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 CHANCE JOSEPH BONAM, Defendant-Appellant.	UNPUBLISHED November 09, 2026 2:27 PM No. 374117 Wayne Circuit Court LC No. 24-004027-01-FH

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

Defendant appeals by right following his jury-trial convictions for unlawful imprisonment, MCL 750.349b, domestic violence, MCL 750.81(2), and assault by strangulation, MCL 750.84(1)(b). On appeal, defendant contends that the trial court abused its discretion by admitting other-acts evidence under MCL 768.27b, that there was insufficient evidence presented to sustain his conviction for unlawful imprisonment, and that he was deprived of his right to the effective assistance of counsel at trial. For the reasons stated in this opinion, we disagree with defendant's arguments and therefore affirm.

I. BACKGROUND AND FACTS

Defendant's convictions arise from the May 2024 assault of his then-girlfriend, who at the time was about four and a half months pregnant. At defendant's trial, the victim gave the following account of this incident. When the victim arrived at her trailer around 12:00 a.m. on May 19, 2024, defendant was in bed and she went to take a shower. While the victim was showering, defendant pulled the shower curtain back, "shoved [the victim's] head back," and tried to force her out of the shower by turning the faucet to end the waterflow. Defendant walked outside the trailer to shut the water off, and then returned.

The victim explained that she wanted to leave the trailer at that point but that defendant would not let her. She hid her phone and keys inside her underwear and attempted to leave but did not make it outside because defendant "stopped" her. The victim further testified that defendant "struggle[d]" with her and prevented her from leaving through the front door "at least twice[,]" either by standing in her way or by picking her up and moving her.

Defendant choked the victim numerous times, using one hand to squeeze or apply pressure to her throat, to the point that she could not breathe. Most of the choking incidents occurred in the kitchen and continued "back and forth through" the trailer as the victim attempted to "get away from" defendant. The victim also ran to her bedroom and attempted to leave through a window, but defendant stopped her and choked her again. Defendant also lay on the victim's stomach, despite the victim informing defendant that he was hurting her. And at one point, defendant asked the victim what they were "going to do about the baby" and "are you going to get an abortion or am I going to have to do it?"

The victim made it out of the front door for the first time at 2:40 a.m. and tried to run and hide from defendant, but defendant ran after her, and because defendant was "right behind" her, she went back inside the trailer. Back inside the trailer, the victim attempted to walk away from him, but defendant continued following her. This went on "for like four hours" until about 4:30 or 5:00 a.m., when the victim fell asleep.

The victim woke up about an hour or two later and left for work. Detective Ryan Barry of the Van Buren Township Police Department testified that around 1:30 p.m. that day, the victim came into the police station and reported that defendant "tried to kill her."[1] Detective Barry took the victim's statement and photographs of bruising and scratches on her body. He also observed redness on the victim's neck.

On May 22, 2024, defendant was arraigned on charges of unlawful imprisonment, domestic violence, and two counts of assault by strangulation. As a condition of his bond, defendant was prohibited from contacting the victim or returning to her trailer. At 2:04 a.m. on July 9, 2024, the victim's Ring camera captured footage of defendant attempting to enter the victim's trailer when she was not present. At 4:30 p.m. the next day, July 10, 2024, defendant returned to the trailer when the victim was home, banged on the front door, and told the victim to "open the f**king door," but she refused.

On July 17, 2024, the victim went to the district court to testify at the preliminary examination. When she drove into the parking lot, defendant approached her vehicle and started speaking to her. The victim testified that defendant asked her if this was "really worth it, what happened to you not showing up," and told her that she was going to ruin their child's life. The victim attempted to move parking spaces, but defendant followed her through the parking lot. Eventually, the victim was able to enter the courthouse, where she reported what occurred to Detective Scott Griggs, the officer in charge of the case. The victim also disclosed to Detective Griggs the two recent incidents in which defendant had come to her trailer, and told him that she was scared of defendant. Detective Griggs described the victim as upset and crying.

Defendant's trial proceeded in September and October 2024, during which the jury heard testimony from the victim, defendant, Detective Griggs, and Detective Barry. The jury ultimately

[1] The trial court ruled that the victim's out-of-court statements were admissible at trial under MRE 804(b)(6). That ruling is not challenged on appeal.

found defendant guilty of unlawful imprisonment, domestic violence, and one count of assault by strangulation. The jury acquitted defendant of the other charged count of assault by strangulation.

Defendant now appeals.

II. ANALYSIS

A. OTHER-ACTS EVIDENCE

Defendant first contends that the trial court abused its discretion by admitting evidence of his attempts to enter the victim's trailer on July 9, 2024 and July 10, 2024 and evidence of the parking lot encounter before the preliminary examination on July 17, 2024 ("the July 2024 incidents") under MCL 768.27b because the danger of unfair prejudice substantially outweighed the evidence's minimal probative value. We disagree.

This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Thorpe*, 504 Mich 230, 251; 934 NW2d 693 (2019). "The decision to admit evidence is within the trial court's discretion and will not be disturbed unless that decision falls outside the range of principled outcomes." *Id*. at 251-252 (quotation marks and citations omitted). "However, whether a rule or statute precludes admission of evidence is a preliminary question of law that this Court reviews de novo." *People v Propp*, 508 Mich 374, 383; 976 NW2d 1 (2021). The admission of "evidence that is inadmissible as a matter of law" is an abuse of discretion. *Id*.

At the outset of trial, the trial court allowed the prosecution to admit evidence of the July 2024 incidents as other-acts evidence under MCL 768.27b. That statute "addresses the admissibility of evidence of other acts of domestic violence committed by a defendant in a domestic-violence case." *Id.* at 383-384. In relevant part, MCL 768.27b states:[2]

> (1) Except as provided in subsection (4), in a criminal action in which the defendant is accused of an offense involving domestic violence or sexual assault, evidence of the defendant's commission of other acts of domestic violence or sexual assault is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.
>
> * * *
>
> (4) Evidence of an act occurring more than 10 years before the charged offense is inadmissible under this section unless the court determines that 1 or more of the following apply . . . .

As this Court has explained, the "plain language" of MCL 768.27b thus "evidences three express limitations on the introduction of prior acts of domestic violence or sexual assault in

[2] MCL 768.27b was amended by 2024 PA 184, effective April 2, 2025. We reference the statute in effect at the time of defendant's trial. See MCL 768.27b, as amended by 2018 PA 372.

current prosecutions for offenses involving domestic violence or sexual assault." *People v Berklund*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367568); slip op at 4.

> First, the introduction of such evidence is limited by subsection (4), which precludes the admission of "[e]vidence of an act occurring more than 10 years before the charged offense" unless certain listed exceptions apply. MCL 768.27b(4). Second, the introduction of such evidence is barred where the evidence is "excluded under Michigan rule of evidence 403." MCL 768.27b(1). Otherwise, the evidence is "admissible for any purpose for which it is relevant." MCL 768.27b(1). This makes relevancy, as defined in MRE 401 and MRE 402, the third express limitation in MCL 768.27b(1) on the admission of prior acts of domestic violence or sexual assault in current prosecutions for offenses involving domestic violence or sexual assault. [*Berklund*, ___ Mich App at ___; slip op at 4 (footnote omitted).]

Accordingly, "MCL 768.27b clearly indicates that trial courts have discretion to admit relevant evidence of other domestic assaults to prove any issue, even the character of the accused, if the evidence meets the standard of MRE 403." *People v Cameron*, 291 Mich App 599, 608; 806 NW2d 371 (2011) (quotation marks and citation omitted).

Defendant's challenge to the admission of the evidence of the July 2024 incidents concerns its admissibility under MRE 403. That rule "provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." *Berklund*, ___ Mich App at ___; slip op at 9. "Evidence is probative if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *People v Denson*, 500 Mich 385, 401-402; 902 NW2d 306 (2017) (quotation marks and citations omitted). Especially pertinent for our purposes, this Court has recognized that "propensity evidence is logically relevant because a person who has committed an offense may be more likely to commit that or another offense than a person who has not committed that or any other offense." *Berklund*, ___ Mich App at ___; slip op at 7 (citation modified). And although MRE 404(b) imposes "a general bar on propensity evidence[,]" MCL 768.27b is an exception to this prohibition: "[I]n prosecutions for offenses involving domestic violence or sexual assault, MCL 768.27b permits evidence of a defendant's prior commission of domestic violence or sexual assault to show the defendant's character or propensity to commit such acts." *Berklund*, ___ Mich App at ___; slip op at 8.

Meanwhile, "[e]vidence is unfairly prejudicial if it has a tendency to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger or shock." *Id.* at ___; slip op at 9 (quotation marks and citation omitted); see also *People v Mardlin*, 487 Mich 609, 618-619; 790 NW2d 607 (2010) ("Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury.") (quotation marks and citation omitted). Evidence is not prohibited under MRE merely because it is prejudicial; indeed, "[r]elevant evidence is inherently prejudicial." *People v Wilson*, 252 Mich App 390, 398; 652 NW2d 488 (2002) (quotation marks and citation omitted). Rather, "it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter under Rule 403." *Id*.

Furthermore, "when applying MRE 403 to evidence admissible under MCL 768.27b, courts should weigh the propensity inference in favor of the evidence's probative value rather than its prejudicial effect." *Berklund*, ___ Mich App at ___; slip op at 10. However, "this does not mean that other-acts evidence admissible under MCL 768.27b may never be excluded by MRE 403." *Berklund*, ___ Mich App at ___; slip op at 10. Our Supreme Court in *People v Watkins*, 491 Mich 450; 818 NW2d 296 (2012), identified a nonexhaustive list of considerations that serve as "a tool to facilitate" such a MRE 403 analysis:

> (1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony. [*Berklund*, ___ Mich App at ___; slip op at 10 (quotation marks and citations omitted).]

With this framework in mind, we return to defendant's argument that the admission of the July 2024 incidents as other acts of domestic violence was improper under MCL 768.27b.

As an initial matter, to the extent that defendant suggests that the evidence of the July 2024 incidents was devoid of probative value in determining whether he committed the charged offenses, we disagree. As this Court has explained, a defendant's history of domestic violence "tends to shed light on the likelihood that a given crime was committed." *Id*. at ___; slip op at 8 (citation modified). In other words, evidence of other acts of domestic violence is probative because it makes it more likely that the defendant committed an act of domestic violence for which the defendant currently faces charges. See *id*. at ___; slip op at 7-8; *Denson*, 500 Mich at 401-402. Defendant does not contest the trial court's determination that the July 2024 incidents qualified as acts of domestic violence for purposes of MCL 768.27b, nor do we find error in that determination. See MCL 768.27b(6)(a)(*ii*) and (*iv*) (defining "domestic violence" to include acts that place one "in fear of physical or mental harm" and engaging in an activity "that would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested"). Accordingly, evidence of defendant's other acts of domestic violence in July 2024 was probative of his propensity to commit domestic violence in May 2024. See *People v Railer*, 288 Mich App 213, 219-220; 792 NW2d 776 (2010) (explaining that MCL 768.27b "permits evidence of prior domestic violence in order to show a defendant's character or propensity to commit the same act").

Applying the *Watkins* factors helps illuminate the strength of the probative value of that evidence. See *Berklund*, ___ Mich App at ___; slip op at 10 (describing the *Watkins* factors as considerations that "provide 'a tool to facilitate, not a standard to supplant,' a trial court's MRE 403 analysis") (quotation marks and citation omitted); *People v Jones*, unpublished per curiam opinion of the Court of Appeals, issued July 15, 2026 (Docket No. 367476), p 5 (employing the *Watkins* factors in evaluating the probative value of MCL 768.27b other-acts evidence), lv pending.[3] On appeal, defendant addresses how only three of the six factors apply—the dissimilarity between the other acts and the charged crime, the temporal proximity of the other acts to the

[3] "Unpublished opinions of this Court are not binding but may be considered for their persuasive value." *People v Urbanski*, 348 Mich App 90, 110 n 6; 17 NW3d 430 (2023).

charged crime, and the lack of need for evidence beyond the complainant's and the defendant's testimony—arguing that they weigh in favor of excluding evidence of the July 2024 incidents. We consider all six *Watkins* factors here.

Defendant argues that the first *Watkins* factor, dissimilarity, weighs in favor of exclusion given differences between the May and July 2024 incidents. Detective Griggs testified that the July 9, 2024 Ring camera footage showed defendant attempting to enter the front door and walking around the trailer, presumably to find an entry point. He further explained that the July 10, 2024 Ring camera footage showed defendant knocking on the front door as well as the back bedroom window. And the victim testified that on July 10, 2024, defendant banged on her front door and told her to "open the f**king door," but that she did not open it. The fact that defendant was unable to enter the trailer during the July incidents does not negate that in both circumstances, defendant ignored the victim's wishes by attempting to enter the trailer. Although the May 2024 incidents involved assault and confinement primarily inside the victim's residence, in both the May and July 2024 incidents, defendant was locked out of the trailer and attempted to enter regardless.

And with respect to what occurred before the victim's preliminary examination on July 17, 2024, defendant asserts that he and the victim engaged in a brief conversation during which he did not threaten the victim nor prevent her from entering the courthouse. However, while not explicitly threatening, the victim testified that defendant made statements to her about not coming to court and how it could affect their unborn child. Similarly, the victim testified that during the charged offense, defendant asked the victim if she was "going to get an abortion" or if he would "have to do it," which could rationally be construed as a threat. Although the victim was not physically harmed during the July 17, 2024 encounter, defendant still subjected her to similar acts of domestic violence. See MCL 768.27b(6)(a)(*ii*) and (*iv*). Overall, considering the similarities and differences between the other-acts evidence and the charged offenses, the first *Watkins* factor appears neutral. See *People v Hoskins*, 342 Mich App 194, 205; 993 NW2d 48 (2022) (concluding that the first *Watkins* factor "neither cut[] for or against" the admission of evidence of a defendant's prior conviction when that conviction "contain[ed] prominent similarities and dissimilarities with the charged crimes").

Turning to the second *Watkins* factor, temporal proximity, defendant argues that it weighs in favor of exclusion because the July 2024 incidents were "post-charge conduct." It is not clear, however, why the July 2024 incidents' occurrence after defendant's conduct in the May 2024 incident for which he was charged lessens the probative value of the evidence of the July 2024 incidents. Rather, a defendant's commission of *any* other acts of domestic violence tends to shed at least some light on the likelihood that he committed another act of domestic violence. See *Berklund*, ___ Mich App at ___; slip op at 8. That another act of domestic violence may have occurred long before or after the charged conduct would only tend to weaken the propensity inference relative to the evidence's probative value, not completely eliminate it. See *Hoskins*, 342 Mich App at 206 (noting that "the strength of the propensity inference [from prior acts] is weakened when a very long period of time has passed between the prior acts and the current charges"). And there is no express limitation provided in the text of MCL 768.27b that inhibits the admissibility of evidence of other acts of domestic violence that occurred following the charged conduct. See MCL 768.27b(4) (the only temporal limitation on the admissibility of other acts under MCL 768.27b bars the admission of some evidence of acts "occurring more than 10 years *before the charged offense*," not after it) (emphasis added). Thus, because there is no bar under MCL

768.27b on considering other acts of domestic violence that postdate the charged conduct and the July 2024 incidents occurred quite closely in time to the May 2024 incident for which defendant was charged—less than two months later—the second *Watkins* factor weighs in favor of admission.

Defendant does not address the next three *Watkins* factors. The third factor, the infrequency of the other acts, does not support excluding the evidence given defendant's commission of three additional acts of domestic violence. See *Hoskins*, 342 Mich App at 207 (when there were two other acts of sexual assault, explaining that this Court could not "conclude that these other acts occurred so infrequently as to support exclusion of the evidence"). Nor do we discern any relevant intervening acts under the fourth factor. And the fifth factor, the lack of reliability of the evidence supporting the occurrence of the other acts, also favors admission because each July 2024 incident was captured on video, Detective Griggs testified as to the content of those videos at trial, and there is no dispute that this evidence accurately portrayed each incident.

Lastly, defendant argues that the sixth *Watkins* factor, the lack of need for evidence beyond the victim's and defendant's testimony, supports exclusion in light of his relationship with the victim. According to defendant, he and the victim loved each other and the victim repeatedly stated that she did not want to pursue charges. However, these circumstances tend to weigh in favor of admission rather than exclusion as the July 2024 incidents further contextualized the victim's and defendant's relationship. The July 2024 incidents bolstered the likelihood that defendant committed the charged offenses in May 2024 despite the victim's testimony at trial that she still loved defendant, that she did not want to have to testify, and that she had wanted the matter to be dismissed. In sum, applying the *Watkins* factors generally indicates that the evidence of the July 2024 incidents was quite probative.

Regarding the danger of unfair prejudice, defendant argues that the evidence of the July 2024 incidents was extremely prejudicial because it invited the jury to convict him based on that propensity evidence. But "[p]ropensity evidence is prejudicial by nature," *Watkins*, 491 Mich at 486, and the fact that this propensity evidence was prejudicial does not render it *unfairly* prejudicial. As this Court has explained, "the evidence's propensity inferences weigh in favor of the evidence's probative value, not its prejudicial effect." *Berklund*, ___ Mich App at ___; slip op at 11. And giving due weight to the propensity inference, this is not an instance where "there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *Mardlin*, 487 Mich at 618-619 (quotation marks and citation omitted). The evidence of the July 2024 incidents was quite probative and there is no indication from the record that this evidence injected extraneous conditions designed to arouse bias, sympathy, or shock among the jurors, nor that it stirred such passion in the jury as to "divert the jury from rational consideration of defendant's guilt or innocence of the charged offenses." *Berklund*, ___ Mich App at ___; slip op at 9, 11 (citation modified). Nor, contrary to defendant's argument, was there a significant risk that the jury would be confused by this evidence. It was clear that defendant was charged for the

incident in May 2024 and that the July 2024 incidents occurred after defendant had been charged,[4] and the trial court's jury instruction on the proper use of the other-acts evidence minimized any potential prejudice. See *Berklund*, ___ Mich App at ___; slip op at 11 (explaining that such a jury instruction "will lessen any danger of unfair prejudice because jurors are presumed to follow their instructions"). Accordingly, because the evidence of defendant's other acts of domestic violence was quite probative and "it is not apparent that the evidence [would] be unfairly prejudicial (particularly in light of a limiting instruction), the trial court did not abuse its discretion when it concluded that the evidence's probative value was not *substantially* outweighed by the danger of unfair prejudice."[5] *Id.* at ___; slip op at 11.

The trial court thus did not abuse its discretion by admitting the evidence of July 2024 incidents under MCL 768.27b. See *Thorpe*, 504 Mich at 251-252; *Propp*, 508 Mich at 383.

B. SUFFICIENCY OF THE EVIDENCE

Defendant next contends that the prosecution presented insufficient evidence to sustain his conviction for unlawful imprisonment. We disagree.

"This Court reviews de novo [a] defendant's challenge to the sufficiency of the evidence." *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). We view "the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime to have been proved beyond a reasonable doubt." *Id*. "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Bailey*, 310 Mich App 703, 713; 873 NW2d 855 (2015) (quotation marks and citation omitted). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *Id*. (citation modified).

[4] Although defendant further asserts that the jury heard testimony about an incident on September 27, 2024, the date of the final pretrial conference, the record reflects no mention of such an event in the presence of the jury.

[5] We lastly note that we are unpersuaded by defendant's assertion that the trial court failed to carry out a meaningful analysis under MRE 403. In support, defendant cites our Supreme Court's order in *People v Cherry*, 393 Mich 261, 261; 224 NW2d 286 (1974), which peremptorily reversed a defendant's conviction when the trial court had failed to recognize that it had discretion to exclude evidence of the defendant's prior conviction, and did not exercise that discretion. This case differs fundamentally from the situation in *Cherry*. The trial court here noted that MCL 768.27b permits the admission of other acts of domestic violence at trial and stated its belief that the July 2024 incidents were the types of acts contemplated by the statute. It then went on to find that the July 2024 incidents had strong probative value, and that this value was not substantially outweighed by the danger of unfair prejudice. The trial court's explanation for its ruling thus demonstrates its clear understanding of its discretion to admit or exclude the evidence of the July 2024 incidents, and the trial court plainly exercised that discretion.

Unlawful imprisonment occurs when one "knowingly restrains another person . . . to facilitate the commission of another felony . . . ." *People v Chelmicki*, 305 Mich App 58, 65; 850 NW2d 612 (2014), quoting MCL 750.349b(1) and (1)(c). On appeal, defendant argues that there was insufficient evidence that he restrained the victim or that the victim was restrained to facilitate the commission of another felony. Neither argument has merit.

Concerning defendant's restraint of the victim, "restrain" for purposes of unlawful imprisonment "means to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or without lawful authority." MCL 750.349b(3)(a). "The restraint does not have to exist for any particular length of time and may be related to or incidental to the commission of other criminal acts." *Id*. Contrary to defendant's assertion, the term "forcibly" for purposes of MCL 750.349b(3)(a) does not require proof of actual physical restriction. This Court has explained that "restrain" for purposes of unlawful imprisonment "does not require the use of physical force or violence." *People v Jarrell*, 344 Mich App 464, 479; 1 NW3d 359 (2022) (emphasis omitted).

Viewed in a light most favorable to the prosecution, see *Bailey*, 310 Mich App at 713, a rational trier of fact could have reasonably found that defendant restrained the victim without her consent multiple times throughout the May 2024 incident. The victim testified that while she was showering, defendant pulled back the shower curtain, shoved her head back, and began turning the water off to force her out of the shower. The victim further stated that defendant prevented her from leaving through the front door and the window and choked her more than once as she attempted to get away from defendant. Detective Barry also testified that the victim had visible redness on her neck the next day, and that the victim reported that almost every time she attempted to leave the trailer, defendant choked, or attempted to choke, her again. From this evidence, a reasonable factfinder could determine that defendant forcibly restricted or confined the victim's movements by choking her when she attempted to leave the trailer. See *Meissner*, 294 Mich App at 452.

Defendant contests the sufficiency of the evidence for a finding of restraint on various grounds. He states that someone "who successfully leaves a location is not, at that moment, being confined or having her movements restricted." He also notes that the victim had her cell phone but did not call the police and that she left the house and went to work before reporting the assault, both circumstances that defendant asserts are incompatible with unlawful imprisonment. Further, defendant states that the victim's voluntary return to the trailer negates any claim that he was forcibly confining her. In all these assertions, however, defendant overlooks the fact that "restraint" for unlawful imprisonment purposes "can occur when the victim is held for even a moment." *Chelmicki*, 305 Mich App at 70; see also *Railer*, 288 Mich App at 218-219 (noting MCL 750.349b(3)(a) "expressly provides" that "restraint does not have to exist for any particular length of time") (quotation marks omitted). That the victim was able to leave her trailer, return to it, and eventually go to work does not negate the evidence that she was confined before she was successful in escaping. And the victim's not reporting the incident earlier to police does not have any bearing on whether she was indeed restrained. Instead, each time defendant prevented the victim from leaving the trailer and proceeded to choke her was sufficient for a factfinder to determine that she was restrained under the statute.

As for the evidence that the victim was restrained to facilitate the commission of another felony, there was sufficient evidence that defendant restrained the victim to facilitate committing assault by strangulation, MCL 750.84(1)(b). An assault by strangulation occurs when one commits an assault by "intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person." *People v Lydic*, 335 Mich App 486, 498 n 9; 967 NW2d 847 (2021) (quotation marks and citations omitted). The victim testified that when defendant was choking her, he used one hand to squeeze or apply pressure to her throat, to the point that she could not breathe. She also disclosed to Detective Barry that when she attempted to escape through the bedroom window, defendant pulled her back inside and proceeded to use one hand to choke her while using the elbow of his other arm to apply pressure to her stomach. And Detective Barry explained that during that incident, defendant told the victim that he was going to kill her and their unborn child. From this evidence, a reasonable factfinder could reasonably have found that defendant's purpose in forcibly restraining the victim from leaving the trailer was to continue his assault by choking her. See *Meissner*, 294 Mich App at 452. Accordingly, the prosecution presented sufficient evidence to sustain defendant's unlawful imprisonment conviction.

C. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant lastly contends that his trial counsel rendered ineffective assistance by failing to request a self-defense jury instruction and by failing to preserve objections to the victim testifying via Zoom. We again disagree.

A claim of ineffective assistance of counsel "presents a mixed question of fact and constitutional law." *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). This Court reviews a trial court's findings of fact "for clear error, and . . . the ultimate constitutional issue arising from an ineffective assistance of counsel claim de novo." *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008). "Clear error exists if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *Armstrong*, 490 Mich at 289. Because defendant did not move for a new trial or for a *Ginther*[6] hearing, his ineffective-assistance claims are unpreserved, see *People v Lopez*, 305 Mich App 686, 693; 854 NW2d 205 (2014), and our review is thus "limited to errors apparent on the record," *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

The United States and Michigan Constitutions guarantee criminal defendants the right to effective assistance of counsel. *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023), citing US Const, Am VI; Const 1963, art 1, § 20, and *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984). "Effective assistance of counsel is strongly presumed, and the defendant bears the heavy burden of proving otherwise." *People v Haynes*, 338 Mich App 392, 429; 980 NW2d 66 (2021) (quotation marks and citations omitted). "To establish a claim of ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *People v Fyda*, 288 Mich App 446, 450; 793 NW2d 712 (2010). In other words, "to obtain a new trial because of ineffective

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

assistance of counsel, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that [the] outcome would have been different." *Yeager*, 511 Mich at 488 (quotation marks and citation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. (quotation marks and citation omitted).

A defendant bears "the burden of establishing the factual predicate of his ineffective assistance claim." *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014). To show that trial counsel's performance failed to meet an objective standard of reasonableness, "a defendant must overcome the strong presumption that counsel's performance was born from a sound trial strategy." *Id*. at 585. "This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight." *Petri*, 279 Mich App at 411 (quotation marks and citation omitted). "If this Court can conceive of a legitimate strategic reason for trial counsel's act or omission, this Court cannot conclude that the act or omission fell below an objective standard of reasonableness." *Haynes*, 338 Mich App at 429-430.

1. SELF-DEFENSE JURY INSTRUCTION

Defendant first argues that trial counsel was ineffective for failing to request a jury instruction on self-defense. "A criminal defendant is entitled to have a properly instructed jury consider the evidence against him." *People v Armstrong*, 305 Mich App 230, 239; 851 NW2d 856 (2014) (quotation marks and citation omitted). "The jury instructions must include all elements of the crime charged, and must not exclude from jury consideration material issues, defenses or theories if there is evidence to support them." *Id*. at 240 (quotation marks and citation omitted). "Trial counsel's failure to request a jury instruction may constitute an unreasonably deficient level of performance." *Yeager*, 511 Mich at 490. However, "[f]ailing to request a particular jury instruction can be a matter of trial strategy." *People v Dunigan*, 299 Mich App 579, 584; 831 NW2d 243 (2013).

At trial, defendant testified that while the victim was showering, she punched him in the face. Defendant said that he then pushed her, and that the victim then tried to grab defendant. Following the close of proofs, the parties held an off-the-record bench conference during which they discussed whether defendant would be requesting a self-defense jury instruction. After, the trial court asked defense counsel on the record if it was correct that defendant would be requesting the instruction, at which point defendant asked if he could speak to trial counsel off the record before answering. After a five-minute discussion between trial counsel and defendant, trial counsel affirmatively declined the self-defense instruction. On appeal, defendant argues that this "cursory decision suggests counsel either misunderstood the availability of the defense or yielded to [defendant]'s preference without adequately advising him of the legal consequences."

When "supported by the evidence, [a] defendant's theory of the case must be given." *People v Rajput*, 505 Mich 7, 10; 949 NW2d 32 (2020) (quotation marks and citation omitted). Thus, our Supreme Court has explained, when there is evidence to support a self-defense theory, the corresponding jury instruction must be included. *Id.* at 11. Defendant does not specify which self-defense jury instruction he believes that he was entitled to receive. We presume, however, that

defendant believes he was entitled to M Crim JI 7.22, which corresponds to the use of nondeadly force under MCL 780.972(2):

> An individual who has not or is not engaged in the commission of a crime at the time he or she uses force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if he or she honestly and reasonably believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

Accordingly, to establish entitlement to M Crim JI 7.22, defendant was required to present some evidence that (1) he was not engaged in the commission of a crime, (2) he had a right to be at the trailer, and (3) he reasonably believed that the use of nondeadly force was necessary to defend himself from the victim's imminent unlawful use of force. See MCL 780.972(2); *Rajput*, 505 Mich at 10-11.

Given the lack of evidence that defendant reasonably believed that the use of nondeadly force was necessary to defend himself from the victim's imminent unlawful use of force, we disagree with defendant's argument that he was entitled to a jury instruction on self-defense. Even in light of defendant's testimony that he pushed the victim in response to her punching him, the evidence does not support a finding that defendant could have honestly and reasonably believed that his later uses of force—"struggl[ing]" with the victim to prevent her from leaving the trailer, choking the victim, and lying on her stomach—were necessary to continue to defend himself from the victim's initial punch. By defendant's own admission, after the victim struck him in the shower, he left the trailer to shut the water off. Those later uses of force all occurred following defendant's return to the trailer, when any threat posed by the victim's punch had evidently dissipated given defendant's ability to remove himself from the situation. And there was no evidence that the victim posed an additional imminent threat, such as evidence that she threatened or struck defendant. Accordingly, there was no evidence from which the jury could find that defendant honestly and reasonably believed he needed to use force to protect himself from an imminent and unlawful use of force by the victim once he returned to the trailer. Thus, even if counsel had requested a self-defense instruction, that instruction would not have been warranted under the evidence. See *Rajput*, 505 Mich at 10-11. Because "[c]ounsel is not ineffective for failing to advance a meritless position or make a futile [request]," *People v Henry (After Remand)*, 305 Mich App 127, 141; 854 NW2d 114 (2014), defendant's ineffective-assistance claim based on the failure to request a self-defense instruction necessarily fails, see *Fyda*, 288 Mich App at 450.

We further note that trial counsel's failure to request M Crim JI 7.22 may well have been sound trial strategy. For "a defendant who asserts the affirmative defense of self-defense admits the crime but seeks to excuse or justify its commission." *People v Triplett*, 499 Mich 52, 57; 878 NW2d 811 (2016) (quotation marks and citation omitted). At trial, defendant denied strangling the victim and blocking her from leaving the trailer. And because defendant thus denied the conduct on which his charged crimes were based, defendant's own testimony did not support a self-defense instruction. See *id.* Trial counsel therefore may have had a legitimate strategic reason for choosing not to request a self-defense instruction: that instruction would have been inconsistent with the defense theory that he did not engage in the conduct alleged. See *Dunigan*, 299 Mich App at 583-584 (concluding that trial counsel was not ineffective for failing to request a jury instruction that

"would have been inconsistent with, and potentially detrimental to, defendant's theory that he was not the perpetrator"). For this additional reason, we cannot conclude that trial counsel's failure to request a self-defense instruction fell below an objective standard of reasonableness. See *Haynes*, 338 Mich App at 429-430.

2. ZOOM TESTIMONY

Next, defendant argues that trial counsel was ineffective for failing to object to the victim testifying by Zoom. The use of videoconferencing technology in court proceedings is governed by MCR 6.006. That court rule allows a trial court "at the request of any participant, or sua sponte, [to] allow the use of videoconferencing technology by any participant in any criminal proceeding." MCR 6.006(A)(2). That allowance is subject to Confrontation Clause requirements, however. As defendant correctly points out, our Supreme Court has held that under *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), the Sixth Amendment "requires face-to-face cross-examination for testimonial evidence unless a witness is unavailable and the defendant had a prior opportunity for cross-examination." *People v Jemison*, 505 Mich 352, 356; 952 NW2d 394 (2020).

On the second day of trial, the victim, 34 weeks pregnant, testified in person, and the trial court adjourned for the day during the victim's cross-examination. The next day, the victim finished her cross-examination via Zoom at the hospital because of a medical emergency. Defendant asserts that his trial counsel should have objected to the victim's testimony via Zoom, and that if his counsel had done so, the trial court would have been forced to make specific findings under MCR 6.006 and may have concluded that in-person testimony was feasible. But defendant highlights no testimony provided by the victim via Zoom that he views as particularly damaging given the victim's in-person testimony the prior day, nor do we discern any such testimony in our review of the record. Thus, even if trial counsel had levied defendant's desired objection and even assuming face-to-face examination was required in this instance under *Crawford* and *Jemison*, it appears that such a Confrontation Clause violation would have been harmless. See *Jemison*, 505 Mich at 367 (remanding for a trial court's determination of whether a Confrontation Clause violation due to video cross-examination testimony was harmless). Further, defendant does not explain how the trial court rendering defendant's desired findings under MCR 6.006, nor more generally how requiring the cross-examination to be finished in person rather than via Zoom, would have affected the outcome of his trial. It is defendant's burden to "establish[] the factual predicate of his ineffective assistance claim," *Douglas*, 496 Mich at 592, and ultimately "show that counsel's deficient performance prejudiced the defense," *Fyda*, 288 Mich App at 450. Because without a showing of prejudice, an ineffective-assistance claim necessarily fails, we cannot conclude that trial counsel rendered ineffective assistance by failing to object to the victim's testimony over Zoom. See *Fyda*, 288 Mich App at 450; *People v Solmonson*, 261 Mich App 657, 668; 683 NW2d 761 (2004) ("Failure to prove . . . prejudice is fatal to [a] defendant's claim of ineffective assistance of counsel.").

III. CONCLUSION

For the reasons stated, the trial court did not abuse its discretion by admitting evidence of the July 2024 incidents as other-acts evidence under MCL 768.27b, there was sufficient evidence to sustain defendant's unlawful-imprisonment conviction, and defendant's trial counsel did not

render ineffective assistance by failing to request a self-defense jury instruction or object to the victim's testimony via Zoom. The judgment of the trial court is therefore affirmed.

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin