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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 30, 2026 1:38 PM
v	No. 372012 Gratiot Circuit Court
RANDY STONEY ODEM, Defendant-Appellant.	LC No. 2023-008795-FH

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

Randy Odem, (hereinafter defendant) was convicted by a jury of assault by strangulation, MCL 750.84(1)(b), and domestic violence, MCL 750.81a(2). Sentenced as a fourth-offense habitual offender under MCL 769.12, he received 114 months to 20 years' imprisonment for the strangulation conviction and 365 days for domestic violence. Defendant appeals both his convictions and sentence. For the reasons set forth in this opinion, we affirm defendant's convictions, but remand for resentencing in accord with this opinion.

I. BACKGROUND

In July 2023, defendant and the complainant, who cohabited in a romantic relationship, became engaged in a verbal altercation. The dispute escalated when defendant straddled the complainant, placed his hands around her neck, and strangled her until she could not breathe. After releasing her, defendant pushed the complainant into a wall, rendering her unconscious. The complainant received medical attention at a hospital, where providers documented a contused left eye and erythema and inflammation of the neck. Law enforcement photographed her injuries, and those images were presented to the jury at trial.

At trial, the complainant testified to four prior incidents of domestic violence perpetrated by defendant, three involving strangulation. Defendant testified, denying the allegations and asserting that the complainant had jumped onto his back and was rendered unconscious during his attempt to remove her. He expressly denied ever strangling the complainant. Defendant's half-brother testified that the complainant communicated—both via text and in person—that defendant did not strangle her. The jury returned guilty verdicts as charged.

At sentencing, the trial court assessed offense variable (OV) 4 at 10 points, finding that the complainant suffered psychological injury affecting her ability to conduct daily activities. The court cited the complainant's victim impact statement, in which she articulated a persistent fear of physical consequences and described awakening daily in a "fight or flight survival mode" due to the "horrible and inexcusable things" experienced during the relationship.

Following sentencing, defendant moved for a new trial, contending that the verdicts were against the great weight of the evidence. He also requested a *Ginther*[1] hearing, alleging ineffective assistance of counsel for failing to call exculpatory witnesses, and moved to correct an allegedly invalid sentence. The trial court conducted a hearing on all post-conviction motions and denied each. Defendant now appeals as of right.

II. ANALYSIS

Defendant first asserts that trial counsel rendered ineffective assistance by failing to call several witnesses who would have testified concerning his relationship with the complainant, as well as two witnesses regarding the complainant's purported recantation of her strangulation allegations. Defendant proffers the testimony of witnesses who would have testified that they had on prior occasions witnessed the complainant strike defendant but never saw defendant as the aggressor. Additional witnesses would have testified that the complainant told them defendant never strangled the complainant.

The effectiveness of counsel presents a mixed question of fact and constitutional law. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012). Factual findings are reviewed for clear error, while questions of law are reviewed de novo. *Id*.

Both the United States and Michigan Constitutions guarantee the right to counsel in criminal prosecutions. US Const, Am VI; Const 1963, art 1, § 20. To satisfy this guarantee, counsel must provide effective assistance. *Strickland v Washington*, 466 US 668, 686 (1984). Ineffective assistance is established where (1) counsel's performance falls below an objective standard of reasonableness, and (2) but for counsel's deficiency, there is a reasonable probability of a different outcome. *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023). A reasonable probability is one sufficient to undermine confidence in the verdict, and need not rise to "more likely than not." *People v Grant*, 470 Mich 477, 486; 684 NW2d 686 (2004). The defendant bears the burden to establish the factual predicate for an ineffective-assistance claim. *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014).

In support of his motion for new trial, defendant submitted affidavits from several witnesses who averred that trial counsel neither contacted nor investigated them. These witnesses would have testified to observing the complainant as the aggressor in prior altercations, and to defendant's attempts to disengage.

We begin our analysis by noting that trial counsel's failure to interview the proffered witnesses constituted ineffective assistance of counsel. Trial counsel is obligated to conduct an

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

independent investigation, and trial strategy is only reasonable if based upon such investigation. *Grant*, 470 Mich at 486-487. The affidavits uniformly assert that trial counsel made no contact with the witnesses. Defendant's brother further indicated he informed counsel of his willingness to testify but was neither called nor able to communicate directly with counsel. Clearly, such inaction constituted ineffective assistance of counsel.

However, ineffective assistance of counsel claims require more than just showing that the performance of the attorney was deficient; the defendant must also demonstrate that "but for counsel's deficiency, there is a reasonable probability of a different outcome." *Yeager*, 511 Mich at 488. After thoroughly reviewing the record and the available evidence, we find that while trial counsel's performance was lacking, the absence of the proposed testimonies did not sufficiently prejudice the defendant to undermine our confidence in the trial's outcome. Trial counsel effectively challenged the credibility of the victim's claims regarding strangulation. Key testimony came from William Barnum, the defendant's half-brother, who discussed his communications with the complainant where she stated in a text message:

> Yeah, that's what I was thinking too. I couldn't figure out why they would be charging him with that when he didn't strangle me. But as I was just reading about it, I think it's because they classified and returned to somebody being unconscious or their breathing restricted. I'm not sure. I'm still reading on it.

The additional prospective witnesses asserted that the complainant informed them the defendant did not strangle her. However, as articulated in *People v Carbin*, 463 Mich 590, 603; 623 NW2d 884 (2001), the failure to present accumulative exculpatory evidence only constitutes ineffective assistance of counsel in specific scenarios. In this case, the testimony would have provided little added value, as the defense does not gain from repetitive assertions. Regarding the claim that the complainant had been the aggressor in previous domestic assaults, it is critical to note that none of these witnesses had personal knowledge of the events surrounding the charged offense. Thus, their testimonies would not effectively counter the trial evidence demonstrating the elements of the charged offenses, particularly the medical documentation confirming injuries consistent with strangulation. Moreover, defendant did not assert a self-defense claim concerning the assault. Instead, he testified that the complainant jumped on his back and fell, leading her to hit her head and lose consciousness. Upon the arrival of paramedics, defendant stated that the complainant had been drinking, caught her foot, and subsequently fell. This narrative underscores that any testimony regarding the complainant's behavior prior to the incident was not pertinent to defendant's actions, particularly since the jury was informed that he was alone with her in the room during the assault. The argument that these witnesses could provide evidence of the complainant striking the defendant on prior occasions fails to create a reasonable probability of a different verdict, given the compelling evidence presented at trial. Therefore, the claim of ineffective assistance of counsel falls short, as the exclusion of this cumulative testimony did not materially alter the fairness of the trial nor the outcome reached by the jury. *Id*.

B. GREAT WEIGHT OF THE EVIDENCE

Defendant contends that the strangulation conviction contradicts the great weight of the evidence, primarily due to what he labels as the complainant's recantation. We evaluate such claims by analyzing whether the evidence overwhelmingly undermines the jury's verdict,

warranting a reversal on the grounds of potential miscarriage of justice. *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011). A verdict will only be overturned if it lacks evidentiary support and is likely influenced by passion, prejudice, or other extrinsic factors. *Id*. On this issue, defendant highlights the complainant's conversations with his half-brother—where she claimed she was not strangled—as grounds to argue the verdict's validity. Defendant cites to the text message quoted above as evidence that the verdict was against the great weight of the evidence. Furthermore, defendant asserts, the complainant reaffirmed her position in person, stating she was not strangled. However, substantial evidence exists to counter this claim. Emergency medical personnel observed red marks on the left side of her neck; a responding officer documented significant erythema from her collarbone to her jaw; and both a nurse and a CT technologist confirmed observable redness and inflammation, noting specific markings on the neck. The jury examined photographs of these injuries and heard testimony wherein the complainant reported strangulation to medical professionals. Additionally, we note that the complainant's text was to defendant's half-brother and was in response to a series of questions posed by the half-brother in what could have been an attempt to get the complainant to drop the charges. It could have been that the complainant was merely attempting to placate the brother to avoid confrontation. Certainly, such motives were before the jury who decided that the text message did not negate other testimony regarding the issue of whether the complainant had been strangled. Considering that comprehensive evidence, it is evident that the verdict is not against the great weight of the evidence and should therefore be upheld.

C. OTHER ACTS EVIDENCE

Defendant further contends that the trial court erred by admitting evidence of prior alleged acts of domestic violence and that trial counsel was ineffective for failing to object. The challenged evidence, however, was admissible under MCL 768.27b and subject to MRE 403. Because defendant did not preserve this issue, it is reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture, (1) error must have occurred, (2) the error must be plain, and (3) it must affect substantial rights. *Id*. Reversal is warranted only if the plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id*. at 763-764.

While MRE 404(b)(1) generally precludes evidence of other crimes, wrongs, or acts to prove character, the Michigan Legislature has articulated a clear and specific exception in MCL 768.27b(1). In the context of domestic violence prosecutions, this statute authorizes the admission of evidence of prior acts of domestic violence for any relevant purpose, including to establish the defendant's propensity to commit such acts, provided the requirements of MRE 403 are satisfied. This statutory provision represents a legislative determination that the probative value of prior domestic violence is especially significant in these cases, reflecting a recognition of the recurring nature and unique evidentiary challenges of domestic abuse prosecutions. As our Supreme Court has recognized, MCL 768.27b(1) expressly permits the admission of prior-act evidence for propensity purposes. See *People v Mack*, 493 Mich 1, 3; 895 NW2d 541 (2012); *People v Watkins*, 491 Mich 450, 471-472; 818 NW2d 296 (2012).

Nonetheless, MRE 403 serves as an essential safeguard, empowering courts to exclude even relevant evidence where its probative value is substantially outweighed by the risk of unfair prejudice, confusion of the issues, or other considerations. Our appellate courts have set forth a

rigorous and nuanced framework for analyzing admissibility under MRE 403, emphasizing the need for careful, case-specific evaluation. Factors such as the similarity and temporal proximity of the prior acts to the charged offense, the frequency and reliability of the incidents, the presence or absence of intervening events, and the necessity of corroborative evidence beyond the parties' testimony must be weighed. See *Watkins,* 491 Mich at 487-488. This analytical approach ensures that the admission of prior-acts evidence under MCL 768.27b(1) serves the ends of justice without unduly prejudicing the accused.

Here, the complainant's testimony established four prior incidents involving defendant: (1) in February 2022, the defendant pushed her against a wall and strangled her; (2) in August 2022, he threw an object at her and then choked her; (3) in January 2023, he placed her in a headlock; and (4) in February 2023, he pushed her into a coffee table, resulting in injury. Critically, three of the four incidents involved acts of strangulation—a particularly dangerous and distinct form of domestic violence—demonstrating both the similarity and seriousness of the prior acts. All these incidents occurred within a relatively short time frame preceding the charged offense, which underscores their temporal proximity and relevance. The frequency of these assaults, without any intervening events to suggest a change in the defendant's behavior, further supports the probative value of the evidence. While some corroborating physical evidence existed, the credibility of the principal witnesses—the complainant and defendant—remained central to the case. Accordingly, under the factors set forth in *Watkins*, the admission of this evidence was not only permissible but essential to ensuring a fair and informed determination of the facts. The trial court's decision to admit the prior-acts evidence was sound and fully consistent with both statutory and case law.

Defendant's assertion that trial counsel rendered ineffective assistance by failing to object to the admission of this prior-acts evidence is wholly without merit. Established Michigan law is clear: counsel is not ineffective for declining to raise objections that would have been futile. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). Given that the prior-acts evidence was plainly admissible under both MCL 768.27b(1) and the analytical framework of MRE 403, any objection would have been legally unsound. Thus, counsel's advocacy met the standards of competence required by the Sixth Amendment, and defendant cannot show deficient performance or resulting prejudice under *Strickland*, 466 US at 686.

While MRE 404(b)(1) generally precludes evidence of other crimes, wrongs, or acts to prove character, MCL 768.27b(1) provides that, in domestic violence prosecutions, evidence of prior acts of domestic violence is admissible for any relevant purpose, subject to MRE 403. This statute permits admission of such evidence for propensity purposes. See *Watkins*, 491 Mich at 471-472; *Mack*, 493 Mich at 3.

Nonetheless, MRE 403 permits exclusion of relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or other factors. In assessing admissibility under MRE 403, courts consider the dissimilarity and temporal proximity of the acts, the frequency and reliability of the acts, intervening events, and the need for evidence beyond the parties' testimony. *Watkins*, 491 Mich at 487-488.

The complainant testified to four prior incidents: (1) February 2022—defendant pushed her against a wall and strangled her; (2) August 2022—defendant threw an object, then choked

her; (3) January 2023—defendant placed her in a headlock; and (4) February 2023—defendant pushed her into a coffee table, causing injury. All but the last involved strangulation and occurred within a close temporal proximity to the charged offense. The incidents were neither dissimilar nor infrequent, and no intervening events preclude their consideration. Although there was other evidence of injury, the principal witnesses were the parties themselves. Under *Watkins*, these factors support admissibility, and the trial court did not err in so ruling.

Defendant's claim that trial counsel was ineffective for failing to object to this evidence is without merit. Counsel is not required to raise futile objections. *Ericksen*, 288 Mich App at 201. The evidence was admissible, and counsel's performance was not deficient in this respect.

D. OFFENSE VARIABLE 4

Defendant next challenges the assessment of offense variable (OV) 4, asserting the evidence failed to establish that the sentencing offense specifically caused the complainant's psychological injury.

Under the sentencing guidelines, factual determinations 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). Whether those facts satisfy the statutory scoring criteria is reviewed de novo. *Id*. Offense variables must generally be scored with reference to the sentencing offense alone. *People v McGraw*, 484 Mich 120, 131; 771 NW2d 655 (2009) (requiring that OV scoring be "offense-specific").

OV 4 addresses psychological injury and is properly assessed at 10 points if "[s]erious psychological injury requiring professional treatment occurred to a victim." MCL 777.34(1)(a). The assessment may be imposed even if the victim does not seek treatment. MCL 777.34(2). A variety of psychological effects—such as personality changes, anger, or persistent fear—may suffice. *People v Armstrong*, 305 Mich App 230, 247; 581 NW2d 856 (2014).

Here, the record demonstrates that the complainant attributed her psychological injury to her ongoing relationship with defendant, reporting persistent and significant symptoms such as hypervigilance, sleep disturbance, and difficulty functioning. Critically, however, she did not specifically attribute these symptoms to the July 2023 offense itself, but rather to the relationship as a whole. The distinction is not merely semantic; it is central to a proper analysis under Michigan's sentencing guidelines. To support a 10-point assessment under OV 4, the psychological injury must be "serious" and must be "sustained by a victim as a result of the offense." MCL 777.34(1)(a) (emphasis added). Generalized references to psychological harm stemming from an entire relationship cannot suffice to satisfy the statute's requirements. Thus, it would be legal error to conflate psychological injuries occasioned by the broader relational context with those directly caused by the specific offense for which the defendant is being sentenced.

We find this situation directly analogous to *People v Muhammad*, unpublished per curiam opinion of the Court of Appeals, issued June 28, 2018 (Docket No. 339157), [2] in which the panel held that evidence of psychological injury attributable to a course of conduct, rather than the discrete sentencing offense, could not support a 10-point OV 4 assessment. In *Muhammad*, as here, the trial court indicated that it was assessing10 points for OV 4 based on the victim's testimony that she had PTSD "pertaining to [defendant]"and that she had "lost a lot of memory over the years from assaults by [defendant]." *Id*. at 18. Similar to this case, it was possible that the victim's statements could have included the assault committed by the defendant for which he was being sentenced, however in *Muhammad* as here, the prospect of serious psychological injury requiring treatment clearly refers to multiple assaults committed over the course of a period of years. Our review of the record in this case leads us to conclude that similar to the facts in *Muhammad*: "[t]here is no specific nexus between the sentencing offense in this case and [the victim's] general, vague statement regarding PTSD that resulted from years of being assaulted by defendant." *Id*. Accordingly, on this record, any connection between the complainant's claims of psychological and the sentencing offense is purely conjectural. Therefore, the trial court erred by considering conduct that was unrelated to the sentencing offense in determining the number of points to assess for OV 4. *McGraw*, 484 Mich at 124.

If OV 4 is assessed at 0 points, defendant's total OV score would be 15 points, reducing his OV level from III to II. As a fourth-offense habitual offender, this lowers the minimum guidelines range to 19–76 months. MCL 777.65. Because the erroneous assessment affected the guidelines range, resentencing is required. See *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006).

For these reasons, we affirm defendant's convictions, vacate his sentence, and remand for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense

[2] Unpublished opinions are not binding precedent, but this Court may consider them for their persuasive value. *People v Green*, 260 Mich App 710, 720 n 5; 680 NW2d 477 (2004).