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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON JOSEPH TROUT,

Defendant-Appellant.

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No. 370221
Alcona Circuit Court
LC No. 2022-003775-FC

Before: MARIANI, P.J., and FEENEY and TREBILCOCK, JJ.

TREBILCOCK, J.

A jury determined defendant abused and killed his girlfriend's toddler. Evidence presented at trial showed that two months of abuse he inflicted against her—including by perpetrating torture-like potty training—culminated with defendant picking the toddler up by her hair and fatally throwing her against a wall. His final act of atrocity was apparently triggered because the little girl decided to go to the bathroom without telling anyone. Defendant now appeals his convictions and sentences for murder and child abuse, primarily contending the trial court erroneously admitted hearsay evidence against him through the excited-utterance exception. He also raises issues concerning juror impartiality and the reasonableness of his sentences. We affirm.

I. BRIEF FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In summer 2022, defendant, Aaron Trout, persistently abused JM, his girlfriend's two-year-old daughter. Here are just some of the ways. He punched her in the face. He held her over a pond by her ankles because he knew she was afraid of water. He forced her to sleep outside. He tied her up, sometimes with her hands behind her back and other times with her hands tied to her hair. He duct-taped her to a potty-training toilet, often in manner that meant she could only look at the ceiling. He made her eat her meals while on the toilet.

JM going to the bathroom without telling anyone was the final straw for defendant. That enraged him. He picked her up by her hair, threw her onto the ground and then slammed her head into a wall. Her eyes rolled back into her head. JM's mother, Adrienne Pavelka, fought and pleaded with defendant to bring JM to the hospital to no avail. He put a gun to Pavelka's head, dragged Pavelka by the hair, and gave Pavelka the "choice" of taking sleeping pills or him shooting

Pavelka. The only care they gave JM was washing off blood from her rectum, feeding her chicken broth, water, and Kool Aid with antibiotics through a syringe, and cleaning her wounds with peroxide and alcohol.

After three days, Pavelka woke up to a "lifeless" JM. She finally convinced defendant to take JM to a hospital. On their way, defendant threatened to kill Pavelka's mom and her other kids. JM was dead on arrival. On her body were 85 separate external injuries, including bruises, scratches, and ligature marks; intentional blunt trauma and binding caused all of her injuries. She died due to cerebral injuries inflicted by multiple blunt force trauma.

A jury convicted defendant of second-degree murder, MCL 750.317, and first-degree child abuse, MCL 750.136b(2),[1] and the trial court imposed 55 to 90 years and 30 to 60 years of imprisonment for his crimes, respectively.[2] On appeal by right, defendant argues that the trial court erroneously admitted Pavelka's statements to a hospital staff member as excited utterances, that he was denied a fair trial due to members of the public interacting with a juror, and that his sentences are unreasonable.

II. EXCITED UTTERANCE

We begin with defendant's main claim on appeal—that the trial court erroneously permitted a hospital technician to testify regarding what Pavelka said to her shortly after walking into the MyMichigan Medical Center in Alpena holding JM's lifeless body as excited utterances under MRE 803(2). Those statements directly implicated defendant in JM's death and expressed Pavelka's fear of defendant because he had just actively threatened her mother and other children. This Court reviews preserved objections to a trial court's evidentiary rulings, like those admitting excited utterances, for abuse of discretion. *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998). For the reasons that follow, the prosecution amply satisfied the excited-utterance exception; we therefore disagree with defendant that the trial court's admission of Pavelka's statements as excited utterances represented an abuse of discretion meriting reversal.

A. EXCITED UTTERANCE OVERVIEW

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing at issue, offered in evidence to prove the truth of the matter asserted. MRE 801(c). It is inadmissible unless otherwise provided by the Michigan Rules of Evidence. MRE 802. An excited utterance is one such provision, which permits the admission of "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused." MRE 803(2). It does so, because "a person who is still under the sway of excitement

[1] Pavelka was initially charged with first-degree felony murder and two counts of first-degree child abuse. Pursuant to a plea agreement, she pleaded guilty to first-degree child abuse, testified against defendant, and is currently serving a 15- to 40-year sentence.

[2] These and other events also caused defendant to lose his parental rights to his three minor children. See *In re Trout*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2024 (Docket No. 366607).

precipitated by an external startling event will not have the reflective capacity essential for fabrication so that any utterance will be spontaneous and trustworthy." *Smith*, 456 Mich at 550 (quotation marks and citation omitted). The rule's focus "is the lack of *capacity* to fabricate, not the lack of *time* to fabricate . . . ." *Id*. at 551 (emphasis added).

In first describing the rule's requirements, our Supreme Court noted three criteria: "(1) it must arise out of a startling occasion; (2) it must be made before there has been time to contrive and misrepresent; and (3) it must relate to the circumstances of the startling occasion." *People v Gee*, 406 Mich 279, 282; 278 NW2d 304 (1979) (footnote omitted). But it has since clarified that the second factor—"time to contrive and misrepresent"—"does not contemplate a sequence in which the utterance necessarily follows immediately on the startling event," *People v Straight*, 430 Mich 418, 424, 425; 424 NW2d 257 (1988), and rather "is simply a reformulation of the inquiry as to whether the statement was made when the witness was still under the influence of an overwhelming emotional condition," *id*. at 425. And following *Straight*, *Smith* simplified the analysis even further: there are "two primary requirements for excited utterances: 1) that there be a startling event, and 2) that the resulting statement be made while under the excitement caused by the event." *Smith*, 456 Mich at 550.

The focus here is on *Smith*'s second factor, for defendant does not dispute the existence of a startling event. This requires examining whether Pavelka "spoke while still under the stress caused by the startling event," with "[t]he crucial point [being] that [a] court must be able to find that the declarant's state at the time [s]he made the declaration ruled out the possibility of conscious reflection." *Straight*, 403 Mich at 425 (quotation marks and citation omitted). "Physical factors, such as shock, unconsciousness or pain, [which] may prolong the period in which the risk of fabrication is reduced to an acceptable minimum," may inform our analysis, as well as "the nature of the startling event, the character of the statement, the condition of the declarant, the identity of the declarant, and the availability of other evidence." *Id.* (quotation marks and citation omitted). See also *People v Kowalak*, 215 Mich App 554, 559; 546 NW2d 681 (1996) (noting the need to consider "all the circumstances bearing on spontaneity and lack of deliberation") (quotation marks and citation omitted).

B. ANALYSIS

Before defendant's trial, the trial court granted the prosecution's pretrial motion in limine to admit the technician's testimony under MRE 803(2). It reasoned:

> [S]he was crying, she was weeping, she was taken by a hospital employee to the family room, an informal setting. She indicated that [defendant] was at large, that he made threats to her other children and her mother. The hospital went into lock down and certainly, all of those statements – she was crying throughout the conversation . . . and she was, clearly, still under the stress of her daughter's death and [defendant]'s threats to her other children and her mother. So, it clearly fits into that hearsay exception of an excited utterance.

Defendant renewed his motion at trial, which the trial court overruled. A "trial court's determination whether the declarant was still under the stress of the event is given wide discretion," *Smith*, 456 Mich at 552, and "[c]lose questions arising from the trial court's exercise of discretion

on an evidentiary issue should not be reversed simply because the reviewing court would have ruled differently," *id*. at 550. Applying this deferential review standard to the trial court's determination below, we find no error meriting reversal.

The technician testified that upon Pavelka entering the hospital with JM, medical staff began life saving measures on JM and that she escorted Pavelka to a separate room and tried to console her. There, Pavelka was "upset," "crying," and just "started telling [her] many things of that day." She also testified that Pavelka just "started rambling" and "blurting things out." Reviewing the cold transcripts as an appellate court, they reveal one central theme—the technician observed an understandably shaken and emotional Pavelka describe the circumstances of defendant assaulting her daughter, his refusal to seek medical care for JM, her waking up that day to find JM "lifeless," and his threatening to kill her mother and her other children. These qualify as statements "made while under the excitement caused by the event." *Smith*, 456 Mich at 550. See also *People v Green*, 313 Mich App 526, 536; 884 NW2d 838 (2015) (excited utterance when the declarant was "very upset and crying"); *People v Walker*, 265 Mich App 530, 535; 697 NW2d 159 (2005) (similar, declarant was "scared, crying, highly upset, and shaking"), vacated in part on other grounds, 477 Mich 856; 720 NW2d 754 (2006); *People v McLaughlin*, 258 Mich App 635, 660; 672 NW2d 860 (2003) (similar, with "victim appear[ing] extremely upset or 'frantic,' " "having trouble breathing and speaking," and "shaking"). Cf. *People v Bowman*, 254 Mich App 142, 146; 656 NW2d 835 (2002) ("[A] court must also consider whether the declarant's emotional state would have permitted such fabrication.").

There being three days between JM's blunt-force injuries and Pavelka's statements at the hospital does not alter this conclusion. On that point, defendant argues *Gee* requires reversal because there our Supreme Court stated that a "12- to 20-hour lapse between event and statement was enough time for consideration of self-interest." 406 Mich at 283. But *Gee* and its progeny emphasize that time alone is not determinative. *See id*. (noting the lack of a "plausible explanation for the delay which would excuse the delay and permit an extension of the excited utterance exception" in that case). "Though the time that passes between the event and the statement is an important factor to be considered in determining whether the declarant was still under the stress of the event when the statement was made, it is not dispositive. It is necessary to consider whether there was a plausible explanation for the delay." *Smith*, 456 Mich at 551. Simply, "there is no express time limit for excited utterances." *Id*. at 551-552.

As for the reason for the delay, defendant notes Pavelka did other things without incident between the assault and her statements to the technician (like working and attempting to obtain drugs from a hospital for defendant to sell).[3] We are not convinced those actions, by themselves,

[3] One thing defendant does not raise is that Pavelka testified that in her attempt to convince him to bring JM to the hospital, she agreed to "do whatever he wants" and that the two concocted on the drive a plan for her to admit that JM "was in a golf cart accident." Although "it is not our prerogative to act as [a defendant's] research assistant," *People v Van Net*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 374944); slip op at 9, we mention this because the prosecution, to its credit, writes this could "suggest[] Pavelka had time for conscious reflection and the ability to contrive and misrepresent what occurred." The prosecution also, however,

reveal a "capacity to fabricate," *id*. at 551, for that is too narrow a view of Pavelka's startling event supporting her breakdown at the hospital. This Court stated several decades ago that "[i]t is hard to conceive of a more startling (or terrifying) event with which one might be confronted than a serious death threat." *Kowalak*, 215 Mich App at 558. Today's case reflects that conception—the record makes clear Pavelka's upheaval at the hospital was a culmination of the three-day period, beginning with defendant's initial assault of JM, to Pavelka awakening to JM's lifeless body that morning, and through his threats to kill her family members if she refused to lie about JM's injuries as they drove to the hospital. One can easily conclude those traumatic events were not isolated incidents allowing for "the possibility for conscious reflection" thereafter, *Smith*, 456 Mich at 551, but rather were a series of related happenings that built on top of each other. Put differently, they "support an inference that the statement[s were] made out of a continuing state of emotional shock precipitated by the" 72 hours of startling events. *People v Layher*, 238 Mich App 573, 584; 607 NW2d 91 (1999).

In sum, the trial court did not abuse its discretion by admitting Pavelka's statements to the technician under the excited-utterance exception, and we need not consider the prosecution's alternative harmless-error argument.

III. RIGHT TO AN IMPARTIAL JURY

Defendant's other conviction-based challenge concerns two separate interactions Juror Blackwell had with members of the public during trial. He claims the trial court erred in not conducting an evidentiary hearing regarding those interactions, and that his trial counsel rendered ineffective assistance of counsel by not moving for a mistrial or for an evidentiary hearing. These claims are not meritorious.

A. ADDITIONAL FACTUAL BACKGROUND

During trial, the court learned that one of the prospective jurors, a "Ms. Oliver," approached Blackwell "during the break and had a conversation with her." Apparently, the two met while in the jury pool. The trial court questioned Oliver and Blackwell in chambers with the prosecutor and defense counsel present, wherein Oliver disclosed that this had occurred a few times and that she additionally wrote letters to defendant (which were intercepted by jail staff).

With the consent of the prosecution and defense counsel, the trial court then questioned Blackwell on the record. Blackwell confirmed that Oliver approached her and "just said hi." She then disclosed that another person, Patricia Brown (who happened to be JM's aunt), also approached her at a restaurant and thanked her for not going on a vacation so she could remain on the jury. The trial court directly asked Blackwell: "Is there anything about either of these encounters that you think would affect your ability to continue to be fair and impartial?" She answered, "Absolutely not," and the trial court commented that it was "satisfied with her answers."

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persuasively provides an alternative explanation that makes it non-deliberative in our view—defendant controlled Pavelka's ability to provide medical care to JM, utilizing a gun to her head and threats to her family to do so.

After admonishing Oliver and Brown for their conduct, the trial court scheduled a contempt hearing for both at the prosecution's request.

On the next trial date, the prosecution withdrew its request. Defense counsel agreed. The trial court then turned to defendant and asked for his consent:

> THE COURT: Mr. Trout, it's my intention to move forward. I am satisfied after inquiring of the juror in question that the contact had nothing to do with any of the facts regarding this case and that the juror has not been in any way compromised and would be able to still deliberate in this case.
>
> Are you in agreement with us moving forward?
>
> MR PFEIFER [(trial counsel)]: If you're not, you have to tell her.
>
> MR. TROUT: I don't know if it matters, Your Honor. I mean, I don't know how I feel about it, honestly, if you want my honest opinion.
>
> THE COURT: Okay.
>
> MR. TROUT: But I mean, it's your decision at the end of the day so …
>
> THE COURT: All right. Well, I am satisfied, Mr. Trout. We've made diligent inquiry here and my purpose is to make sure that your rights are protected and that this case will be decided by a fair and impartial jury so, we have the one juror who was approached. We've made inquiry of her on this record and I've talked to both the people who approached her. The conversation had nothing to do with the facts of this case. It was about her giving up her vacation to sit as a juror in this case. And I'm satisfied, based on you were here when we talked to her. We brought the juror in and she indicated that none of what was said to her would in any way affect her ability to look at the facts of this case and make her decision based only on that.
>
> Given that, do you have any concerns about her ability to sit as a juror on your case?
>
> MR. TROUT: No, Your Honor.

The trial court accepted that concession: "I'm, not going to dismiss her. I'm satisfied that she was not compromised in any way. So, we will continue."

B. ANALYSIS

A criminal defendant has a constitutional right to be tried by an impartial jury. *People v Miller*, 482 Mich 540, 547; 759 NW2d 850 (2008); US Const, Ams VI, XIV; Const 1963, art 1, § 20. Courts presume that jurors are impartial, and it is a defendant's burden "to establish that the juror was not impartial or at least that the juror's impartiality is in reasonable doubt." *Miller*, 482 Mich at 550. In claims of extraneous influences, as here, a defendant has the burden to show both

that "the jury was exposed to extraneous influences" and that "these extraneous influences created a real and substantial possibility that they could have affected the jury's verdict." *People v Budzyn*, 456 Mich 77, 88-89; 566 NW2d 229 (1997). Upon that showing, "the burden shifts to the people to demonstrate that the error was harmless beyond a reasonable doubt." *Id*. at 89.

Waiver resolves defendant's faulting of the trial court for not conducting an evidentiary hearing regarding Brown's and Oliver's interactions with Blackwell. When asked by the trial court whether he was satisfied with their brief on-the-record responses to the trial court's questioning and its conclusion that Blackwell could continue to be fair and impartial, both defendant and his trial counsel affirmatively agreed. That is waiver, and "one who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).[4]

That leaves us with his complaint that his trial counsel should have moved for a mistrial or pushed for an evidentiary hearing. He preserved this issue for appellate review by filing in this Court a motion for remand to the trial court for a hearing under *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). See *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020). This Court denied his motion; therefore, we review for errors apparent on the record. *Id*.[5]

The United States and Michigan Constitutions guarantee the right to effective assistance of counsel. *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012), citing US Const Am VI and Const 1963, art 1, § 20. "A defendant must meet two requirements to warrant a new trial because of the ineffective assistance of trial counsel." *People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 676 (2011). "First, the defendant must show that counsel's performance fell below an objective standard of reasonableness." *Id*. at 290; see also *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984). "In doing so, the defendant must overcome the strong presumption that counsel's assistance constituted sound trial strategy." *Armstrong*, 490 Mich at 290. "Second, the defendant must show that, but for counsel's deficient performance, a different result would have been reasonably probable." *Id*.

On the record before us, trial counsel did not perform deficiently. The trial court asked questions of Blackwell, Brown, and Oliver, after which it felt satisfied that nothing beyond an admonition was appropriate. It is defendant's "burden of establishing the factual predicate for his

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[4] Even if not waived, defendant has not satisfied his burden to show that Blackwell's short encounters with Oliver and Brown qualify as extraneous influences and that there was "a real and substantial possibility that" those interactions "could have affected the jury's verdict." *Budzyn*, 456 Mich at 88-89. Nothing in the record demonstrates anything more than passing hellos and a brief thank you, none of which involved the substance of defendant's trial.

[5] As this Court's order specifies, the denial of defendant's motion was "without prejudice to a case call panel of this Court determining that remand is necessary[.]" *People v Trout*, unpublished order of the Court of Appeals, entered November 6, 2024 (Docket No. 370221). Defendant has not advanced any other argument supporting his prior request for a remand, and upon plenary review of defendant's claim, we continue to see no need for a remand to properly adjudicate the claim.

claim" of ineffective assistance of counsel. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). He faults his trial counsel for not asking any "questions of any of the three individuals involved," requesting an evidentiary hearing, or inquiring of other jurors, but does not offer specifics on why the trial court's inquisitions were not enough and what more needed be asked. See *People v Van Net*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 374944); slip op at 9 (noting "it is not our prerogative to act as [a defendant]'s research assistant"). And after reviewing the trial court's questioning, we discern nothing more counsel could or should have done concerning any "real and substantial possibility that [the extraneous influences] could have affected the jury's verdict." *Budzyn*, 456 Mich at 89.

IV. SENTENCING

We conclude with defendant's contention that the trial court imposed unreasonable sentences, 55 to 90 years for second-degree murder and 30 to 60 years for first-degree child abuse. Both sentences represented significant upward departures from the sentencing guidelines, which were 22 ½ to 37 ½ years for second-degree murder and 14 ¼ to 23 ¾ years for first-degree child abuse. Defendant's sentences are reasonable.

A. THE TRIAL COURT'S REASONING

Before turning to the trial court's express reasoning for why it found a departure was in order, we start where the trial court did:

> [T]oday is about [JM] who was a vibrant two-year-old girl whose life was brutally and viciously taken from her in a cold and calculated way.
>
> The only visual image I have of [JM] are pictures of her tiny malnourished body laying on an autopsy table. . . . I'm sure the jury, everybody involved in the case . . . [cannot] forget those pictures. Eighty-six injuries on her body. Abrasions and bruises on her face, ligature marks on her wrists and her ankles, bruises on her legs and back, and not visible in the photographs were the traumatic brain injury that ultimately resulted in her death.
>
> * * *
>
> This has got to be one of the most sadistic horrific things I've ever seen done to a child. This tiny innocent girl was duct taped to a potty chair. Her hands tied behind her back with her ponytail tied into the knot so that she had to look at the ceiling. She wasn't just treated inhumanly, she was a totally dependent innocent toddler who was brutally and repeatedly tortured by a person who was supposed to be protecting her and caring for her all the while her mother did nothing to intervene or to stop it.
>
> I can't begin to imagine what those last two weeks of [JM]'s life felt like to her. The constant fear, wondering why the people she should have been able to trust who were supposed to be protecting her were doing these horrific things to her, wondering what she had done to deserve it and what could she do so they would

> see her as a good girl and not do these things to her anymore. Who would make it stop? Nobody.

The trial court then characterized defendant as a "monster":

> You picked that little girl up and you slammed her against the floor and against the wall causing the injuries that ultimately resulted in her death and then, coldly and callously, without any regard for her life or her vulnerability, you let her lay there for two days without any medical treatment. You didn't do a thing to help her. By your own admission, you never offered the tiniest bit of care, comfort, or compassion to her because it wasn't your child.

And the trial court noted the dispassion he exuded while apologizing; that he sat with "arms crossed defiantly, chin jetted out in arrogance, smirking during the victims' statements"; and that he referred to JM as "it," and "never once referred to [her] as a little girl or by name."

With those (and other) observations, the trial court then concluded it did "not feel that the sentencing guidelines are adequate to address much of what went on here." The trial court emphasized Offense Variable (OV) 4 (psychological injury to a victim) and OV 10 (exploitation of a vulnerable victim):

> I particularly look at OV 4. Serious psychological injury to the victim is not scored in this case because she died. But let's not forget about the two weeks that preceded her death. Nobody on the face of this Earth can conclude that during those two weeks, she didn't suffer severe psychological injury from the torture and abuse that she was subjected to. The guidelines don't score that for her. They'll score that for her family members who have had that inflicted on them but not for her and I don't believe that's adequate in this situation since she clearly suffered horrifically for those two weeks leading up to her death.
>
> OV 10, I don't think it adequately takes into consideration the . . . predatory conduct. He refused to allow her to go to her grandma's house because she had a visible injury when he allowed the other children to go because he didn't want to get in trouble. Predatory behavior is for the purpose of victimization.

After that discussion of the variables it found lacking, the trial court eloquently summarized its reasoning:

> The facts of this case demonstrate a cold, calculated depravity on the part of the defendant. There was an extended period of continuous and repeated abuse and torture perpetrated wantonly on a very vulnerable child without the slightest demonstration of any recognition of her as a human being and without any regard whatsoever for the consequences or the result of his actions. Even after the fact, not expressing the slightest bit of remorse or even acknowledging that this innocent child who was in his care is now dead.
>
> Even if one chose to believe his protestations that he did not do this, even in his statements to the police, when he finally changed his story for the third or

> fourth time saying that Adrienne was doing it and he was aware of it, even then . . . , he did nothing. He did nothing for this child. And he had a duty of protecting her and caring for her. She was living in his household and he admitted that he had been her caregiver. That he watched her while Adrienne was at work.
>
> It takes a certain coldness, evil, wickedness of a heart that's far beyond my ability to comprehend and I say that having done this for 38 years, in all aspects of criminal law. I've seen a lot of things in 38 years. But this is beyond my ability to comprehend.
>
> It's unfathomable what Mr. Trout did to this little girl. He's a person who should never be allowed to navigate in free society again but, again, I'm constrained by statute.
>
> The facts here are as serious and as heinous as I have ever seen. The defendant is as depraved and evil and without any human compassion at all as anyone I have ever seen. His coldness is astonishing to me. I have never seen him display one bit of concern or care for anyone but himself ever.

B. SENTENCING PRINCIPLES AND STANDARD OF REVIEW

Courts must impose reasonable sentences. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). A sentence is reasonable if it adheres to the "principle of proportionality." *Id*.; see also *People v Posey*, 512 Mich 317, 348; 1 NW2d 101 (2023) (opinion by BOLDEN, J.). That means it is "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Steanhouse*, 500 Mich at 474, quoting *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990) (quotation marks omitted). In arriving at a proportionate sentence, a sentencing court must consider the four *Snow* factors. See *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972). Those factors "are: (1) 'reformation of the offender'; (2) 'protection of society'; (3) 'disciplining of the wrongdoer'; and (4) 'deterrence of others from committing like offenses.' " *People v Boykin*, 510 Mich 171, 188; 987 NW2d 58 (2022), quoting *Snow*, 386 Mich at 592. And it must "state on the record which criteria were considered and what reasons support the court's decision regarding the length and nature of punishment imposed." *People v Coles*, 417 Mich 523, 550; 339 NW2d 440 (1983), overruled on other grounds by *Milbourn*, 435 Mich at 635. This Court reviews sentences for an abuse of discretion, which occurs when a sentencing court imposes an unreasonable sentence. *Steanhouse*, 500 Mich at 471.

Although advisory, the sentencing guidelines are "a highly relevant consideration in a trial court's exercise of sentencing discretion," and courts must therefore consult and take them into account. *People v Lockridge*, 498 Mich 358, 391; 870 NW2d 502 (2015). Here, the trial court did so and concluded that a departure sentence for each conviction was more proportionate than a within-guidelines sentence. When imposing departure sentences, courts may consider (among other factors) "(1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation." *People v Lampe*, 327 Mich App 104, 126; 933 NW2d 314 (2019) (quotation marks and citation omitted). And in so

imposing, a trial court "must justify the out-of-guidelines sentence imposed in order to facilitate appellate review, which includes an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *Id*. at 127 (quotation marks, brackets, and citation omitted). Finally, the reasonableness standard remains the same for departure sentences. *Lockridge*, 498 Mich at 492.

C. ANALYSIS

The trial court's sentences more than adequately complied with these principles, and we have extensively block quoted the trial court's statements here to reflect the thorough, deliberate, and reflective care it took in imposing defendant's sentences. There is little to add here from our perspective, especially one that is informed entirely by a review of a paper case record and without the color of in-person observations available to the trial court. We find no fault with the trial court's sentences, let alone ones that reflect an abuse of discretion: it appropriately considered the *Snow* factors, as well as those we look to concerning departure sentences, like the seriousness of the offense ("The facts here are as serious and as heinous as I have ever seen"), factors that were inadequately considered by the guidelines (OV 4 and OV 10), and factors not considered by the guidelines (like defendant's lack of remorse). *Lampe*, 327 Mich App at 126.

For his part, defendant largely does not disagree. He makes no effort to dispute the severity of crimes and nor is there a way to do so. Defendant does not even mention, let alone dispute, the trial court's discussion of why OV 4 and OV 10 did not adequately cover his conduct. And, while he suggests that the trial court wrongly held his protestations of innocence against him, see *People v Dobek*, 274 Mich App 58, 104; 732 NW2d 546 (2007), the record here as extensively quoted above reflects the trial court did no such thing and rather found significant "evidence of a lack of remorse," which can be considered, *id*.

Defendant's only other sentencing pushback is his accusation that the trial court was determined to give him a life-without-the-possibility-of-parole sentence, which it could not do because the jury only convicted him of second-degree murder. According to defendant, the trial court departed upwards 17 ½ years because doing so "virtually guarantee[s] the same result" as life without the possibility of parole, given he will be 86 years old when he is first eligible for parole. But "he received a term-of-years sentence," and his age at parole eligibility alone "is insufficient to overcome the presumption of proportionality . . . ." *People v Purdle*, 350 Mich App 446, 456; 32 NW3d 479 (2024). For over thirty years now, this Court has emphasized that proportionality governs reasonableness review, including when an effective life sentence such as defendant's is at issue. See *People v Kelly*, 213 Mich App 8, 15; 539 NW2d 538 (1995). See also *People v Eads*, ___ Mich ___, ___; NW3d ___ (2026) (Docket No. 168205); slip op at 17 n 21 (noting that, under MCL 750.317, a court may "impose any term-of-years sentence, subject to *Milbourn* proportionality review"), citing *People v Lemons*, 454 Mich 234, 258; 562 NW2d 447 (1997). And as set forth, defendant's sentences adhere to the principle of proportionality.

V. CONCLUSION

For these reasons, we affirm the trial court's judgment.

/s/ Christopher M. Trebilcock
/s/ Philip P. Mariani
/s/ Kathleen A. Feeney