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 MAURICE RUSHTON, Defendant-Appellant.	UNPUBLISHED September 15, 2026 10:24 AM No. 375304 Oakland Circuit Court LC No. 2023-283844-FC

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

PER CURIAM.

Defendant, Maurice Rushton, appeals as of right his jury-trial conviction of second-degree murder, MCL 750.317. He was sentenced, as a habitual fourth offender, MCL 769.12, to 35 to 70 years' imprisonment. On appeal, defendant contends that the trial court erred in failing to provide the instruction for the lesser-included offense of manslaughter, abused its discretion in the scoring of Offense Variables (OV) 5 and 19, and erred in admitting hearsay evidence under the doctrine of forfeiture by wrongdoing, MRE 804(b)(6). We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

On the evening of September 22, 2022, SB drove to Pontiac to return property to JY, her ex-boyfriend. When she arrived, JY approached her car. There was a group of people at the park, including the victim, a white male, and defendant, a short bald black male with an orange goatee. Defendant was wearing plaid pants and an Eddie Bauer jacket. Park patrons began to yell at the victim to run. Defendant held a knife in his hand as he pursued the victim. Defendant left the area. When he returned, defendant seemingly explained that he stabbed the victim because of theft and that the victim was not a true Muslim. After a short time, SB and JY went in search of the victim. They found him lying face down on the ground and bleeding from his chest. They called 911, and SB tried to stop the bleeding.

That evening, SB participated in a video recorded interview for detectives. But, eight days later, SB telephoned the police and said she wanted to recant her statement. Later, SB did not voluntarily appear for the preliminary examination and had to be arrested. SB claimed that she encountered defendant in the holding cell area at district court. At that time, defendant purportedly

advised SB that he knew who she was, what she said, and the car she drove. Although SB did not have "beef" with anyone, her car was purposefully damaged, and she was followed by people who asked her name. Consequently, at trial, SB and JY indicated that they would not testify. After an evidentiary hearing, the trial court found that SB was unavailable and admitted her preliminary examination testimony under MRE 804(b)(6), the forfeiture-by-wrongdoing doctrine.

Despite defendant's claim[1] that he did not commit the murder, defendant was charged with open murder, and as noted, convicted of second-degree murder.

II. JURY INSTRUCTION–VOLUNTARY MANSLAUGHTER

Defendant first alleges that the trial court erred by failing to instruct the jury regarding voluntary manslaughter. We conclude that defendant waived this issue, and the waiver extinguished any claim of error.

Preserved claims of instructional error are reviewed de novo. *People v Kowalski*, 489 Mich 488, 501; 803 NW2d 200 (2011). The jury instructions are reviewed as a whole, not piecemeal, to determine if an error occurred. *Id*. An imperfect instruction is not a basis for setting aside a conviction "if the instruction fairly presented the issues to be tried and adequately protected the defendant's rights." *Id*. at 501-502. "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." MCL 768.29.

But if a defendant fails to object to an omitted instruction, his claim of error is forfeited and reviewed for plain error affecting substantial rights. *People v Gonzalez*, 468 Mich 636, 643; 664 NW2d 159 (2003). And when a defendant expresses satisfaction with the jury instructions, any error is waived. *People v Carter*, 462 Mich 206, 214-215; 612 NW2d 144 (2000); *People v Reid*, 292 Mich App 508, 515; 810 NW2d 391 (2011).

In this case, defendant waived appellate review of this issue by expressing satisfaction with the jury instructions. The trial court instructed the jury on first-degree murder and second-degree murder.[2] After the instructions and verdict form were read to the jury, the trial court asked the attorneys if they were satisfied, and they both responded, "Satisfied."

---

[1] Deputies interviewed other people at the park. A park patron identified defendant as "Moe." The deputies were able to locate defendant that evening. When questioned about the stabbing and his role, defendant claimed that he was home that evening and walked with a cane because of a recent surgery.

[2] "When a defendant is charged with murder, a requested instruction for voluntary manslaughter must be given if supported by a rational view of the evidence." *People v Joesel*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167705) (quotation marks and citation omitted). "Voluntary manslaughter consists of three prongs: (1) the defendant killed in the heat of passion; (2) the passion was caused by adequate provocation, and (3) there was not a lapse of time during which a reasonable person could control [their] passions." *Id*. Here, defendant did not request a

"By expressly approving the jury instructions, defendant waived review of the alleged instructional error." *People v Head*, 323 Mich App 526, 537; 917 NW2d 752 (2018). "Waiver extinguishes any error, meaning that there is no error to review." *Id*. In light of defendant's theory at trial, defendant's approval of the instructions for first and second-degree murder demonstrates that there is no error to review or correct.

III. OV 5–SERIOUS PSYCHOLOGICAL INJURY

Defendant asserts that the trial court improperly scored OV 5 at 15 points to reflect serious psychological injury. We disagree.

Under the sentencing guidelines, the trial court's findings of fact are reviewed for clear error and must be supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013); *People v Rhodes (On Remand)*, 305 Mich App 85, 88; 849 NW2d 417 (2014). "Clear error is present when the reviewing court is left with a definite and firm conviction that an error occurred." *People v Fawaz*, 299 Mich App 55, 60; 829 NW2d 259 (2012) (quotation marks and citation omitted). On the other hand, we review de novo "[w]hether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute[.]" *Hardy*, 494 Mich at 438; see also *Rhodes (On Rem)*, 305 Mich App at 88. When calculating the sentencing guidelines, a court may consider all record evidence, including the contents of a presentence investigation report (PSIR), plea admissions, and preliminary examination testimony. *People v Teike*, 348 Mich App 520, 527; 19 NW3d 733 (2023); *People v Johnson*, 298 Mich App 128, 131; 826 NW2d 170 (2012). Additionally, the trial court may draw reasonable inferences arising from the record evidence. *People v Montague*, 338 Mich App 29, 55; 979 NW2d 406 (2021).

"Even though defendant did not preserve [the issue of OV 5 scoring] for appeal, this Court may review an unpreserved scoring issue for plain error affecting substantial rights." *People v Loper*, 299 Mich App 451, 457; 830 NW2d 836 (2013), overruled in part on other grounds by *People v Lockridge*, 498 Mich 358, 392-395; 870 NW2d 502 (2015). "To avoid forfeiture of the issue under the plain error rule, the defendant bears the burden to show that 1) error . . . occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id*. (quotation marks and citation omitted).

The trial court did not err in scoring OV 5 at 15 points, and defendant failed to show plain error affecting his substantial rights arising from this issue.

MCL 777.35 addresses psychological injury to a member of the victim's family. Fifteen points may be scored when "[s]erious psychological injury requiring professional treatment occurred to a victim's family." MCL 777.35(1)(a). Fifteen points must be scored "if the serious psychological injury to the victim's family may require professional treatment," but "the fact that treatment has not been sought is not conclusive." MCL 777.35(2).

---

voluntary manslaughter instruction. Indeed, the defense was that defendant did not commit the murder, and he did not seek to mitigate the offense by arguing heat of passion or provocation.

OV 5 is scored for a homicide or homicide-related crime that causes psychological injury to the members of a victim's family. *People v Calloway*, 500 Mich 180, 184; 895 NW2d 165 (2017). MCL 777.35(1)(a), addressing OV 5, "does not require proof that a victim's family member has already sought or received, or intends to seek or receive, professional treatment." *Id*. at 186. The psychological injury must be "serious," which in this context is defined as "having important or dangerous possible consequences." *Id*. The serious psychological injury requirement may be satisfied when the victim's family submits statements in the PSIR or at sentencing to show the psychological impact that may require future professional intervention. The family's submission to the courts may delineate the trauma and family impact. *Id*. at 188-189. The trial court should note the family statements addressing loss and the emotional toll and not presume that serious psychological injury necessarily accompanies every homicide. *People v Felton*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 375518), slip op at 5.

At sentencing, the victim's mother stated that she was shattered by what defendant did to her family. She requested that defendant receive a life sentence because his history of harming people had escalated to the victim's murder. The mother was so overwhelmed, she asked the prosecutor to read her statement. The mother wrote how the victim's death had shattered her life, that she worshiped the victim, and that she would be deprived of family and life events such as the victim having children.

Additionally, the victim impact statement section of the PSIR contained a statement from the victim's adoptive mother. She indicated that her heart was crushed by the victim's death. The victim's father was devastated by the death such that he shut down and did not speak much. Unfortunately, the victim's father passed before the sentencing.

Defendant's blanket conclusion that "serious" psychological injury did not occur is inconsistent with the record. The victim's mother and adoptive mother expressed the devastating loss from the victim's murder. The women would not celebrate holidays with the victim and would not experience certain milestones such as the birth of a grandchild. Thus, even though the victim's family members did not report that professional psychological treatment was occurring or would be sought, they presented statements reflecting serious psychological injury arising from the death of the victim, their son. In light of the devastation expressed by the victim's family members, the 15-point score for OV 5 was supported by a preponderance of the evidence, and it was possible that professional treatment may be necessary in light of their expression of loss. *Calloway*, 500 Mich at 188-189; *Felton*, ___ Mich App at ___, slip op at 5. Defendant has not shown that plain error occurred.

IV. OV 19–INTERFERENCE OR ATTEMPTED INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE

Next, defendant contends that the trial court erred in scoring OV 19 at 10 points. We disagree.[3]

As noted, all record evidence, including the contents of a PSIR, may be considered when calculating the sentencing guidelines. *Teike*, 348 Mich App at 527; *Johnson*, 298 Mich App at 131. In the description of the offense narrative of the PSIR, it reflected that sheriff deputies went to Monroe and Huron Streets in Pontiac for the report of a stabbing. The deputies found the victim lying on his back with a small stab wound to the chest area. The victim was transported to the hospital where he was pronounced dead.

Witnesses in the area were interviewed. One park patron observed "Moe" (defendant's nickname) chasing "that white guy" (the victim). JY was in the park speaking to the victim and others. SB arrived and JY went to speak with her.

Defendant left his home located just across the street, and he began to chase the victim around the park. JY told the victim to run because defendant had previously stabbed the victim. JY heard the victim yell, "please don't," and defendant responded, "you got me f***ed up."

When defendant returned, he expressed that he did not care if he killed the victim. A search of defendant's home revealed a purple knife. There was evidence that defendant had recently cleaned with bleach because of the smell. Defendant's shoes had gravel from the park in the treads and red spots.

In pertinent part, MCL 777.49 provides that a trial court may assess 10 points when "[t]he offender otherwise interfered with or attempted to interfere with, or that results in the interference with the administration of justice[.]" "[T]he plain and ordinary meaning of 'interfere with the administration of justice' for purposes of OV 19 is to oppose so as to hamper, hinder, or obstruct the act or process of administering judgment of individuals or causes by judicial process." *People v Hershey*, 303 Mich App 330, 343; 844 NW2d 127 (2013). "The phrase 'interfered with or attempted to interfere with the administration of justice' is broad." *People v Steele*, 283 Mich App 472, 492; 769 NW2d 256 (2009). It is not limited to acts constituting an obstruction of justice. *Id.* This interference encompasses more than just the actual judicial process. *People v Barbee*, 470 Mich 283, 287-288; 681 NW2d 348 (2004). Law enforcement officers comprise an integral component in the administration of justice, and interfering with their duties, such as

[3] Defendant claimed OV 19 was improperly scored because he maintained his innocence. That ground was not raised in the trial court and did not serve as the basis of the trial court's ruling. Because defendant does not challenge the basis for the trial court's ruling, this Court need not even consider granting him appellate relief. See *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001). Indeed, defendant's appellate challenge does not warrant relief because the facts indicate defendant interfered with the administration of justice in multiple ways, and he fails to acknowledge or address those facts. Nonetheless, the validity of the trial court's ruling will be analyzed.

providing a false name, constitutes interference with the administration of justice for purposes of OV 19. *Id.* at 288. OV 19 also "may be scored for aggravating conduct that occurred after the sentencing offense was completed" because the circumstances described in OV 19 expressly encompass acts that occur after the sentencing offense was completed. *People v Smith*, 488 Mich 193, 201-202; 793 NW2d 666 (2010).

Interference with the administration of justice includes behavior designed to "hamper, hinder, or obstruct the act or process of administering judgment of individuals or causes by judicial process." *Hershey*, 303 Mich App at 343. It may include a defendant's admonition to his victims not to reveal his acts or he would go to jail. *Steele*, 283 Mich App at 492. The defendant's statements need not constitute a threat, but rather, satisfy OV 19, when the statements present "a clear and obvious attempt" "to diminish his victims' willingness and ability to obtain justice." *Id.* at 493. Moreover, actual interference is not required to assign a 10-point score. *People v Dingee*, ___ Mich App ___, ___; ___ NW3d ___ (2025), slip op at 10, lv pending. An attempt to interfere with the administration of justice will suffice. *Id.* Consequently, when a defendant engaged in an activity, such as social media posts, that were designed to intimidate the victim and deter her pursuit of criminal charges, the trial court does not clearly err in finding a defendant's attempt to interfere with the administration of justice warranting a 10-point score. *Id.*

As noted, OV 19 "may be scored for aggravating conduct that occurred after the sentencing offense was completed" because the circumstances described in OV 19 expressly encompass acts that occur after the sentencing offense was completed. *Smith*, 488 Mich at 201-202. In this case, after the sentencing offense of second-degree murder was completed, defendant took steps to hinder the police investigation and to prevent the discovery of inculpatory evidence. When the police executed their search warrant of defendant's residence, they discovered a knife in the kitchen and the smell of bleach. Additionally, defendant represented that he had been inside his home that evening and could only walk with a cane because of a recent surgery. This misrepresentation was designed to prevent the police from associating defendant with the individual that chased the victim around the park. Further, JY and SB were reluctant to provide written statements to the police and declined to testify in part because of being labeled snitches. Additionally, defendant communicated with SB at district court that he knew who she was, what she had said, and the type of car that she drove. Under the circumstances, the trial court did not clearly err in finding that a 10-point score for OV 19 was supported by a preponderance of the evidence. Defendant's actions were designed to avoid being held responsible for the victim's death by destroying evidence and intimidating witnesses to prevent them from testifying. *Hardy*, 494 Mich at 438; *Rhodes (On Rem)*, 305 Mich App at 88.

V. MRE 804(b)(6)

Lastly, defendant claims that the trial court erred in admitting SB's preliminary examination testimony after finding forfeiture by wrongdoing, denying him his due process right to a fair trial. We disagree.

Preserved evidentiary issues are reviewed for an abuse of discretion. *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019). An abuse of discretion occurs when the decision falls outside the range of reasonable and principled outcomes. A decision on a close evidentiary question generally cannot constitute an abuse of discretion. *Id*. at 251-252. "Questions whether a defendant was denied a fair trial, or deprived of his liberty without due process of law, are reviewed de novo." *Steele*, 283 Mich App at 478.

The trial court did not abuse its discretion in determining that SB was rendered unavailable under MRE 804(b)(6) and admitting her preliminary examination testimony and videotaped police interview shortly after the stabbing.

"A defendant can forfeit his right to exclude hearsay by his own wrongdoing." *People v Burns*, 494 Mich 104, 110; 832 NW2d 736 (2013). "[T]he forfeiture-by-wrongdoing rule, which is codified in MRE 804(b)(6) . . . provides that a statement is not excluded by the hearsay rule if the declarant is unavailable and the statement is offered against a party that has engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." *People v Allen*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 352625), slip op at 11 (quotation marks and citation omitted). "To admit evidence under MRE 804(b)(6), the prosecution must show by a preponderance of the evidence that: (1) the defendant engaged in or encouraged wrongdoing; (2) the wrongdoing was intended to procure the declarant's unavailability; and (3) the wrongdoing did procure the unavailability." *Id*. (quotation marks and citation omitted).

The forfeiture-by-wrongdoing doctrine presents a ground for a hearsay exception as well as an exception to the right of confrontation. *Burns*, 494 Mich at 111. The doctrine applies when the defendant or an intermediary participates in conduct aimed at preventing a witness from testifying and with an intent to make the witness unavailable. *People v McDade*, 301 Mich App 343, 354; 836 NW2d 266 (2013). The timing of the wrongdoing is not dispositive. *People v Caddell*, 332 Mich App 27, 67; 955 NW2d 488 (2020). But a defendant's wrongdoing that occurs after underlying criminal activity has been reported or discovered is far more suspect and may give rise to "a strong inference of intent to cause a declarant's unavailability." *Id*. (quotation marks and citation omitted).

Factually, forfeiture by wrongdoing occurs when a defendant tells a romantic partner not to appear at court even if she receives a subpoena. *Allen*, ___ Mich App at ___; slip op at 11. And the defendants' contacts with the witness before the court hearing, the visits with the witness by the defendants' family members, the shooting at the witness's home, and the assaults upon the witness in jail at the defendants' direction reflected the intent to procure the witness's unavailability and the substantial wrongdoing that caused the unavailability. *Caddell*, 332 Mich App at 68.

To admit evidence under MRE 804(b)(6), the prosecutor was required to show by a preponderance of the evidence that the defendant engaged in or encouraged wrongdoing, the wrongdoing was intended to procure the declarant's unavailability, and the wrongdoing did procure the unavailability. *Burns*, 494 Mich at 115. A trial court's determination that a witness is unavailable will not be supplanted unless a clear abuse of discretion is demonstrated. *People v Bean*, 457 Mich 677, 684; 580 NW2d 390 (1998). Factual findings underlying the trial court's unavailability determination are reviewed for clear error. See *People v Garland*, 286 Mich 1, 7; 777 NW2d 732 (2009). Clear error occurs when the appellate court is left with a definite and firm conviction that a mistake was made. *People v Abbott*, 330 Mich App 648, 654; 950 NW2d 478 (2019).

The trial court determined that the prosecutor had not satisfied the burden of proof to admit JY's testimony under MRE 804(b)(6) but found that SB's testimony was admissible. Ultimately, the trial court struck SB's trial testimony and admitted her preliminary examination testimony as well as her police interview shortly after the shooting.

The trial court's factual findings in analyzing the factors were not clearly erroneous. SB did not initially appear at the preliminary examination. She was taken into custody and housed at the district court. After her testimony, SB was returned to the cell at the district court where she was purportedly in proximity to defendant for nearly three hours. At that time, defendant advised SB that he knew who she was, knew what she had reported, and knew the color and make of her vehicle after seeing it on the day of the stabbing. Defendant also offered SB renumeration if he defeated the charges against him without her testimony. And defendant talked to SB about discussing his case with other jail inmates, who would be released, and about JY.

On one occasion, SB was walking home from the store when she was followed by people who inquired what her name was. Additionally, SB's vehicle was tampered with because a wire was cut. SB learned that the damage was not normal wear and tear. SB did not have a "beef" with anyone else in the community. And she testified that she had not remembered certain details when she testified before the jury in part because she was afraid.

In light of the SB's testimony, the trial court found forfeiture by wrongdoing. Recognizing that the trial court was in a superior position to determine SB's credibility, we cannot conclude that the trial court clearly erred. Defendant or his associates engaged in or encouraged wrongdoing intended to procure SB's unavailability at trial. They achieved this by their contacts with her at district court or by following her as she walked home. Additionally, defendant advised that he knew the color and type of car that SB drove. Later, while defendant remained jailed, a wire on SB's vehicle was cut. SB learned that the vehicle damage was not normal wear and tear. Because defendant's actions were designed to prevent SB's testimony, the trial court did not err in its factual findings. See *Caddell*, 332 Mich App at 68. Ultimately, the trial court did not abuse its discretion by admitting hearsay under MRE 804(b)(6).

But even if the trial court had clearly erred in its evidentiary determination, which it did not, any error was harmless. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). And any constitutional error was harmless beyond a reasonable doubt. *People v Dendel (On Second Remand)*, 289 Mich App 445, 475; 797 NW2d 645 (2010).

The evidence presented at trial showed that after SB and JY found the victim, JY called 911. SB reported that while they did not witness the actual stabbing, they saw a man chasing the victim.

In response to the 911 call, an officer arrived to find SB rendering aid to the victim. Later, this same officer was canvassing about a block away when he encountered Christopher Givhan,[4] who informed him that he saw "Moe" chasing the white guy (the victim). Everyone knew "Moe," a black man with an orange goatee. Givhan heard people yelling for the victim to run and "he's gonna get you." Givhan also provided the officer with defendant's address.

After Givhan made his initial statements, other officers went to defendant's residence and arrested him within a short time after the stabbing was reported.

Defendant was a black man with an orange beard. The police interviewed defendant. Defendant's interview was played for the jury. During the interview, defendant said he dyed his beard orange because he was a Muslim. Defendant also admitted that people called him "Moe." However, defendant claimed that he had been inside his house since noon, except to get his mail at 3:00 p.m. Defendant further claimed that he could not run after the victim due to a leg injury.

About three hours after the stabbing, the police executed a search warrant at defendant's residence. They found a purple butcher knife in the dish drying rack in the sink. There was a mop in the kitchen sink. There was also a bucket of mop water that smelled strongly of bleach as well as an empty bottle of bleach under the kitchen sink.

The police also found a pair of shoes in the living room that had small red stains on them. Testing revealed the possible presence of blood on defendant's shoes. Forensic analysis of the DNA from the sole of the right shoe revealed very strong support that the victim was a contributor. Although no blood was found on the knives seized from defendant's home, forensic analysis provided very strong support that defendant contributed to the DNA found on the black knife's blade.

This circumstantial evidence established beyond a reasonable doubt that defendant fatally stabbed the victim. Defendant's false statements to the police that he did not leave his apartment except to retrieve the mail were likewise circumstantial evidence of guilt. See *People v Seals*, 285 Mich App 1, 5; 776 NW2d 314 (2009); *People v Dandron*, 70 Mich App 439, 442; 245 NW2d 782 (1976). Additionally, defendant's use of bleach in an attempt to destroy DNA evidence further shows his consciousness of guilt. See e.g., *People v Unger*, 278 Mich App 210, 226; 749 NW2d 272 (2008). Therefore, even if the trial court erred in admitting SB's preliminary hearing

[4] Givhan passed away before trial. After a hearing, the trial court granted the prosecution's motion to admit Givhan's nontestimonial statements during an ongoing emergency under *Michigan v Bryant*, 562 US 344; 131 S Ct 1143; 179 L Ed 2d 93 (2011), and *Davis v Washington*, 547 US 813, 822; 126 S Ct 2266; 165 L Ed 2d 224 (2006).

testimony and the statements from her recorded police interview, any error was harmless and harmless beyond a reasonable doubt.[5]

Affirmed.

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

[5] We note that in addition to the evidence already discussed, SB's preliminary examination would have been admissible at trial under MRE 804(a)(2) or (3) and (b)(1), independent of its admission under MRE 804(b)(6).