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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 25, 2026 10:06 AM
v	No. 370586 Alpena Circuit Court
BRAD ADAM SREBNIK, Defendant-Appellant.	LC No. 2023-002146-FC

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

PER CURIAM.

A double murder rocked the City of Alpena in the summer of 2021. Evidence showed that defendant, Brad Srebnik, first strangled a teenage girl to death. He then—with the help of his girlfriend and another—burned and buried her body. Less than two months later, defendant shot and killed his girlfriend while on the lamb. A jury convicted defendant of two first-degree murder counts, one count of mutilation of a corpse, and two firearm crimes, and he is now serving mandatory sentences of life without the possibility of parole. Defendant raises several issues on appeal, including the propriety of the search warrants used to collect cellular phone data, certain evidentiary determinations, and whether the prosecutor engaged in misconduct during her closing argument. We affirm.

I. BRIEF FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On the evening of July 31, 2021, 17-year-old Brynn Bills departed her residence and, on her way out, left a note explaining that "she was going with her friend Abby." Her family and friends never saw or heard from her again.

Defendant's longtime friend, Joshua Wirgau, detailed why. He explained that defendant messaged him on August 2 saying "911," meaning "something bad has happened or he has an emergency." On a subsequent call, defendant told Wirgau that "there was a drug deal that went ba[d] and it wasn't good for the other person." Wirgau went to defendant's house in Alpena. There, Wirgau met defendant, Abby Hill (defendant's girlfriend), and Bruce Kinsey (a mutual friend). Defendant then told the group that there was an altercation between Bills, Hill, and himself, and that he ended up choking Bills to death. Wirgau testified:

> [T]here was a drug deal at his house that went bad. [Bills] . . . had come after him with an ice pick and tried to stab him. . . . [T]hey wrestled in his kitchen area. And it led to him choking her -- sitting on top of her and choking her. . . . [T]hey were yelling at her, and telling her that he didn't want to kill her. And that she just needed to calm down and everything would be all right. And he said before he knew it, she was taking her last breath.

The next day, defendant rented an excavator, and together with Hill and Wirgau, traveled to Wirgau's property on Naylor Road in Alpena; Wirgau dug a deep hole in which they placed Bills's cardboard-wrapped body. Defendant then poured gasoline and industrial strength toilet-bowl cleaner on Bills's body and lit it on fire. After several minutes, they extinguished the fire and covered her body with concrete and more dirt to "make it look like it wasn't disturbed as much as [they] could." Wirgau subsequently dug a burn pit, and observed Hill and defendant burning "a pair of boots, an[] ID card, and a wallet."

Through a series of tips initially implicating Wirgau, law enforcement officials quickly began connecting Hill, Wirgau, and defendant to Bills's disappearance. They arranged for a traffic stop of Hill on an unrelated matter; the stop resulted in the couple's jailing—Hill on outstanding warrants and defendant for a weapons violation. Officers interviewed Hill following her arrest, who admitted to being with Bills the night of her disappearance. That admission, along with other investigative fruits, resulted in search warrants aimed at gathering electronic and physical evidence concerning Hill, Wirgau, and defendant.

Hill being in jail concerned defendant. He arranged for Kinsey to bond her out in mid-September because he "[d]id not want her talking to the law enforcement at all," and asked that she be kept under "lock and key until he got out of jail." Suspecting officials were homing in on their role in Bills's disappearance, Wirgau, Hill, and defendant eventually fled following defendant's release from jail, including to Kinsey's house.

While there, Hill and defendant "exploded into a big argument," with him telling her to "calm the fuck down" and "show [him] some respect." Wirgau "heard a slap," and saw "red marks around [Hill's] throat" and "a handprint on the side of her face." She told Wirgau that defendant "hit her and choked her" and that "she's scared that he's going to kill her." Hill also detailed that she "wanted her dad" and that "[s]he wish[ed defendant] would let her use a phone."

Defendant decided he had enough. He told Wirgau that Hill had "got to go." The trio packed up backpacks, guns, and ammunition, and headed for a secluded, private property near Alpena known as Lafarge. Once there, they found "a decent place to set up [a] tent." That is where defendant committed his second murder in less than two months.

With his back turned, Wirgau "heard [Hill] scream and then . . . heard a gunshot." He then saw Hill laying on the ground, face down, and "twitching." Defendant was "[s]tanding there with a pistol in his hand pointed out towards where [Hill] was standing." Kinsey eventually picked up defendant and Wirgau, after which Kinsey observed and helped with the destruction of Hill's personal effects. And while going through Hill's items, defendant discovered a card for the Michigan State Police. He responded: "the bitch talked. . . . I'm glad I shot her." A few days later, law enforcement officials executed a search warrant for Wirgau's property, where they

recovered—and later forensically identified—Bills's body. Wirgau then turned himself in and ultimately led authorities to Hill's body at Lafarge shortly thereafter.

Following a lengthy trial, a jury convicted defendant of two counts of first-degree premeditated murder, MCL 750.316(1)(a), mutilation of a dead body, MCL 750.160, carrying a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.22b, and felon in possession of a firearm (felon-in-possession), MCL 750.224f. The trial court imposed consecutive life-without-the-possibility-of-parole sentences for the two murder convictions, 152 months to 40 years for his mutilation of Bills's body, five years for felony-firearm, and 76 months to 40 years for felon-in-possession. Defendant now appeals by right.

II. SEARCH WARRANT ISSUES

The first two issues on appeal stem from the search warrants law enforcement officials obtained to gather electronic evidence linking defendant to the murders. He argues those search warrants lacked probable cause due to inaccurate descriptions of cellular-tower-location capabilities, and that the trial court should have conducted a hearing under *Franks v Delaware*, 438 US 154; 98 S Ct 2674; 57 L Ed 2d 667 (1978), so that he could have challenged the factual veracity of the affidavits supporting the warrants. Neither argument persuades.

A. PROBABLE CAUSE

We start with defendant's contention that the warrants lacked probable cause because they exaggerated how close certain cellphones were to the location of Bills's and Hill's murders. Some additional facts are first in order.

1. ADDITIONAL FACTUAL BACKGROUND AND PROCEDURAL HISTORY

As indicated, law enforcement officials quickly connected Wirgau, Hill, and defendant to Bills being missing. They, for example, discovered evidence indicating Hill and defendant were together after Bills disappeared. And they received "several tips" tying Wirgau to her disappearance and death and that defendant "rented a backhoe to assist in burying her body in the back yard of Wirgau's residence located at 1630 W Naylor Road in Alpena." Numerous other investigative leads eventually led them to discover her body on that property, after which Wirgau gave damning confessions further connecting Hill, Wirgau, and defendant to Bills's death and their mutilation of her body, as well as defendant's subsequent murder of Hill.

One relatively small aspect of law enforcement's investigation that has drawn defendant's eyes on appeal is their use of search warrants to secure electronic evidence—cell phone information—related to defendant, Hill, and Wirgau. Defendant homes in on a November 9, 2021 affidavit for a search warrant for a Verizon Wireless telephone number tied to him (one of many phone numbers he used), which came after eight other search warrants similarly targeted at cellular information. This search warrant was issued both after Wirgau turned himself in and officers recovered both bodies.

Detective Sargent James Lively of the Michigan State Police attested to the facts detailed in the disputed warrant request. To support his request for that search warrant, Lively's affidavit

set forth 31 factual paragraphs detailing the results of the investigation so far and why law enforcement officials desired a warrant for that particular phone number. They include the following facts, discerned in part from interviews with Hill and Wirgau, tips from witnesses, and other search warrants:

> (1) Hill picked up Bills on the night she went missing and went to Hill's house;
>
> (2) Wirgau was in a relationship with Bills, "wanted to silence her," and Wirgau and defendant used a backhoe to bury Bills's body in Wirgau's backyard;
>
> (3) the surveillance system from Wirgau's residence was disabled and missing;
>
> (4) detectives located Bills's remains on Wirgau's property;
>
> (5) Hill and defendant "were in an altercation in the kitchen with" Bills, resulting in Bills's death;
>
> (6) Wirgau observed defendant shoot "Hill in the head with a pistol," killing her; and
>
> (7) witnesses inconsistently located Hill, Wirgau, and defendant on the day of Hill's murder.

Two paragraphs within that affidavit are significant for defendant's appeal.

First, Paragraph K concerns Lively's description of the fruits of a search warrant for Hill's cellphone:

> K. Affiant drafted an affidavit for search warrant and had the search warrant served on Verizon Wireless for Abby Hill's [cell phone] for historical data information. Information received from Verizon Wireless for Abby Hill's historical data which indicates that her cell phone . . . made a call on August 2, 2021, at 11:46am. Further, the historical location data indicates the phone was pinging off the cellular tower located at Naylor Road and French Road, putting her phone *in the vicinity* of 1630 W Naylor Road at that time. [Emphasis added.]

The second is Paragraph CC, which reflects a search warrant return for Kinsey's cell phone:

> CC. On 10/13/21 D/Sgt Utt completed an affidavit for a search warrant on Bruce Kinsey's cell phone . . . . The information returned from this search warrant showed Bruce Kinsey's cell phone hit off of cell phone tower on 9/25/21, located at 991 Long Lake Ave, Alpena MI . . . . This cell tower is *near the area* where Abby Hill's body was located. [Emphasis added.]

We add the emphasis to each reference to the relative spatial relationship of the cell phone towers and the location of the event at issue in the above paragraphs here to draw attention to what defendant says is problematic under the Fourth Amendment, to which we turn next.

2. WARRANT REQUIREMENT OVERVIEW

"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 Rodriguez*, 327 Mich App 573, 583; 935 NW2d 51 (2019) (quotation marks and citation omitted). See US Const, Am IV; Const 1963, art 1, § 11. Defendant's appeal implicates the warrant clauses of those guarantees: "[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," US Const, Am IV, and "No warrant to search any place or to seize any person or things or to access electronic data or electronic communications shall issue without describing them, nor without probable cause, supported by oath or affirmation," Const 1963, art. 1, § 11. These provisions mean that "[a] search warrant thus must state with particularity not only the items to be searched and seized, but also the alleged criminal activity justifying the warrant." *People v Hughes*, 506 Mich 512, 538; 958 NW2d 98 (2020). Accordingly, "some context must be supplied by the affidavit and warrant that connects the particularized descriptions of the venue to be searched and the objects to be seized with the criminal behavior that is suspected, for even particularized descriptions will not always speak for themselves in evidencing criminality." *Id*.

The "fair probability" standard governs when a magistrate may issue a search warrant: "A magistrate shall only issue a search warrant when he or she finds that there is a fair probability that contraband or evidence of a crime will be found in a particular place." *People v Franklin*, 500 Mich 92, 101; 894 NW2d 561 (2017) (quotation marks and citation omitted). Where, as here, an affidavit supports a search warrant, "the affidavit must contain facts within the knowledge of the affiant and not mere conclusions or beliefs." *People v James*, 327 Mich App 79, 91; 932 NW2d 248 (2019) (quotation marks and citation omitted). Courts presume that "an affidavit supporting a search warrant is valid," *People v Mullen*, 282 Mich App 14, 23; 762 NW2d 170 (2008), and must read it "in a commonsense and realistic manner to determine whether a reasonably cautious person could have concluded that there was a substantial basis for finding probable cause," *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006). Ultimately, courts give "great deference" to a magistrate's probable cause finding. *Franklin*, 500 Mich at 101.

3. ANALYSIS

On appeal, defendant claims probable cause was lacking because Lively "overstated the importance of the location data, placing people together who might have been miles apart." He raised this issue below when he moved to suppress evidence obtained via search warrants for cell phone data. That motion in large part focused on paragraphs K and CC, arguing that their locational references—"in the vicinity" and "near the area"—"ha[d] no factual support other than rank conjecture" because the applicable cell towers formed a nearly 25-square mile and 35-square mile area, respectively. The trial court denied the motion, reasoning the paragraphs were at best "unartfully worded" but did not "negate[] the probable cause determination of the magistrate." It continued: "The Court agrees with the prosecution that – even if these paragraphs were stricken from the affidavit – the surviving statements contained in the search warrant affidavit would be sufficient for a reasonably cautious person to conclude that there was a substantial basis for finding probable cause."

Defendant adequately preserved our review of this issue by moving to suppress the evidence on the now-challenged grounds, which means we review de novo the trial court's holding that a reasonably cautious person could have concluded there was a substantial basis supporting the magistrate's probable cause finding. See *People v Unger*, 278 Mich App 210, 243; 749 NW2d 272 (2008). We agree with the trial court that defendant's search-warrant challenges are without merit. In sum, his arguments for suppression based on the alleged misstatement of the precision of location data miss the mark on several fronts.[1]

First, assuming for a moment that he is correct that Lively's affidavit erroneously connected cellphone locations to a specific place despite the broad area of cell tower coverage, the remedy is to strike Paragraphs K and CC and then review the remaining information set forth in the affidavit for probable cause. See *Mullen*, 282 Mich App at 22, citing *Franks*, 438 US at 155-156. "[O]nly when material misstatements or omissions *necessary to the finding of probable cause* have been made should a search warrant be invalidated." *People v Czuprynski*, 325 Mich App 449, 471; 926 NW2d 282 (2018). And as indicated, the trial court reasoned here that the removal of defendant's complained-of alleged misstatements did not defeat probable cause. Defendant advances no argument on appeal challenging this aspect of the trial court's conclusions, rendering it abandoned. *Martin*, 271 Mich App at 334.

Second, had defendant not abandoned that line of attack, such an argument would be fruitless. There was more than "a fair probability" that a search of defendant's cellphone data would turn up evidence of Bills's or Hill's murders even without the contested location data. *Franklin*, 500 Mich at 101. It cannot seriously be disputed that, reading Lively's affidavit "in a commonsense and realistic manner," *Martin*, 271 Mich App at 298, it sets forth ample evidence tying defendant to both murders given the substantiated tips they received and investigated, which Wirgau then corroborated when he confessed that defendant killed both Bills and Hill. And, as it related to the request to search defendant's phone, the affidavit sufficiently connected that phone to calls to and from Kinsey around the time of Hill's murder. In sum, "a reasonably cautious person could have concluded that there was a substantial basis for finding probable cause." *Id*.

Let us, for a third reason, reconsider the assumption in the first place. Given the specific details set forth in Lively's affidavit, and reading it with the presumption of validity and commonsense, we cannot agree that the "in the vicinity" and "near the area" statements were false. Those are familiar, generic locational descriptors, and defendant provides no caselaw or other

[1] We note defendant's appellant brief purports to raise other challenges with warrants issued in this case, including that the affidavits supporting the warrants contained "requests for records from other phone numbers . . . [that] were also based on questionable information," that "sought real-time GPS data," and were otherwise inaccurate or nonspecific. But he does so by nearly regurgitating word-for-word what trial counsel argued below, which lacked meaningful factual support, record citations, or applicable caselaw. On appeal, this is akin to just simply "announc[ing] a position or assert[ing] an error and then leav[ing] it up to this Court to discover and rationalize the basis for his claims." *People v Beck*, 510 Mich 1, 26; 987 NW2d 1 (2022) (quotation marks, citation, and omissions omitted).

sources evidencing an understanding that in this instance, a 25 to 35 square mile area possibility for a particular cellphone location renders a particular location not "near" or "in the vicinity."

And if that were not enough, we have a fourth reason to reject defendant's arguments: our agreement with the prosecution that even if the warrants were somehow invalid, the evidence gathered is not subject to exclusion under the "good faith" exception set forth in *People v Goldston*, 470 Mich 523; 682 NW2d 479 (2004), and *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984). Simply, it would be "objectively reasonable" to rely on the magistrate's probable-cause determination, and there is no evidence that warrants were secured with false or misleading information or that the magistrate "wholly abandon[ed] her judicial role." *Goldston*, 470 Mich at 542 (quotation marks and citation omitted). The purpose of the exclusionary rule is "to deter police misconduct." *Id*. Applying that rule here—especially without any suggestion by defendant that officials intentionally used misleading statements about cellphone location—would not further that purpose.[2]

B. DEFENDANT IS NOT ENTITLED TO A *FRANKS* HEARING

We next turn our attention to defendant's claim that the trial court erroneously denied his request for a *Franks* hearing to test the factual sufficiency of the affidavits underpinning the cellular phone search warrants because, in his words, "[a] reasonable magistrate knowing that the warrant only placed the two people in the Alpena area at the same time *and* that the Affiant wrongly attempted to imply that they were together could easily have refused to sign the search warrant." Under *Franks*, "a defendant is entitled to an evidentiary hearing in order to show that the affidavit is void when the defendant makes a substantial preliminary showing of a deliberate falsehood or reckless disregard for the truth by the affiant." *Franklin*, 500 Mich at 103. The trial court denied defendant's motion for a *Franks* hearing, concluding, among other reasons, that defendant failed to satisfy this burden. Reviewing that decision for abuse of discretion, *Martin*, 271 Mich App at 309-310, we find no error meriting reversal.

Courts presume an affidavit's validity. *Franks*, 438 US at 171. In order to obtain a hearing to rebut that presumption, a "challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine." *Id*. Rather, he must make "allegations of deliberate falsehood or of reckless disregard for the truth," "accompanied by an offer of proof." *Id*. That offer of proof "should point out specifically the portion of the warrant affidavit that is claimed to be false; and . . . should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient."

[2] Defendant's appellant brief does not challenge the good-faith exception's applicability—instead, he suggests *Goldston* was wrongly decided. But we are bound by *Goldston*. See *People v Watson*, 245 Mich App 572, 597; 629 NW2d 411 (2001). And we see no need to indulge his request that he be permitted to file a "supplemental brief addressing" the good-faith exception's applicability nonetheless—he had an opportunity to file a reply brief in the normal course under MCR 7.212(G) rebutting the prosecution's express invocation of the good-faith exception in its appellee brief and elected not to do so.

Id. This Court has extended *Franks* to material omissions from affidavits. See *Martin*, 271 Mich App at 311.

Defendant fell well short of meeting the requirements for a *Franks* hearing. Among other things missing, he did not demonstrate falsity (as set forth above), let alone one that was deliberate or made with reckless disregard. And he made no offer of proof in his motion for a *Franks* hearing. Finally, he provided no caselaw involving similar facts as at issue here supporting his argument that officers' alleged withholding of locational areas of cellular phone towers rises to the level of a material omission meriting a *Franks* hearing.

III. IMPEACHMENT EVIDENCE

The next issue concerns Hill's statements to Wirgau implicating defendant, which the trial court admitted under MRE 804(b)(6)'s exception for a statement offered against a party that wrongfully caused the declarant to be unavailable.

To refresh, Hill, Wirgau, and defendant were staying at Kinsey's house in mid-September in an attempt to avoid law enforcement's scrutiny. According to Wirgau, Hill and defendant "exploded into a big argument," which resulted in Wirgau hearing a physical altercation and observing that Hill "had red marks around her throat, and . . . a handprint on the side of her face." Hill then told Wirgau that defendant "hit her and choked her," that she was "scared" defendant was "going to kill her," and that "[s]he wish[ed defendant] would let her use a phone."

Defendant does not challenge the admission of those statements. Instead, he contends the trial court impermissibly prevented him from introducing prior statements that Hill gave to a Michigan State Police detective investigating Bills's murder that defendant contends were inconsistent with what Wirgau testified she said: that defendant "did not know Ms. Bills at all," and that "Hill [was] not afraid of" defendant. The trial court noted that "if Ms. Hill was alive, . . . it would be impeachment," but reasoned that the forfeiture-by-wrongdoing rule precluded its entry because Hill was not available "to either admit to making the statement, explain why the statements are different, or deny making the statements."

Originating from the common law, see *Reynolds v United States*, 98 US 145, 159; 25 L Ed 244 (1878), the forfeiture-by-wrongdoing rule prevents a person from "tak[ing] advantage of his wrong," *People v Burns*, 494 Mich 104, 111; 832 NW2d 738 (2013) (quotation marks and citation omitted). As the federal system has influentially noted, it "prophylactic[ly] . . . deal[s] with abhorrent behavior 'which strikes at the heart of the system of justice itself.' " Advisory Committee Comments, FRE 804 (1997), quoting *United States v Mastrangelo*, 693 F2d 269, 273 (CA2, 1982). Michigan adopted the rule in 2001, substantially borrowing from Federal Rule of Evidence 804(b)(6). See *Burns*, 494 Mich at 111; see also *People v Jones*, 270 Mich App 208, 212; 714 NW2d 362 (2006) (noting Michigan's rule "is nearly identical to FRE 804(b)(6) . . . .").

Codified at MRE 804(b)(6), the forfeiture-by-wrongdoing rule provides that "[a] statement offered against a party that wrongfully caused—or encouraged—the declarant's unavailability as a witness, and did so intending that result" is "not excluded by the rule against hearsay if the declarant is unavailable as a witness . . . ." Not only is it "an exception to the rule against hearsay," it operates as an exception "to a defendant's constitutional confrontation right." *Burns*, 494 Mich

at 111. That is, a defendant waives his right to confrontation "if hearsay testimony is properly admitted because the declarant's unavailability was procured by defendant's wrongdoing." *Jones*, 270 Mich App at 215.

Defendant suggests a creative way around this well-established principle, MRE 806. That Rule of Evidence states in relevant part:

> When a hearsay statement . . . has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. [MRE 806.]

This Rule's "underlying rationale . . . is to treat the hearsay declarant as a witness testifying from the witness stand." *People v Fordwade*, unpublished per curiam opinion of the Court of Appeals, issued Dec. 3, 2002, (Docket No. 235006), p. 2. "[B]y introducing [a] complainant's hearsay statements, the prosecution place[s] the complainant's credibility in issue, [and f]airness dictates that he be subject to impeachment and support as though he had in fact testified." *Id*. Confrontation principles anchor this Rule, for it is "similarly encompassed by a criminal defendant's state and federal constitutional right to present a defense and to confront her accusers." *Id*.

Rule 806's second clause—"The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it"—forms the foundation of defendant's position here. As his argument goes, because the trial court admitted Hill's hearsay statement (via Wirgau), the trial court was required to admit evidence of her "inconsistent statement" (what she told police) and that it mattered not whether she "had an opportunity to explain or deny it" (because she was dead). The trial court's refusal to admit impeachment evidence against Hill, contends defendant, represented an erroneous evidentiary ruling (that rises to an abuse of discretion), and impeded his due process right to a fair trial (which we review de novo). See *People v Steele*, 283 Mich App 472, 478; 769 NW2d 256 (2009). Defendant preserved these arguments by objecting below and then raising the same objection here. *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019).

Regardless of an evidentiary or constitutional framing, we see no reversible error in the trial court's resolution on this point. To start, defendant has failed on appeal to adequately substantiate the factual basis for this challenge—namely, he has not established that what Hill told law enforcement officials after Bills's murder was, in fact, inconsistent with what Wirgau testified she said before defendant murdered her, such that her statements would necessarily fall within MRE 806's ambit. Furthermore, a "trial court's decision on a close evidentiary question ordinarily cannot be an abuse of discretion." *People v. Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998). With that benefit of the doubt, as well as an underdeveloped record on appeal, no caselaw discussing the interplay between MRE 804(b)(6) and 806, and the permissive—not imperative—nature of MRE 806's plain language, we cannot conclude that an abuse of discretion occurred in this case. *See People v Blackston*, 481 Mich 451, 461; 751 NW2d 408 (2008) ("There is nothing in the rule of evidence that *requires* admission of an inconsistent statement, and MRE 806 provides

no greater leeway regarding admissibility of a statement for impeachment purposes than is granted to litigants offering impeachment evidence in general."). Even framed within the constitutional dimension, defendant's claim remains inadequately developed and he has not shown how the trial court's refusal to admit Hill's prior statements violated his right to a fair trial, particularly given the substantially justified policy reasons supporting the forfeiture-by-wrongdoing rule and their waiver implications for defendant's confrontation rights. See *Burns*, 494 Mich at 111; *Jones*, 270 Mich App at 215. Finally, based on the record before us—including the untainted, overwhelming evidence of defendant's guilt—we do not see how any error as to this issue, evidentiary or constitutional, would have given rise to relief-worthy harm.

IV. WITNESS COMPETENCY

We next address an issue concerning Kinsey's testimony. He was present at Wirgau's house when defendant initially disclosed the details of Bills's killing, helped bond Hill out, and transported Wirgau, Hill, and defendant to and from his house (and then subsequently broke up a fight between Hill and defendant). He also picked up Wirgau and defendant after Hill's murder, observed and aided in the destruction of Hill's personal effects, and heard defendant tell Wirgau, "I'm glad I shot her."

Defendant faults a pretrial decision by the trial court that paved the way for Kinsey's testimony. Before trial, defendant moved for the trial court to conduct a hearing under MRE 601 to "allow examination of [Kinsey's] propensity to give false testimony and then to order Mr. Kinsey's testimony to be excluded at trial." According to defendant, Kinsey lied to a police officer and to a prosecutor during the course of their investigation into the disappearances of Bills and Hill. Relying on the district court judge's evaluation of Kinsey at defendant's preliminary examination, the trial court denied the motion:

> Judge Curtis listened to . . . Mr. Kinsey, considered him within his opinion, and to the same extent that he considered him, the jury has the ability to consider some, all, or none of what he says. And I think that as seasoned counsel, if he lies on the stand, that doesn't do anything besides help you in moving forward with your defense of the case. So with regard to that, I will exercise the discretion that I'm required to exercise under the rule, but I don't find that a competency hearing that's separate and distinct from the trial is necessary. Whether he can tell a truth or a lie, frankly, will be used against him by virtue of the trier of fact in this case. My position with regard to "competency," he was competent to testify. Whether or not he's lying is something that will be left to the trier of fact.

This Court reviews a trial court's competency decision for abuse of discretion. *People v Watson*, 245 Mich App 572, 583; 629 NW2d 411 (2001).

Unlike its federal counterpart, see FRE 601, Michigan Rule of Evidence 601 grants a trial court a check on a witness's competency: "Every person is competent to be a witness unless: (a) the court finds, after questioning, that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully or understandably; or (b) these rules provide otherwise." MRE 601. See also 402 Mich lxxxviii, c (1978) (staff comment noting difference between Michigan and Federal Rules). This rule thus creates a rebuttable presumption: "All

witnesses are presumed to be competent to testify," *Watson*, 245 Mich App at 583, "which may be rebutted by showing that the witness does not have sufficient capacity or sense of obligation to testify truthfully or understandably," *People v Coddington*, 188 Mich App 584, 597; 470 NW2d 478 (1991). There exists, however, a distinction between whether a witness understands he must truthfully testify and whether he tells the truth: if a witness later shows an "inability to testify truthfully," that "reflects on credibility, not competency." *Watson*, 245 Mich App at 583 (quotation marks and citation omitted).

Defendant contends that the trial court committed an error of law by not conducting an initial hearing concerning Kinsey's capacity to tell the truth and relying on it being the jury's prerogative to test Kinsey's credibility. But what he does not advance is any specific record facts indicating Kinsey lacked the sense of obligation to testify truthfully or any argument that these facts overcome MRE 601's presumption of competency.[3] See *People v Beck*, 510 Mich 1, 26; 987 NW2d 1 (2022) (abandonment of undeveloped arguments). And more importantly, nothing in MRE 601 commands that a trial court conduct a hearing every time a party challenges a witness's competency. Defendant has not overcome the deference we must afford the trial court in assessing Kinsey's ability to competently testify vis-à-vis his propensity to be incredible. *Watson*, 245 Mich App at 583.

V. MOTORCYCLE GANG EVIDENCE

We next consider whether the trial court erred in not declaring a mistrial after a witness stated on her own accord that defendant had a "one percenter" tattoo. To defendant's eye, this symbol is "very closely associated with criminal motorcycle gangs and is highly inflammatory." On review of the trial court's decision for abuse of discretion, *People v Boshell*, 337 Mich App 322, 335; 975 NW2d 72 (2021), and recognizing that a trial court may grant a mistrial "only where the error complained of is so egregious that the prejudicial effect can be removed in no other way," *People v Caddell*, 332 Mich App 27, 37; 955 NW2d 488 (2020) (quotation marks and citation omitted), we cannot agree with defendant.

As part of her testimony concerning her interaction with defendant after Hill disappeared, the prosecutor engaged with a witness as follows:

> Q. All right. So what happens later that night?
>
> A. Later that –
>
> Q. That same – same night he came down. You said his parents gave him a ride there.
>
> A. Oh. Oh. Yes. When – then later that evening the – tattoo.

[3] Per defendant, "Kinsey has been previously prosecuted for perjuring himself in this case. His version of events has changed on multiple occasions. He signed an agreement to give 'truthful testimony,' but the state is the sole arbiter of the agreement."

Q. What happened?

A. Kyle – he had a one percenter tattoo on his neck.

Q. He had a tattoo?

A. Yes. It was just –

Q. Who are you talking about? Can you just mention –

A. Brad. Brad had a tattoo.

Defendant's counsel objected and requested a mistrial, asserting the "one percenter" reference was well understood to mean a problematic and criminally inclined individual in the motorcycle community and thus was "grossly far more prejudicial than probative." The trial court denied the request, questioning whether the jurors knew the term's meaning, noting that there was already evidence in the record indicating "he's involved in a motorcycle club that sells drugs," and finding that it did not support an inference that "this means that he killed two people." Defendant's counsel then declined the trial court's offer to strike the testimony and/or give a limiting instruction. The prosecutor proceeded to question the witness more without any other incident concerning defendant's tattoo.

The trial court's decision here did not "fall outside the range of principled outcomes," constituting an abuse of discretion. *People v Buie*, 491 Mich 294, 320; 817 NW2d 33 (2012). Defendant made no offer of proof below (let alone here) supporting his argument that the term is "widely understood," and thus that jurors could have inferred a propensity to murder from his being a "problematic" "one percenter."[4] See *Beck*, 510 Mich at 26 (abandonment of undeveloped arguments). Moreover, as the trial court recognized, there was evidence in the record that defendant was not law-abiding given his cocaine trafficking. This falls short of establishing that the passing reference to defendant being a "one percenter" impaired his "ability to get a fair trial," *People v Beesley*, 337 Mich App 50, 54; 972 NW2d 294 (2021) (quotation marks and citation omitted), or that it was "so egregious that the prejudicial effect can be removed in no other way" but a mistrial, *Caddell*, 332 Mich App at 37.

VI. PROSECUTORIAL MISCONDUCT

The last issue on appeal is whether the prosecutor engaged in misconduct during her closing arguments by referencing defendant's mistreatment of women. Defendant did not object

[4] We note other courts have documented what the term means consistent with defendant's arguments here, but have done so with the assistance of expert, *Karnuth v State*, 233 NE3d 991 (Ind App 2024), and lay witness, *People v Memory*, 182 Cal App 4th 835; 105 Cal Rptr 3d 353 (2010), testimony. We are not aware of any case law providing the term's definition is common knowledge within the public at large, nor has defendant provided us with any such case.

at the time of the statements, so our review is for plain error. See *People v Smith*, 351 Mich App 1, 29; 34 NW3d 593 (2024). Defendant cannot overcome this high bar.

This Court reviews claims of prosecutorial misconduct on a "case by case" basis, giving attention to the "entire record" and examining the "prosecutor's remarks in context." *Id*. (quotation marks and citation omitted). We afford prosecutors "great latitude"; as such, they are "free to argue the evidence and all reasonable inferences from the evidence as they relate to their theory of the case." *People v Mullins*, 322 Mich App 151, 172; 911 NW2d 201 (2017) (quotation marks and citation omitted). Ultimately, we must discern whether—again, through the plain error lens—the misconduct denied defendant "a fair and impartial trial." *People v Anderson*, 331 Mich App 552, 565; 953 NW2d 451 (2020) (quotation marks and citation omitted).

With that brief background, we turn to the complained-of statements. When summarizing defendant's involvement in helping bond out Hill, the prosecutor referenced defendant's history with domestic violence in her closing arguments:

> He goes to jail and immediately starts calling [friends] . . . . [Y]ou got to get Abby out of jail. Get Abby out of jail. Again, who is controlling this? It's not [his friends] saying, we need to get Abby out. It's the defendant calling from jail, get her out. And why is he concerned? He's concerned because he knows she's the weak [link]. Everybody else involved in this escapade are the defendant's friends from 20 plus years. But Abby Hill had only been involved for this group for about six or seven months. *And we all know how the defendant feels about women. We're going to talk about his prior domestic violence acts. But we know how he feels about women. We are disposable. We are easy to get rid of. And he doesn't have a care for us. That's why he puts his hands on women.* She is the weak link in his mind. Get her (inaudible). Get her out before she starts filling (inaudible). She can't be alone. Do not let her be by herself. Why do you think that is? Because we don't want her talking to the police. She's the weak link. [Emphasis added.]

The prosecutor then offered a similar refrain during rebuttal:

> He has been obsessed with Abby turning on him in some way. And it's easy for him to blame Abby, because she's the woman in his life, and has only been there for a few months. Versus his boys, who have been around him for 20 or 30 years.
>
> Abby, only been around for a few months. Disposable. Disposable. As evidenced by the way he treats her, the way he talks about her, the way that he interacts with her. Trying to do a love test. That's ridiculous. And you see it throughout the course. *You see it through all of the evidence, how he views women*. [Emphasis added.]

These remarks, asserts defendant, rose to the level of prosecutorial misconduct because there lacked evidence supporting that he "had a generalized hatred or contempt for women," and that he acted in conformity with that "supposed character trait."

Even if we were to agree that those remarks tipped over the edge of permissible inferences, the plain-error-review standard requires defendant to demonstrate that it "affected the outcome of the lower court proceedings" and that we should exercise our discretion to correct an error because it "seriously affected the fairness, integrity or public reputation of judicial proceedings." *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999) (cleaned up). Defendant has not done so. The evidence admitted against him at trial was strong—in addition to the physical and electronic evidence, material witnesses (like Wirgau and Kinsey) detailed when, where, and why defendant killed his victims. With that, and the commentary about defendant's treatment of women in general being fleeting at best (just a few paragraphs over the course of nearly 80 transcript pages of the prosecutor's closing arguments), the prosecutor's remarks here fall well short of mandating the vacatur of defendant's convictions.[5]

VII. CONCLUSION

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

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

[5] Defendant also raises a brief cumulative-error issue, pointing to the combination of the one-percenter testimony and the prosecutor's closing statements. But the cumulative-error doctrine is of no help to defendant here given that, as discussed, he has not shown error as to the one-percenter testimony and any error in the prosecutor's closing statements does not warrant relief. *See People v Dobek*, 274 Mich App 58, 106; 732 NW2d 546 (2007).