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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 12, 2026 12:26 PM
v	No. 369347 Calhoun Circuit Court
CHAD ALLAN REED, Defendant-Appellant.	LC No. 2021-000416-FC

Before: M. J. KELLY, P.J., and RIORDAN and RICK, JJ.

PER CURIAM.

Defendant, Chad Reed, appeals as of right his convictions following a jury trial of three counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227; one count of felon in possession of a firearm (felon-in-possession), MCL 750.224f; one count of second-degree murder, MCL 750.317; and one count of first-degree premeditated murder, MCL 750.316(1)(a). For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

Jaclyn Lepird and Joseph Soule were reported missing on October 12, 2020. Lepird and Soule lived together in an apartment that they rented from Reed. A police officer was dispatched to their apartment and spoke with Reed, who advised that he had not spoken to them or heard from them in "several days." He also stated that they had previously "left and gone without telling anyone." The officer briefly searched their apartment but did not observe anything concerning.

The next day, the police received a call that Lepird and Soule's vehicle had been located. They also learned that Reed had been cleaning Lepird and Soule's apartment with bleach. Based upon that information, a missing-persons investigation was started. As part of that investigation, Reed was detained, placed into the back of a police cruiser, and left there in handcuffs "for some time." His cellular phone was also taken from him. Eventually, the handcuffs were removed and

he agreed to go to the police station for an interview. After being advised of his *Miranda*[1] rights, Reed clearly stated that he wanted "an attorney." The interview stopped and Reed was allowed to leave. His phone was not released to him, however. Rather, a search warrant was prepared for Reed's DNA, his cellular phone, and his residence.

One day later, on October 14, 2020, Reed visited his aunt's house. His aunt asked if he had anything to do with the disappearance of his tenants, Lepird and Soule. She recalled that Reed then confessed to killing both of them. Without telling her what led to the start of the confrontation, he told her that he had been on the porch with Lepird and Soule. At trial, his aunt described his recitation of the circumstances of the killings as follows:

> [Soule] had a knife pointed at him, and he pulled a gun and shot him, and then he said [Lepird] came through the door, and all he could think of was, leave no witnesses, and he shot her. And she ran off the porch, and she ran toward the backyard, and he grabbed the knife off of [Soule], and he went and followed her to the backyard, and he shot her again. And then, he said she wasn't gone, so he had hit her on the head with something. He'd pounded on her face. He had tried to slit her throat. And finally, he found something that he wrapped around her throat and choked her.

Reed additionally told her that he tried to "cut the bullet" out of Soule, that he scrubbed Lepird's hands because he was afraid that there was DNA under her nails, that he had used a tarp or plastic to wrap the bodies, and that he had driven around looking for a place to put them. He would not tell her where he ultimately stashed the bodies, but he did ask her whether a burn pit on her property was still functional. She told him that it was not, which led him to commenting that he was going to need a lot of bags. Reed finally told his aunt that he had hidden the gun under some leaves, but that it was gone when he went back for it.

On the morning of October 15, 2020, Reed's aunt went to the police station and reported Reed's confession. After Reed's aunt made her statement, Reed arrived at the police station to pick up his phone. He was taken into an interview room and advised that he was under arrest for Lepird and Soule's murders. Reed was again advised of his *Miranda* rights. When advised of his right to counsel, he responded, "that is my wish." Despite that invocation of the right to counsel, the police continued the interview by telling Reed the reason why they were in the interview room and suggesting that he should tell "his side of the story." Reed was also asked to sign a written waiver of his *Miranda* rights. He refused and asked, "Can't I just have a lawyer here right now." The police responded that they did not have lawyers "sitting around" and that if Reed did not want to talk to them, he could simply say that he did not want to talk to them. Reed did not repeat his request for a lawyer or say that he did not want to talk. Instead, he made inculpatory statements. Reed's statements led to the police locating Lepird and Soule's bodies, which were wrapped in plastic in a vehicle that was parked in the garage of an abandoned house.

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Prior to trial, Reed moved to suppress his statements and the nontestimonial evidence seized as a result of his confession. The trial court held an evidentiary hearing on the motion. Following the hearing, the court found that Reed's confession had been secured in violation of *Miranda* and its progeny. Accordingly, the court entered an order suppressing his confession to the police. But the court did not suppress the nontestimonial evidence because it found that Reed's confession was nevertheless voluntary.

Reed filed an interlocutory application for leave to appeal, arguing that the nontestimonial evidence should be suppressed because his confession was not voluntary. In response, the prosecution argued that the confession was voluntary, but it also insisted that the trial court erred by finding that Reed's confession had been secured in violation of *Miranda*. It did not, however, file an application for leave to appeal that decision. This Court denied Reed's application for leave to appeal,[2] and the case proceeded to trial.

Following the jury trial, Reed was convicted as indicated above. This appeal follows.

II. VOLUNTARY CONFESSION

A. STANDARD OF REVIEW

Reed argues that the trial court erred by not suppressing the nontestimonial evidence secured as a result of his confession. We review for clear error the trial court's findings of fact at a suppression hearing. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). Findings of fact are clearly erroneous if "this Court is left with a firm and definite conviction that a mistake has been made." *People v Ryan*, 295 Mich App 388, 396; 819 NW2d 55 (2012). Questions regarding the voluntariness of a confession are reviewed de novo, with deference given to "the trial court's assessment of the credibility of the witnesses and the weight accorded to the evidence." *People v Ryan*, 295 Mich App 388, 396; 819 NW2d 55 (2012). "When reviewing a trial court's determination of voluntariness, we examine the entire record and make an independent determination." *People v Gipson*, 287 Mich App 261, 264; 787 NW2d 126 (2010). "[T]he burden is on the [prosecution] to demonstrate voluntariness by a preponderance of the evidence." *People v Stewart*, 512 Mich 472, 480; 999 NW2d 717 (2023).

B. ANALYSIS

Criminal suspects are protected against self-incrimination by the Fifth Amendment of the United States Constitution and Article 1 of the Michigan Constitution. US Const, Am V; Const 1963, art 1, § 17. The trial court found that Reed's Fifth Amendment right to counsel under *Miranda* was violated when the police continued the October 15 interview after Reed invoked his right to counsel. As such, the trial court held that Reed's confession was inadmissible. That decision—although discussed by the parties on appeal—has not been challenged by Reed or by

[2] *People v Reed*, unpublished order of the Court of Appeals, entered July 12, 2023 (Docket No. 365850).

the prosecution in a cross appeal. As such, we will not disturb it. Instead, we turn to the issue presented: whether the physical evidence discovered as a result of his confession was admissible.

At the outset, it is important to recognize that "the exclusion of unwarned statements is a complete and sufficient remedy for any perceived *Miranda* violation." *People v Campbell*, 329 Mich App 185, 204; 942 NW2d 51 (2019) (quotation marks, citation, and alterations omitted). Consequently, the suppression of a defendant's statements taken in violation of *Miranda* does not automatically require the suppression of evidence discovered as a result of the defendant's statement. *Id*. at 203. Rather, "[p]hysical evidence obtained as a result of an unwarned statement remains admissible as long as the statement was voluntary." *Id*. at 205. "It is only the physical fruits of an actually coerced statement that must be suppressed to serve the deterrent purpose of the exclusionary rule." *Id*. An "actually coerced statement" is a statement that is accompanied by "actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will." *Oregon v Elstad*, 470 US 298, 308-309; 105 S Ct 1285; 84 L Ed 2d 222 (1985).

Generally, a confession is voluntary if the totality of all the surrounding circumstances establish that the confession was a product of an essentially free and unconstrained choice and not the result of an overborne will. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988).[3] When considering whether a statement is voluntary, the trial court should consider the following nonexhaustive list of factors:

> [T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the accused was threatened with abuse. [*Id*. at 334.]

"The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness." *Id*. Another factor relevant to this case, however, is the fact that Reed's statements were taken after the police continued questioning him following the invocation of the right to counsel. There is a presumption of involuntariness for statements taken after a defendant invokes his or her right to counsel. *People v Fenderson*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167391); slip op at 14.

The record reveals that Reed is an adult who has had prior involvement with law enforcement and the courts. He was not handcuffed during the interview or otherwise restrained. The detectives were respectful of him and spoke in conversational tones. They did not raise their

[3] In his Standard 4 brief, Reed argues that the trial court should have applied the "bright line method" instead of "the totality of the circumstances method" in determining the voluntariness of his statements. He does not cite any authority in support of his argument, however. Moreover, the totality-of-the-circumstances method is clearly required by *Cipriano*.

voices, threaten, or belittled Reed. The detectives' emotional appeals to Reed's "more virtuous" and "better instincts" were not particularly coercive in nature. The recording of the interview confirms that Reed began to cry, to apologize, and to make inculpatory admissions approximately 5 minutes into the interview. Approximately 8 minutes into the interview he was advising the detectives where he had hidden the gun. These statements are largely spontaneously volunteered and were not prompted by pointed questioning. Rather, the video reveals that the detectives mostly listened as Reed talked. The questions asked were mostly questions clarifying Reed's statements. Throughout the interview, Reed was calm and soft-spoken. He appeared to be resigned to his fate, and comfortable with his decision to confess. Moreover, there is no readily apparent evidence that Reed was cognitively impaired, in ill-health, emotionally impaired, or under the influence of alcohol or narcotics. Finally, as recognized by the trial court, rather than depriving Reed of food, the police provided him with food and drink. Considering the totality of the circumstances, we conclude that the trial court did not clearly err by holding that the statements were admissible.

III. FOURTH AMENDMENT

A. STANDARD OF REVIEW

Reed next argues that he is entitled to reversal because his Fourth Amendment rights were violated. Specifically, he asserts that his Fourth Amendment rights were violated because he was detained for more than 48 hours without a probable-cause determination following his warrantless arrest and that, as a result, all evidence obtained from the October 15 search warrant should be suppressed.[4] We review constitutional questions de novo. *People v Sadows*, 283 Mich App 65, 67; 768 NW2d 93 (2009).

B. ANALYSIS

"The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). See US Const, Am IV; Const 1963, art 1, § 11. "[A]n unconstitutional seizure occurs when the police detain an individual for more than 48 hours following [a warrantless arrest] without a neutral magistrate concluding that probable cause exists, unless the prosecution proves the existence of a bona fide emergency or other extraordinary circumstance." *People v Sanders*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167899); slip op at 1-2. Statements made by a defendant "seized in violation of the Fourth Amendment's requirement of a prompt judicial determination of probable cause must be excluded from evidence unless the prosecution establishes that the statements were sufficiently attenuated form the taint of the unconstitutional conduct." *Id*. at ___; slip op at 2.

[4] In his Standard 4 brief, Reed additionally argues that the delay in proceedings was a jurisdictional issue. We disagree. "[I]n a criminal case, an illegal arrest or arrest warrant issued on defective procedure will not divest a court of jurisdiction when the court has jurisdiction over the charged offense and the defendant appears before the court." *Porter v Porter*, 285 Mich App 450, 462; 776 NW2d 377 (2009).

Reed maintains that he was seized in violation of the Fourth Amendment right to a prompt judicial determination of probable cause because more than 48 hours elapsed between his warrantless arrest and his arraignment. He contends that, as a result, his confession and the physical evidence derived from his confession should be excluded from evidence. Reed has not established that a Fourth Amendment violation occurred, however. The record reveals that Reed was arrested without a warrant on the morning of October 15, 2020. Sometime on October 17, 2020, a felony arrest warrant was issued by a magistrate. Reed has not directed us to record evidence indicating the exact time that he was arrested, nor has he established what time the warrant was issued. Thus, it is possible that there was a judicial determination of probable cause more than 48 hours after Reed's arrest, but it is equally possible that the determination was made 48 hours or less after Reed's arrest. Additionally, Reed has not argued that the magistrate issued the felony warrant without first finding the requisite probable cause to do so. Nor is there any evidence on the record suggesting that the magistrate lacked probable cause to issue the warrant. Accordingly, Reed has not established that there is a Fourth Amendment violation.

Regardless, even if a violation had occurred, the remedy identified in *Sanders* is the potential suppression of statements made as a result of the delay. Here, the statements were suppressed because they were taken in violation of *Miranda*. Reed has not directed this Court to any authority suggesting that the Fourth Amendment violation identified in *Sanders* requires the suppression of physical evidence discovered, as a result, of the suppressed statements. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Thus, Reed has abandoned on appeal his assertion that suppression of the physical evidence is required as a result of the alleged Fourth Amendment.

Reed further argues in his Standard 4 brief that his Fourth Amendment rights were violated on October 13, 2020, because the officers lacked probable cause to detain him. We disagree. At the outset, this issue was not raised below. As a result, we review it for plain error affecting Reed's substantial rights. *People v Shafier*, 483 Mich 205, 211; 768 NW2d 305 (2009). Although Reed can show that he was briefly detained, he has not shown that the police required probable cause for the detention. Indeed, it is well-established that "for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *People v Pagano*, 507 Mich 26, 32; 967 NW2d 590 (2021) (quotation marks and citation omitted). Such a detention—referred to as a *Terry* Stop—is permissible "as long as the officer can articulate a reasonable suspicion for the detention." *Id*. (quotation marks and citation omitted). "Although reasonable and articulable suspicions is a lesser showing than probable cause, it still entails something more than an inchoate or unparticularized suspicion or hunch, because an officer must have had a particularized and objective basis for the suspicion on criminal activity." *Id*. (quotation marks and citation omitted).

Here, the officer received information that Reed "may have been cleaning out" Lepird and Soule's apartment with bleach and that Reed was "tearing up flooring" in their apartment. Although Reed suggests that such behavior was not suspicious because he was doing so during the COVID pandemic, the fact that he was doing it to his missing tenants' apartment a day after being questioned by the police suggests a more sinister motive. Regardless, Lepird and Soule's vehicle had also been located and the case was being treated as a missing persons case. Reed has not demonstrated that the reports that he was ripping up flooring and bleaching the apartment of his

two missing tenants did not lead to a reasonable suspicion of criminal activity. Moreover, even assuming arguendo that the October 13 detention was improper, Reed has not established that the detention affected his substantial rights. Indeed, following the brief detention, he consented to traveling to the police station for an interview, was advised of his *Miranda* rights, invoked his right to counsel, and then left. Reversal is, therefore, not warranted.

IV. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Reed argues that there was insufficient evidence to sustain his conviction of first-degree murder of Lepird. We review a challenge to the sufficiency of the evidence de novo and "in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). "Circumstantial evidence and reasonable inferences therefrom may be sufficient to prove all the elements of an offense beyond a reasonable doubt." *People v Schumacher*, 276 Mich App 165, 167; 740 NW2d 534 (2007). When reviewing a sufficiency claim, we "must defer to the fact-finder by drawing all reasonable inferences and resolving credibility conflicts in support of the . . . verdict." *Id*.

B. ANALYSIS

In a criminal case, the prosecution must introduce sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Reed was convicted of first-degree premeditated murder for his killing of Lepird. "The elements of first-degree premeditated murder are (1) the intentional killing of a human (2) with premeditation and deliberation." *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). Reed argues that there was insufficient evidence of premeditation.

"To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem." *People v Oros*, 502 Mich 229, 240; 917 NW2d 559 (2018) (quotation marks, citation omitted, and alterations omitted). "Premeditation and deliberation may be established by an interval of time between the initial homicidal thought and ultimate action, which would allow a reasonable person time to subject the nature of his or her action to a second look." *Id*. at 242 (quotation marks and citation omitted; emphasis added). "[S]ome time span between the initial homicidal intent and ultimate action is necessary to establish premeditation and deliberation, but it is within the province of the fact-finder to determine whether there was sufficient time for a reasonable person to subject his or her action to a second look." *Id*. (quotation marks and citation omitted). Generally, a second look can be established by "only a brief moment of thought or a matter of seconds." *Id*. at 242-243 (quotation marks and citation omitted).

Here, after shooting Soule dead, Reed saw Lepird. According to his aunt, he wanted to "leave no witnesses" and so shot her. The shot did not kill Lepird and she fled. Reed grabbed a knife and chased her down. He struck her in the head and face. He then tried to slit her throat with the knife. When those efforts did not lead to her death, he found a rope to wrap around her neck and strangled her. The forensic pathologist testified that all of Lepird's injuries—the gunshot

wound to her back, the signs of strangulation with a rope, the incised wound on the front of her neck, and the blunt-force injuries to her head—were inflicted while she was still alive and that "ultimately, she succumbed to the combination of multiple injuries . . . ." This evidence not only reflects the ferociousness of the killing, but also supports the jury's finding that he acted with premeditation. He saw her and decided to shoot her while she was fleeing because she was a witness to his slaying of Soule. He took the time to retrieve a knife before he chased her down. He had time between beating her in the head and trying to slit her throat to track down a rope to strangle her. See *Gonzalez*, 468 Mich at 641 ("Manual strangulation can be used as evidence that a defendant had an opportunity to take a second look."). The time necessary between each method of attempted killing supports an inference that he "had and took time for reflection before proceeding" to kill Lepird. See *Oros*, 502 Mich at 235. Indeed, multiple "interval[s] of time" between Reed's "initial homicidal thought and ultimate action[s]" took place. *Id*. at 242. Further, the steps he took to facilitate her killing, including the retrieval of the knife and the location of rope to strangle her, reveal that when his initial plan to kill her by shooting her failed, he planned additional methods of killing, including using his fists, a knife, and a rope. Although the methods of killing evolved, his ultimate plan to kill her so that she could not be a witness to his killing of Soule remained constant. Viewing the above evidence in the light most favorable to the jury verdict, the evidence was sufficient to establish that Reed acted with premeditation when he killed Lepird. Reversal is not required.

V. JURY INSTRUCTIONS

A. STANDARD OF REVIEW

Reed next argues that the trial court erred by denying his request for a second-degree murder instruction for his killing of Lepird. He contends that a second-degree murder instruction was warranted because, although brutal, there was no evidence of premeditation related to his killing of Lepird and because his decision to hide the bodies was "consistent" with a "panic killing." We review claims of instructional error de novo. *People v Kowalski*, 489 Mich 488, 501; 803 NW2d 200 (2011). We review "for an abuse of discretion a trial court's determination that a specific instruction is inapplicable given the facts of the case." *People v Hartuniewicz*, 294 Mich App 237, 242; 816 NW2d 442 (2011). Jury instructions are considered "as a whole to determine whether the court omitted an element of the offense, misinformed the jury on the law, or otherwise presented erroneous instructions." *Id*. Furthermore, "[w]hen a defendant requests a jury instruction on a theory or defense that is supported by the evidence, the trial court must give the instruction," and if the instruction was not given, "the defendant bears the burden of establishing that the trial court's failure to give the requested instruction resulted in a miscarriage of justice." *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002). We will not reverse defendant's conviction "unless, after examining the nature of the error in light of the weight and strength of the untainted evidence, it affirmatively appears that it is more probable than not that the error was outcome determinative." *Id*. at 124-125.

B. ANALYSIS

"A criminal defendant has the right to have a properly instructed jury consider the evidence against him." *People v Mills*, 450 Mich 61, 80; 537 NW2d 909 (1995). "[T]he trial court is required to instruct the jury concerning the law applicable to the case and fully and fairly present the case

to the jury in an understandable manner." *Id*. "Second-degree murder is always a lesser included offense of first-degree murder." *People v Clark*, 274 Mich App 248, 257; 732 NW2d 605 (2007), and "[f]irst-degree premeditated murder is only distinguished from second-degree murder by the element of premeditation," *People v Walker*, 330 Mich App 378, 383; 948 NW2d 122 (2019). A defendant charged with the greater offense of first-degree murder is entitled to an instruction on the lesser included offense of second-degree murder "if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it." *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002), overruled in part on other grounds *People v Mendoza*, 468 Mich 527, 545; 664 NW2d 685 (2003).

Here, the intent element of Lepird's murder was disputed. As recognized by Reed, a rational view of the evidence supported an inference that he acted with the intent to kill Lepird. And, as recognized by the prosecution, a rational view of the evidence also supported a finding that he acted with premeditation and deliberation. As such, Reed was entitled to a jury instruction on second-degree murder.

That does not end our inquiry. A "harmless error analysis is applicable to instructional errors involving necessarily included lesser offense." *Cornell*, 466 Mich at 361. MCL 769.26 provides:

> No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, *on the ground of misdirection of the jury*, or the improper admission or rejection of evidence, or for any error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of resulted in a miscarriage of justice. [Emphasis added.]

Because the error in this case is a preserved, nonconstitutional error, reversal is not warranted "unless after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative." *Cornell*, 466 Mich at 363 (quotation marks and citation omitted).

Here, having examined the entire cause, we conclude that the evidence did not clearly support a conviction for the lesser included offense of second-degree murder. That Reed acted with intent to kill Lepird was plain from the fact that he shot her in the back, cut her neck with a knife, strangled her with a rope or similar object, and struck her in the head with his fists. Indeed, by his own admission to his aunt, he intended to eliminate the witness to his killing of Soule. In addition to an inference of intent to kill, however, the evidence strongly and overwhelmingly supported that Reed acted with premeditation and deliberation when he killed Lepird. As noted, after deciding to kill her, he shot her in the back as she fled. Lepird did not die from being shot. She ran. He chased her, but not instantly. Instead, there was an interval of time in which he considered his options and decided to grab a knife before pursuing her. He then caught up to her and struck her in the head. That did not kill her. He then used the knife he brought with him to cut her neck. That did not kill her. Reed took another interval of time to locate something to strangle her with. He then proceeded to strangle her. Although the strangling did not, by itself, kill her, the combination of all her injuries inflicted by Reed did.

Reed admitted to his aunt that he was concerned that there was DNA evidence under Lepird's nails. That allows for an inference that while Reed was cycling through various methods of killing her, she fought back at least a little. Reed scrubbed her hands after her death to hide any such evidence. He then wrapped her in plastic. He put her body in a truck and drove around looking for a place to hide it. Eventually, he settled on furtively parking the truck in the garage of a nearby abandoned home. He drove Lepird and Soule's vehicle to another location and left it there. When the police questioned him about Lepird and Soule's disappearance, he made statements suggesting that it was common for them to disappear. The very next day, he went into their apartment and cleaned it with bleach and started ripping up the floor.

Considering the above evidence, we cannot conclude that the evidence clearly supported a conviction of second-degree murder. As such, Reed has failed to satisfy his burden of showing that it was more probable than not that the failure to provide the requested instruction undermined the reliability of the verdict. See *id*. at 367. The error in this case was harmless.

VI. INEFFECTIVE ASSISTANCE

A. STANDARD OF REVIEW

Lastly, Reed argues that his lawyer provided constitutionally ineffective assistance for a number of reasons. "When no *Ginther*[5] hearing has been conducted, our review of the defendant's claim of ineffective assistance of counsel is limited to mistakes that are apparent on the record." *People v Mack*, 265 Mich App 122, 125; 695 NW2d 342 (2005).

B. ANALYSIS

To establish ineffective assistance of counsel, the defendant bears the burden of providing that his lawyer's performance was deficient, i.e., it "fell below an objective standard of reasonableness," and that he was prejudiced by his lawyer's deficient performance, i.e. "but for counsel's deficient performance, a different result would have been reasonably probable." *People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 676 (2011). Decisions "regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy." *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004).

Reed first argues that he was denied effective assistance because his lawyer failed to obtain recordings of 911 calls he claimed to have made to protect Lepird and Soule. Nothing in the record, however, supports an inference that any such calls exist or that Reed told his lawyer that he had called 911. Accordingly, Reed has not met his burden of establishing the factual predicate for his claim. See *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014). As such, he cannot prevail on this claim.

Next, he contends that his lawyer was ineffective for failing to secure video evidence from his October 13 detainment. The record shows that the recordings from the patrol vehicle were provided. The officers were not wearing "body cams" during their interactions with Reed. Further,

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

his interview at the police station on October 13 was not recorded. Thus, Reed has again failed to establish the factual predicate for his claim. See *id*.

Reed also suggests that his lawyer was ineffective for failing to call a gunshot-residue expert. There is nothing in the record, however, revealing what information such an expert would have testified to if called. A defendant cannot meet his burden of establishing deficient performance and prejudice simply by stating that his lawyer failed to take an action. Indeed, absent some indication of the proposed testimony, it is equally likely that testimony from a gunshot-residue expert would have supported either the defense or the prosecution's theory of the case. Regardless, the prosecution presented testimony from an expert on gunshot-residue and Reed's lawyer sufficiently questioned that expert on cross examination in support of his claim.

Reed also argues that he was denied effective assistance because his lawyer failed to suppress the jail calls that were entered into evidence by stipulation. But he does not explain the purported basis for excluding the jail calls. Nor does he explain why, but for his lawyer's decision to stipulate to their admission, a different outcome would have been reasonably probable. See *Armstrong*, 490 Mich at 289-290.

Reed argues that his lawyer was ineffective for refusing to argue at his preliminary examination that there was a Fourth Amendment violation based upon the police entering the residence without a warrant. However, Reed waived his preliminary examination. Thus, there is nothing to support the contention that his lawyer refused to raise such a challenge.

Reed next argues that his lawyer should have objected to his suppressed statements from being released to a presentence investigations office. The trial court, however, did not rely upon the suppressed confession as part of its reasoning for imposing the sentence that it did. Thus, Reed cannot show that a different outcome would have been reasonably probable but for the failure to object.

VII. JURY TAMPERING

Reed lastly argues that the jury was tampered with during jury selection because jurors were dismissed for knowing the officers involved in the investigation. Yet, he has presented no authority in support of his position that dismissing individuals who might have a bias in favor of prosecution witnesses amounted to jury tampering. As such, this claim is abandoned on appeal. *Kelly*, 231 Mich App at 640-641.

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Riordan
/s/ Michelle M. Rick