United States v Cronic*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984). In order to obtain a new trial on the basis that counsel provided ineffective assistance, the 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 would have been different." *Thigpen*, 349 Mich App at 446 (quotation marks and citation omitted). Although counsel's strategic decisions must be objectively reasonable, the defendant contending ineffective assistance of counsel must overcome a strong presumption that their counsel's performance constituted sound trial strategy. *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023). A defendant asserting an ineffective-assistance claim has the burden to establish the factual predicate of the claim. *People v Loew*, 340 Mich App 100, 120; 985 NW2d 255 (2022).

First, in his brief on appeal filed by counsel, defendant argues that his trial counsel erred by beginning to excuse a juror but then failing to do so. The record does not establish that counsel's decision to not excuse a juror was objectively unreasonable.

"[T]his Court has been disinclined to find ineffective assistance of counsel on the basis of an attorney's failure to challenge a juror." *People v Unger*, 278 Mich App 210, 258; 749 NW2d 272 (2008). When presuming that counsel rendered effective assistance, this Court should "affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did." *People v Abcumby-Blair*, 335 Mich App 210, 237; 966 NW2d 437 (2020) (quotation marks, citation and ellipsis omitted). In this case, defense counsel indicated that defendant "would like to

thank and excuse Juror No.—I've lost his seat, here. Juror No.—oh, I beg your pardon. I would pass, at this time." Considering the range of possible reasons for making this statement, it appears that counsel may have intended to excuse a juror that already had been excused. Thus, defendant has not established the factual predicate that counsel actually intended to excuse a juror but then failed to do so.

Second, defendant argues through counsel that defense counsel made two errors regarding defendant's alibi defense. We conclude the record indicates that defense counsel investigated defendant's alibi defense and reasonably argued that defendant did not have the burden to establish that he had an alibi.[4]

Counsel has the duty to reasonably investigate possible defenses or make reasonable decisions that render a specific investigation unnecessary. *Thigpen*, 349 Mich App at 447. In this case, in an affidavit provided with defendant's brief on appeal, Jeremy Crowley indicates that he would have been willing to testify to support an alibi defense at trial.[5] At trial, counsel indicated that he was striking Jeremy from the witness list and that Jeremy would no longer testify. During his opening statement, when referring to alibi defenses, defense counsel indicated that there were a number of reasons why a person might not have an alibi. It is apparent from the record that counsel considered an alibi defense and decided not to pursue it.

We also reject defendant's argument that counsel erred when giving his opening statement by mentioning an alibi defense but stating that defendant would not present one. When considered in context, defense counsel's statement that defendant did not have an alibi was not objectively unreasonable. Defense counsel's alibi-related statements were made between defendant's argument that the government was presenting a speculative case and that the jury was required to presume that defendant was innocent. He explained to the jury that defendant is not required to present an alibi witness and indicates that "not everybody remembers things." What defendant fails to mention in this brief is that one of the potential jurors raised the issue of an alibi defense during voir dire—when asked a hypothetical question about how to prove that they had not stolen something, the prospective juror said they would provide an alibi to show that they were somewhere else at the time. Thus, this argument by defense counsel appears to be a strategic decision to address why defendant was not calling any witness who could establish that he was somewhere else during the time of the robbery. We conclude that it was not objectively unreasonable for counsel to make such an argument.

Third, defendant argues that counsel erred by failing to challenge the admission of hearsay and other-acts evidence. As previously indicated, most of defendant's hearsay arguments fail and the trial court did not err by admitting evidence that defendant had previously been on parole. Defense counsel is not required to make meritless or futile objections. *People v Putman*, 309 Mich

---

[4] Because defendant's arguments fail even if these arguments are preserved, we decline to address the prosecution's argument that defendant's alibi-related arguments are unpreserved.

[5] Defendant has provided an additional affidavit. Because this affidavit is unsworn, it is fundamentally defective, and we will not consider it. See *People v Budzyn*, 456 Mich 77, 92 n 14; 566 NW2d 229 (1997).

App 240, 245; 870 NW2d 593 (2015). As for defendant's argument that the statement of the parole agent was hearsay and that the prosecution did not provide notice of prior bad acts evidence, defendant has failed to show that there is a reasonable probability that the outcome of the trial would have been different if defense counsel had objected to this evidence and the evidence was excluded as a result. See *Thigpen*, 349 Mich App at 446. Accordingly, defense counsel did not provide ineffective assistance by failing to make these challenges.

Further, we conclude that defense counsel's decision to waive a hearsay objection to William's otherwise-objectionable statements to Sgt. Doud during the photographic identification was not itself objectively unreasonable. Just prior to asking Sgt. Doud to agree that William was not 100 percent sure about the identity of the robber, Sgt. Doud conceded that Williams did not circle or identify anyone in the photographic lineup, which was helpful evidence to the defense. Asking him to make further concessions about *why* Williams was unable to identify anyone in the photographic lineup was a matter of legal strategy. While it is clear from the record that defense counsel anticipated a different answer, the *decision* to question the process was not objectively unreasonable.

Fourth, defendant argues that trial counsel provided ineffective assistance by failing to object to the analyst's opinion that defendant was the person depicted in two photographs. Defendant has not established the factual predicate for this claim because the analyst did not express such an opinion.

"[A] witness cannot express an opinion on the defendant's guilt or innocence of the charged offense." *People v Fomby*, 300 Mich App 46, 53; 831 NW2d 887 (2013) (quotation marks and citation omitted). A witness does not profess such an opinion when the witness does not identify defendant in a video or still image. *Id*. However, a witness's testimony is permitted to link individuals depicted in images. *Id*. In this case, the analyst testified that she reviewed the Facebook profile with the name "Hbm Dell Certified," searched a database of arrest photographs, and compared those photographs with the photographs that were publicly available on the "Hbm Dell Certified" Facebook profile, which "appeared to be a similar physical description." She also testified that the same or similar *pictures* had been posted to multiple "Hbm" accounts. The analyst did not express an opinion that defendant was the person in the photographs; her testimony merely linked individuals depicted in images. Because defense counsel need not make meritless or futile objections, counsel did not err by failing to object to the analyst's testimony.

Fifth, defendant argues that counsel provided ineffective assistance by failing to challenge Sgt. Doud's testimony about the prosecution making a charging decision in this case, which was allegedly exacerbated by earlier testimony from Sgt. Doud about obtaining a search warrant. According to defendant, the comments about the charging decision bolstered the testimony of the prosecution's witnesses and the case it was presenting by implying that the prosecutor deemed the witnesses to be credible, i.e., the prosecutor vouched for the witnesses. Regarding the search warrant testimony, defendant argues that it did not address a disputed material fact; rather, it told "the jury that a district court judge considered and approved the police work to that point." We reject this argument because the prosecution's decision to charge a defendant does not by itself imply any knowledge about a witness's truthfulness, nor is testimony about the mere issuance of a search warrant evidence that the trial court somehow endorses everything that the police department has done on the case up to that point in time.

The prosecution may not vouch for a witness's credibility by indicating that it has knowledge regarding a witness's truthfulness. *People v Jackson*, 313 Mich App 409, 426; 884 NW2d 297 (2015). Additionally, a witness may not opine about the defendant's guilt or innocence in a criminal case. *Fomby*, 300 Mich App at 53. In this case, Sgt. Doud testified about the process of obtaining a search warrant for the Facebook messenger conversation, including that doing so required going to the district court for review. Nothing in the testimony indicates that the prosecution had special knowledge about the truthfulness of any witness, and Sgt. Doud did not offer an opinion regarding whether defendant was guilty or innocent. Defendant has not established that counsel's decision not to object was objectively unreasonable.

Sixth, defendant asserts that counsel failed to effectively cross-examine and impeach Dean regarding his memory of the evening, his statements to the responding officer, and the amount of light present during the crime. The record does not support this argument because counsel did attempt to impeach Dean about these issues.

Decisions regarding whether to call witnesses, how to question witnesses, and what evidence to present are matters of trial strategy. *Putman*, 309 Mich App at 248. "A particular strategy does not constitute ineffective assistance of counsel simply because it does not work." *People v Carll*, 322 Mich App 690, 702; 915 NW2d 387 (2018) (quotation marks and citation omitted). In this case, counsel asked Dean if he remembered saying things to the responding officer, and Dean testified that he would not be able to say. Counsel asked if Dean recalled testifying about having memory issues during the preliminary examination and questioned him about specific statements that he made during the preliminary examination. Defense counsel asked Dean whether his memory was better at the time of trial than at the time of the incident, and Dean testified that he thought that it was. Counsel asked Dean about the amount of light that was present in the area, and Dean testified that light from the side of the house sufficiently illuminated the area.

In sum, the record does not support that counsel failed in any of the ways that defendant argues. Defense counsel questioned Dean regarding each of the specific points defendant raises on appeal; the cross-examination strategy simply did not work.[6]

Seventh, defendant argues that counsel provided ineffective assistance by focusing his closing argument on the possibility that someone hacked defendant's Facebook accounts. We disagree and conclude that, considering the facts in this case, defense counsel's theory of the case was not objectively unreasonable.

Decisions about what arguments to present in a closing statement are matters of trial strategy. *Putman*, 309 Mich App at 248. In this case, defense counsel argued that Facebook account could have been hacked or used by someone else and that the government failed to investigate whether someone else committed the crime. To the extent that counsel stated that defendant "is using it" when referring to the Facebook accounts, it was in the context of counsel's

[6] We note that defendant also asserts that counsel should have requested "a limiting instruction." Because it is unclear what defendant is referring to, in part because defendant has not provided any authority related to this assertion, we deem this argument abandoned. See *People v Iannucci*, 314 Mich App 542, 545; 887 NW2d 817 (2016).

argument that defendant had multiple accounts because he had a busy social life. Counsel immediately followed up by arguing that this did not mean that someone else could not also be accessing defendant's accounts. In light of the extensive evidence connecting the "Hbm" accounts, including defendant's birthday and that all three accounts were tagged when defendant was released from parole, we cannot conclude that defense counsel's argument that defendant's accounts had been hacked to arrange the robbery was unreasonable.

Lastly, defendant argues that counsel provided ineffective assistance by abandoning defendant at sentencing. Again, we conclude that the record does not support this argument.

In this case, sentencing was scheduled for July 11, 2023. At the hearing on that date, defense counsel initially indicated that he reviewed the presentence investigation report (PSIR) with defendant, that it was factually accurate, and that he had no deletions or corrections. When the court asked the prosecution if it had any additions, deletions, or objection, the prosecution made a series of objections to the scoring, which, if sustained, would have significantly increased the range of the guidelines. Because of the numerous changes proposed by the prosecution, defense counsel asked to adjourn the hearing to provide time for the defense to review the proposed changes and asked that they be presented to defense counsel in writing by the prosecution. As a result, the trial court adjourned the hearing, although the court also stated that "[i]t likely would not change the Courts sentence." When the sentencing hearing resumed on September 12, 2023, the court indicated that it reviewed the sentencing memoranda, and defense counsel challenged the prosecution's argument regarding one of the offense variables.

Defendant argues that defense counsel's response to the trial court's question as to whether he would like to say anything on behalf of his client before proceeding to sentencing constituted ineffective assistance of counsel—defense counsel's answer was: "No. Thank you very much for the opportunity, though." According to defendant: "This is not strategy at all, reasonable or unreasonable. This is the complete abandonment of a client at sentencing." Considered in a vacuum, defendant's argument would be persuasive, i.e., an attorney refusing to offer anything at sentencing to support his client could be deemed an act of abandonment. But the record shows that defense counsel did no such thing in this case. To begin with, defense counsel managed to have the hearing adjourned when faced with proposed changes to the PSIR that could negatively affect his client and also convinced the court to require the prosecution to put those proposed changes in writing. As a result, defendant had an opportunity to review the prosecution's subsequent sentencing memorandum and submit a written response containing any necessary objections. At the resumption of the sentencing hearing in September 2023, as noted above, prior to telling the court that he had nothing further to say about sentencing, defense counsel made a presentation about his objections to OV 4 and argued that it should be scored at zero. Thus, the record does not support defendant's assertion that counsel completely abandoned him at sentencing.

V. DEPRIVATION OF COUNSEL

Defendant argues that his right to counsel was violated when counsel struggled to represent him following a car accident. The record does not support defendant's argument.

"Generally, whether a defendant's right to counsel was violated is a constitutional issue that this Court reviews de novo." *People v Hoang*, 328 Mich App 45, 54; 935 NW2d 396 (2019). A defendant has been denied this right if he or she has been completely denied counsel at a critical stage. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). When counsel is completely unprepared for trial or has been provided but does nothing, there is a functional denial of a defendant's right to counsel. *People v Mitchell*, 454 Mich 145, 153; 560 NW2d 600 (1997).

In this case, the court adjourned one day of trial after receiving a report that defense counsel had been in a car accident and needed to follow up regarding a slight injury. The next trial date was four days later. The record does not contain any indications that counsel subsequently was too impaired to function as an attorney. Instead, the transcripts indicate that counsel proceeded much as he had proceeded before his accident. Further, defendant has provided no offers of proof to support his argument that counsel was physically unsteady.

VI. PROSECUTORIAL MISCONDUCT

Defendant argues that the prosecutor erred by commenting on William's statements during the photographic lineup in his closing remarks and by asking a question that resulted in Sgt. Doud's stating that defendant had been involved in the Facebook conversation with William. The prosecutor did not err by basing his closing argument on evidence in the record or by questioning Sgt. Doud about the process of his investigation.

As an initial matter, this issue is not preserved. Again, this Court reviews unpreserved issues for plain error affecting a party's substantial rights. *Davis*, 509 Mich at 67-68. A prosecutor can deny a defendant's right to a fair trial by making improper remarks that infringe on a defendant's constitutional rights or by making remarks that "so infect[] the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v DeChristoforo*, 416 US 637, 643; 94 S Ct 1868; 40 L Ed 2d 431 (1974). "[T]he test for prosecutorial misconduct is whether a defendant was denied a fair and impartial trial." *People v Caddell*, 332 Mich App 27, 71; 955 NW2d 488 (2020) (quotation marks and citation omitted).

First, defendant argues that the prosecutor erred by referring to Sgt. Doud's testimony about William's comments during closing arguments. During closing statements, a prosecutor may argue all the facts in evidence and all reasonable inferences arising from the evidence that are related to the prosecution's theory of the case. *Caddell*, 332 Mich App at 71. As previously discussed, defendant waived any challenges to the admission of this testimony. The prosecutor did not err by commenting on these facts, which were in evidence, during closing arguments.

Second, defendant argues that the prosecution erred by implying that defendant was guilty because Sgt. Doud's statements about the Facebook conversation between defendant and William functionally commented on defendant's guilt. We conclude that the prosecutor's question regarding the individual associated with the "Hbm Dell Certified" account was a good-faith effort to question Sgt. Doud about the course of his investigation.

"A witness may not opine about the defendant's guilt or innocence in a criminal case." *People v Heft*, 299 Mich App 69, 81; 829 NW2d 266 (2012). When an opinion about a defendant's guilt "is proffered by an officer of the law, the error seriously affects the fairness, integrity, or

public reputation of the proceedings." *People v Bynum*, 496 Mich 610, 633; 852 NW2d 570 (2014). When the defendant's prosecutorial-misconduct argument is functionally an evidentiary issue framed as a prosecutorial-misconduct issue, this Court determines whether the prosecutor acted in good faith. *People v Dobek*, 274 Mich App 58, 70; 732 NW2d 546 (2007). "A prosecutor's good-faith effort to admit relevant evidence does not constitute misconduct." *Id*.

In this case, the following exchange took place between the prosecutor and Sgt. Doud:

> *Q*. What was your next course of action then after possibly identifying an individual associated with that Hbm Dell Certified Facebook account?
>
> *A*. So I wanted to see the conversations that were taking place between Travis Crowley and the victim, a William Jearls. So I drafted a search warrant for Facebook. Once the search warrant was authorized I then submitted the search warrant to Facebook requesting the records for Travis Crowley for that Hbm Dell Certified Facebook profile.

The prosecutor's question was about the steps in the investigation that Sgt. Doud took to identify "an individual" associated with the Facebook account that was connected to the crime. To the extent that Sgt. Doud's testimony can be considered a comment that he believed defendant to be person who spoke with the victim, there is no indication that the prosecution deliberately elicited this testimony. Therefore, we reject defendant's prosecutorial-misconduct argument.

Lastly, defendant argues that cumulative errors deprived him of a fair trial.

> The cumulative effect of several errors can constitute sufficient prejudice to warrant reversal even when any one of the errors alone would not merit reversal, but the cumulative effect of the errors must undermine the confidence in the reliability of the verdict before a new trial is granted. However, each of the errors must be of some consequence. [*Lowrey*, 342 Mich App at 119 (quotation marks and citations omitted).]

In this case, most of defendant's claims of error are without merit, as indicated in this opinion. As to the remaining issues raised by defendant, i.e., that the prosecution failed to provide notice of prior bad acts testimony, that Sgt. Doud's testimony about the statements of the parole agent were hearsay, that defendant's right to confront witnesses was violated as it pertained to the Facebook records custodian and William's Facebook messenger conversations, and evidence of defendant's parole status, this Court has already determined that not one of them would have affected the outcome of this case. We likewise hold that none of these errors alleged by defendant were of any consequence to the outcome of this case. Again, Dean testified that he identified defendant as one of the robbers in a photographic lineup and testified that he identified him in person at a hearing in May 2022 (i.e., at the preliminary examination). He likewise identified defendant as one of the robbers at trial and testified that defendant was the same person he previously identified. Defendant's description matched the description given by William during his excited 911 call. Defendant has failed to show that he would have been able to overcome this damning evidence if the above evidence had not been introduced. As a result, we reject

defendant's assertion that cumulative errors deprived him of a fair trial, i.e., that assertion is not supported by the record in this case. See *Lowrey*, 342 Mich App at 119-120.

Affirmed.

/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado
/s/ Randy J. Wallace