STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 31, 2026 9:47 AM
v	No. 366322 Washtenaw Circuit Court
KEVIN L. LACROIX, Defendant-Appellant.	LC No. 21-000546-FH

Before: KOROBKIN, P.J., and RIORDAN and MARIANI, JJ.

PER CURIAM.

Defendant, Kevin L. LaCroix, was convicted by a jury of assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84(1)(a); third-offense domestic violence, MCL 750.81(5); unlawful imprisonment, MCL 750.349b; and two counts of assault by strangulation, MCL 750.84(1)(b). The trial court sentenced defendant to serve concurrent terms of 5 to 10 years' imprisonment for AWIGBH, 3 to 5 years' imprisonment for third-offense domestic-violence, 9 to 15 years' imprisonment for unlawful imprisonment, and 5 to 10 years' imprisonment for each count of assault by strangulation. Defendant now appeals his convictions and sentences by right. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from a domestic-violence incident between defendant and his then-girlfriend (the victim) that occurred in July 2021. It is undisputed that, shortly before the incident, defendant drove the two to a lake for a gathering; that they both drank alcohol while there; and that defendant drove them home later that evening. At defendant's jury trial in February 2023, both he and the victim testified about the ensuing incident; their respective accounts differed significantly.

The victim's testimony and a video recording[1] captured by a surveillance camera outside the home established that, shortly before entering the home, defendant became violent with the victim in the carport by the home; defendant yelled at the victim, dragged her on the ground by her hair toward the home, and physically assaulted her until she relented and entered the home with him. According to the victim, defendant initiated the assault after accusing her of "embarrassing" him at the gathering, and the assault then continued inside the home, with defendant repeatedly striking, kicking, and choking her throughout the ordeal. Specifically, the victim testified that defendant forced her into the home and then placed his arm around her neck and choked her. Defendant eventually released the victim, and she fell to the floor. While she was on the floor, defendant stomped on her hand, kicked her in the head with his steel-toed boot, and placed his hands around her neck and choked her; she could not breathe and she involuntarily urinated. Defendant did not stop choking her until he noticed that she was bleeding from her head, at which point he forced her to shower and go to bed. Several hours later, while defendant was in bed, the victim fled the home and reported the incident to the police.

The prosecution also presented testimony at trial from the officer who responded to the incident. The officer, among other things, recounted what the victim told him at that time about the incident, which was consistent with her trial testimony. In addition, the prosecution introduced as evidence photos taken of the victim by the responding officer, which depicted injuries to her arm, face, and head.

Defendant's primary theory at trial was that the victim was highly intoxicated at the time of the incident and that her memory of the incident was therefore inaccurate and unreliable. To advance this theory, defendant relied heavily on cross-examination of the victim and his own testimony, as well as closing argument. Defendant testified that the victim was very intoxicated and became violent toward him during the drive home, and he tried "deescalating the situation" once in the home by "hugging" her from behind. Defendant also admitted to kicking the victim in the head but maintained that he had done so accidentally, testifying that the victim had thrown herself onto the hallway floor and that he had tripped as he was trying to step over her.

Defendant was convicted and sentenced as previously described.[2] This appeal followed.[3]

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[1] The victim testified that defendant installed a video-surveillance system on the inside and outside of the home that they both had access to via a mobile application on their phones. The victim testified that she obtained the video recorded by the outdoor camera by accessing the mobile application; the victim later provided that video footage to the police and the prosecution, but she was unable to recover any video from the indoor cameras because those cameras were "disabled" or "not on."

[2] Defendant, *in propria persona*, filed a myriad of motions throughout the pretrial and posttrial proceedings raising nearly all of the issues now presented on appeal.

[3] When filing his brief on appeal with this Court, defendant also filed a motion to remand to the trial court on several different grounds. This included a request to remand for him to view, or for the trial court to conduct an *in camera* review of, the victim's unredacted medical records to

II. SPECIFIC UNANIMITY INSTRUCTION

We start with defendant's argument in his Standard 4 brief[4] that the trial court improperly responded to a jury question regarding the unlawful-imprisonment charge. According to defendant, this question suggested that the jury was confused about whether the elements of unlawful imprisonment could be established by defendant dragging the victim by her hair toward the home or by choking her inside the home, and the court should have responded to this confusion by providing a specific unanimity instruction. Defendant, however, has failed to provide us with the record necessary to verify the factual predicate of this claim. See *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000) (stating that a defendant-appellant bears "the burden of furnishing the reviewing court with a record to verify the factual basis of any argument upon which reversal was predicated"). The record before us contains neither a copy of the jury's question nor a recorded transcription of it. The record does contain a transcript of a posttrial hearing at which the trial court briefly discussed its response to the jury's question, but over the course of that hearing, neither the parties nor the court stated the substance of the jury's question.[5] The precise question posed by the jury is thus unknown.

As the appellant, defendant bore the burden of providing the question to us, securing a stipulation about its content, or taking steps to settle the record so that we can duly review the issue on appeal. MCR 7.210(B)(1)-(2) and (C); see also *Elston*, 462 Mich at 752. Defendant, however, has done none of this, and has instead offered only a rough paraphrasing of what he believes the jury's question to have been based on what his trial counsel apparently told to him off the record after the jury rendered its verdict. This is wholly inadequate to permit due appellate review of

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determine if any of the redacted information would be helpful to his defense. After reviewing defendant's motion, this Court remanded this case for the limited purpose of an *in camera* review of the redacted portion of the victim's medical records. *People v LaCroix*, unpublished order of the Court of Appeals, entered January 27, 2025 (Docket No. 366322). The trial court conducted that review and concluded that the redacted portion of the records did not contain any information that would have been helpful to the defense. Accordingly, while this issue appears in defendant's appellate brief, he has already received his requested relief as to it, and he has not challenged the decision reached by the trial court on remand. The issue is thus moot, and we will not address it further. See *People v Gonzalez*, 256 Mich App 212, 235 n 8; 663 NW2d 499 (2003).

[4] In addition to filing an appellate brief with the assistance of counsel, defendant filed a supplemental Standard 4 brief pursuant to Michigan Supreme Court Administrative Order No. 2004-6, 471 Mich c, cii (2004).

[5] Additionally, the court's discussion of its response to the jury's question does not, on its face, demonstrate any juror confusion regarding unanimity or the factual basis of defendant's guilt as to the unlawful-imprisonment charge, as claimed by defendant. See *People v Cooks*, 446 Mich 503, 516-518, 522, 524; 521 NW2d 275 (1994). It, at most, demonstrates that the jury had a question regarding the unlawful-imprisonment charge during deliberations and that the court instructed the jury to re-read its copy of the instructions for the definition of "restrain" as an element of unlawful imprisonment and to continue its deliberations.

defendant's claim, and we thus cannot conclude that defendant has shown entitlement to relief on its basis. See *Elston*, 462 Mich at 752.[6]

III. PROSECUTORIAL MISCONDUCT

Defendant next contends, in both his brief filed by counsel and his Standard 4 brief, that the prosecutor made several remarks during her rebuttal argument that amounted to misconduct, thereby depriving him of a fair trial. Because defendant failed to contemporaneously object and request a curative instruction with respect to these comments, his challenge to them is unpreserved and thus reviewed for plain error affecting substantial rights. See *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). To obtain appellate relief under this standard, defendant must show: (1) an error occurred, (2) the error was clear or obvious, and (3) the error affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id*. And even when these three requirements are met, "[r]eversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Bennett*, 290 Mich App at 475-476 (quotation marks and citation omitted).

Claims of prosecutorial misconduct are reviewed on a case-by-case basis by examining pertinent portions of the record and evaluating the prosecutor's remarks "in their proper context." *People v Wisniewski*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 361978); slip op at 13. "This Court also must review the prosecution's comments in light of the arguments made by defense counsel and the relationship they bear to the evidence admitted at trial." *Id*. at ___; slip op at 13 (quotation marks and citations omitted). Prosecutors are generally "afforded great latitude regarding their arguments" and are "free to argue the evidence and all reasonable inferences from the evidence as it relates to their theory of the case." *People v Unger*, 278 Mich App 210, 236; 749 NW2d 272 (2008). But a prosecutor "may not appeal to the jury to sympathize with the victim" or "urge the jury to convict as part of its civic duty or on the basis of its prejudices," *id*. at 237, because doing so "injects issues broader than the guilt or innocence of the accused into the trial," *People v McGhee*, 268 Mich App 600, 636; 709 NW2d 595 (2005). Nor may a prosecutor "argu[e] facts not in evidence," "mischaracteriz[e] the evidence presented" at trial, *Wisniewski*, ___ Mich App at ___; slip op at 13, or suggest that he or she "has some special knowledge concerning a witness'[s] truthfulness," *People v Isrow*, 339 Mich App 522, 529; 984 NW2d 528 (2021) (quotation marks and citation omitted).

Defendant argues that the prosecutor, during her rebuttal argument, impermissibly bolstered the victim's credibility and appealed to the jury's sympathies by repeatedly opining on the veracity of the victim's memory of the incident. But it is clear from the record that the prosecutor's statements regarding the victim's memory were in direct response to defendant's assertions during closing argument that the victim "really didn't have a memory of that day" and

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[6] Defendant's corresponding claim that his trial counsel was ineffective for not requesting a specific unanimity instruction fails for the same fundamental reasons. See *People v White*, 331 Mich App 144, 148; 951 NW2d 106 (2020) (confirming that the defendant bears the burden of establishing the factual predicate of his or her ineffective-assistance-of-counsel claim).

that her testimony was not worthy of belief because of her inability to remember certain things that occurred shortly before the incident. See *Wisniewski*, ___ Mich App at ___; slip op at 13; *Isrow*, 339 Mich App at 529-530. Given defendant's attempt during closing argument to impugn the victim's credibility in recounting the charged offenses, the prosecutor was permitted to argue that, based on the admitted evidence, the victim rather than defendant was worthier of belief. See *Isrow*, 339 Mich App at 529-530 (noting that the prosecution "may comment on his [or her] own witnesses' credibility during closing argument, especially when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes") (quotation marks and citation omitted). Accordingly, defendant has not shown misconduct in this regard. See *Bennett*, 290 Mich App at 475-476.[7]

That said, we see merit in defendant's challenge to certain comments made by the prosecutor during rebuttal argument regarding her own traumatic experiences. The prosecutor stated:

> [T]he thing about trauma is, this happened almost two years ago. We have all have had events in our life and maybe they haven't been as bad as [the victim] and maybe they have been worse, but I remember as a kid that I've had pretty terrible things happen to me and I can't tell you what I was wearing that day, I can't tell you the date, I can't tell you, you know, how I—I could probably tell you how I felt, but if you start probing me and asking me questions, I'll probably shutdown [sic] and not even want to talk about it. I've had things happen four years ago that—that same thing. I couldn't remember every detail the day, I couldn't remember if I went bowling in the morning or what, but I can remember that exact event and I can remember parts of it and I wanted to shut it down, I wouldn't be able to tell you especially if you start probing me questions, I probably wouldn't want to talk about it. This is trauma. This is someone who was abused by someone that she loved. This is someone who was abused by someone that she had lived with and that's how trauma works. Trauma works in the fact that you remember specific details, you shutout [sic] the other details, you don't remember specifics of early in the morning because they don't even matter to you at that point. That's trauma. She had a traumatic experience happen to her and for this defense attorney to suggest that everything she had said on the stand or parts of what she said on the stand or don't believe her story on the stand because she doesn't remember, you know, . . . that's absolutely ridiculous.

[7] Also unavailing is defendant's unpreserved argument, in his Standard 4 brief, that the prosecutor committed misconduct by asking the victim leading questions during direct examination. Defendant does not provide any meaningful argument or identify any legal or factual support for this claim, leaving it improperly presented for this Court's review. See *People v Burkett*, 337 Mich App 631, 639 n 4; 976 NW2d 864 (2021) (explaining that a party may not simply announce his position and expect this Court "to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position") (quotation marks and citation omitted).

Although made in response to defense counsel's argument regarding the victim's memory, these comments focused on the prosecutor's own personal experiences and struggles with trauma, which the prosecutor offered to bolster the witness's credibility but which themselves bore no relation to the events underlying the charged offenses or the evidence adduced at trial. Indeed, the jury never received testimony from any witnesses, or any other evidence, explaining how a traumatic event might affect a person's memory. The comments thus, at minimum, chafed against core limitations on the scope of proper argument by the prosecutor. See *Wisniewski*, ___ Mich App at ___; slip op at 13 (a prosecutor may not argue facts not in evidence); *Isrow*, 339 Mich App at 529 (a prosecutor may not suggest he or she has special knowledge of witness's truthfulness); *Unger*, 278 Mich App at 237 (a prosecutor may not appeal to the jury to sympathize with the victim).

To the extent the comments "exceeded the bounds of proper argument," *Unger*, 278 Mich App at 237, however, defendant has not shown entitlement to relief on that basis. As discussed, the comments were made in response to defense counsel's arguments regarding the unreliability of the victim's memory, and "an otherwise improper remark may not rise to an error requiring reversal when the prosecutor is responding to the defense counsel's argument." *Id*. at 238 (cleaned up). The trial court also instructed the jury that the attorneys' statements and arguments were not to be considered as evidence and that it could not render a decision based on bias or sympathy, and "jurors are presumed to follow their instructions." *Id*. at 237. Furthermore, the prosecution presented ample admissible evidence of defendant's guilt at trial, which included the victim's detailed testimony regarding the events at issue, testimony from the responding officer and photos of the victim's injuries that were supportive of the victim's account, and video footage showing defendant yelling at and physically assaulting the victim in the carport immediately before the two entered the home—footage which, we note, defendant has failed to provide to this Court for our own review on appeal, despite our repeated requests that he do so. In light of these considerations, defendant has failed to show that any impropriety in the prosecutor's comments during rebuttal denied him a fair trial or seriously affected the outcome of the proceedings. See *Bennett*, 290 Mich App at 475-476; *Unger*, 278 Mich App at 237-238.[8]

IV. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the prosecution presented insufficient evidence to support his convictions of assault by strangulation. In determining whether the evidence is sufficient to sustain a conviction, we review the record evidence de novo "in the light most favorable to the

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[8] We also find no basis for relief in defendant's corresponding claim that his trial counsel was ineffective for failing to object to these comments. To start, the record reflects that counsel *did* object, but only when he moved for a mistrial after closing arguments had concluded rather than in the midst of the prosecutor's rebuttal. As counsel later explained, he did not contemporaneously object to the comments because the prosecutor had an "emotional tone" and he "felt that a man jumping up to silence her may have played bad in that moment." The record thus demonstrates that counsel made a strategic decision not to contemporaneously object, and defendant has offered nothing to overcome the strong presumption that this strategic decision was reasonable. See *Unger*, 278 Mich App at 242-243. Nor has he shown how it was reasonably probable that, had counsel contemporaneously objected, the outcome of his trial would have been different. See *id*.

prosecution" and consider whether it was sufficient "to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *People v Harris*, 495 Mich 120, 126; 845 NW2d 477 (2014). "Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of a crime, and it does not matter that the evidence gives rise to multiple inferences or that an inference gives rise to further inferences." *People v Walker*, 330 Mich App 378, 382; 948 NW2d 122 (2019) (cleaned up). It is the jury's role, as factfinder, to determine "the weight of the evidence [and] the credibility of witnesses," *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008), and "a reviewing court is *required* to draw all reasonable inferences and make credibility choices in support of the jury verdict," *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018) (quotation marks and citation omitted).

Defendant concedes that the prosecution presented sufficient evidence to demonstrate an assault by strangulation. He argues, however, that the evidence was sufficient to support only one of his convictions for assault by strangulation, not both. As explained in *People v Lydic*, 335 Mich App 486, 498 n 9; 967 NW2d 847 (2021):

> MCL 750.84(1)(b) criminalizes "assaulting another person by strangulation or suffocation." An assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery. And a battery is the consummation of an assault. Additionally, MCL 750.84(2) defines "strangulation or suffocation" as "intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person." [(Cleaned up.)]

Here, the prosecution presented sufficient evidence from which a rational jury could conclude beyond a reasonable doubt that defendant committed two separate acts of "intentionally impeding" the victim's "normal breathing or circulation of [her] blood by applying pressure on [her] throat or neck." MCL 750.84(2). Testimony from both the victim and defendant established that immediately after entering the home, defendant wrapped his arm around the victim's neck from behind, and the victim testified that her breathing was constricted when defendant did so. Defendant eventually let go of the victim, who ended up on the hallway floor, and defendant then kicked her in the head. The victim testified that after kicking her, defendant placed his hands around her throat and squeezed, causing her to be unable to breathe and to involuntarily urinate. Given this evidence, a rational jury could have found beyond a reasonable doubt that defendant intentionally impeded the victim's breathing or blood flow by applying pressure to her throat or neck twice. See *id*. Accordingly, there was sufficient to support defendant's two convictions of assault by strangulation. See *Harris*, 495 Mich at 126.

V. SUBSTITUTION OF COUNSEL

Defendant next argues that the trial court abused its discretion by denying his *pro per* motion to substitute defense counsel before sentencing.[9] "The decision regarding substitution of

[9] Defendant labeled his motion as a motion to "dismiss" counsel and did not expressly request substitute counsel. Because, however, defendant did not unequivocally waive his right to counsel

counsel is within the sound discretion of the trial court and will not be upset on appeal absent a showing of an abuse of that discretion." *People v Buie (On Remand)*, 298 Mich App 50, 67; 825 NW2d 361 (2012) (quotation marks and citation omitted). A trial court abuses its discretion when it renders a decision outside the range of reasonable and principled outcomes, which necessarily occurs when it makes an error of law. *Wisniewski*, ___ Mich App at ___; slip op at 7.

Although "[a]n indigent criminal defendant is guaranteed the right to counsel[,]" he or she "is not entitled to have the attorney of his [or her] choice." *People v McFall*, 309 Mich App 377, 382; 873 NW2d 112 (2015) (quotation marks and citation omitted). As this Court has explained:

> Substitution of counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause may exist when a legitimate difference of opinion develops between a defendant and his [or her] appointed counsel as to a fundamental trial tactic, when there is a destruction of communication and a breakdown in the attorney-client relationship, or when counsel shows a lack of diligence or interest. A mere allegation that a defendant lacks confidence in his or her attorney, unsupported by a substantial reason, does not amount to adequate cause. Likewise, a defendant's general unhappiness with counsel's representation is insufficient. [*Id*. at 382-383 (quotation marks and citations omitted).]

"The circumstances that would justify good cause rest on the individual facts in each case." *Buie*, 298 Mich App at 67.

Shortly before sentencing, defendant filed a *pro per* motion requesting, among other things, that his counsel be discharged due to alleged ineffective assistance at trial. The trial court properly declined to consider the motion at that time because defendant was not permitted to file such a motion while represented by counsel. See *People v Kevorkian*, 248 Mich App 373, 422; 639 NW2d 291 (2001). In any event, defense counsel subsequently noticed the motion so that the court could consider and rule on it before sentencing. After considering the parties' written submissions and corresponding oral arguments on the matter, the court denied defendant's motion.

The trial court did not abuse its discretion by denying defendant's motion, as defendant offered no argument to establish good cause to appoint new counsel for sentencing. See *McFall*, 309 Mich App at 382-383; *Buie*, 298 Mich App at 67. Although defendant raised claims about his counsel's performance at trial, he did not explain why those complaints rendered counsel unable to adequately represent him at sentencing. Nor did he cite to a difference of opinion with counsel about any fundamental issue that would impact his sentence. See *McFall*, 309 Mich App at 383. Defendant's assertions about counsel's trial decisions may well have demonstrated that he "lack[ed] confidence" in counsel, but those allegations must be supported with "a substantial

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and ask to represent himself, see *People v Anderson*, 398 Mich 361, 367-368; 247 NW2d 857 (1976), and he additionally argued that he had "good cause" to dismiss the counsel appointed to him at that time—a necessary element for substitution of counsel, see *People v McFall*, 309 Mich App 377, 382-383; 873 NW2d 112 (2015)—we treat defendant's motion as one to substitute counsel.

reason" to establish good cause, and defendant did not offer such support. *Id*. Moreover, the record reflects that defense counsel vigorously represented defendant's interests at sentencing by voicing various arguments about the scoring of offense variables and by arguing for a lower sentence on the basis of defendant's military service. Accordingly, defendant has not shown that, under the circumstances, the trial court abused its discretion by denying his motion. See *id*. at 382-384; *Buie*, 298 Mich App at 67, 69-70.

VI. PRESENCE DURING JURY DELIBERATION AND SENTENCING

Defendant next argues in his Standard 4 brief that the trial court denied him his constitutional right to be physically present during his criminal proceedings by holding him in custody outside the courtroom during jury deliberations and by conducting his sentencing hearing remotely via Zoom. "[A] criminal defendant has a constitutional right to be present at any stage of a trial during which [his or her] substantial rights might be adversely affected, including during sentencing." *People v Anderson*, 341 Mich App 272, 281; 989 NW2d 832 (2022). We ordinarily review issues implicating a criminal defendant's constitutional rights de novo. *People v McKinney*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 371378); slip op at 4. But because defendant failed to raise the issue of his physical presence when the exclusions at issue occurred, his challenges are unpreserved and thus reviewed for plain error affecting substantial rights. See *Anderson*, 341 Mich App at 279-281.

Defendant argues that he was excluded from the courtroom at a critical point in the trial proceedings because he was not present when the trial court responded to the jury's question about the necessary elements of his unlawful-imprisonment charge. Defendant is generally correct that a criminal defendant has the right to be present when the trial court instructs the jury. See *People v Powell*, 303 Mich App 271, 275; 842 NW2d 538 (2013). But reversal is warranted on this ground only if defendant can show that he was prejudiced by his absence—i.e., that had he been physically present in the courtroom during jury deliberations, there is a reasonable probability that the outcome of the proceedings would have been different and that that error seriously affected the fairness, integrity, or public reputation of the proceedings. See *Anderson*, 341 Mich App at 283-284. Defendant makes no meaningful argument, legally or factually, regarding prejudice. See *People v Burkett*, 337 Mich App 631, 639 n 4; 976 NW2d 864 (2021). Defendant, at best, suggests in other portions of his brief that had he been present during deliberations, he would have asked for a specific unanimity instruction in response to the jury's question. But, as discussed, we cannot conclude that a specific unanimity instruction was warranted under the circumstances of this case, as defendant failed to establish the factual predicate of that claim. Furthermore, any presumption of prejudice from defendant's absence was overcome by his counsel's presence when the court answered the jury's question. See, e.g., *People v France*, 436 Mich 138, 165; 461 NW2d 621 (1990); see also *People v Rodriguez*, 251 Mich App 10, 32; 650 NW3d 96 (2002) ("A defendant may not claim error regarding an issue on appeal where his lawyer deemed the action proper at trial or otherwise acquiesced."). Accordingly, defendant has not shown that reversal is warranted on this basis.

Defendant also argues that the trial court violated his right to be physically present at sentencing by only allowing him to be present remotely via Zoom. Again, defendant is generally correct that he was entitled to be physically present at sentencing, as he was convicted of felonies and did not expressly waive his right to be physically present. See *Anderson*, 341 Mich App at 281-283; see also MCR 6.006(A). Defense counsel, however, made clear at the first sentencing hearing that defendant would be appearing remotely via Zoom for sentencing, and defendant did not object to this arrangement, even after the court mentioned the possibility of an in-person hearing for the second sentencing hearing. See *Anderson*, 341 Mich App at 283-285. The court also permitted and encouraged defendant to fully participate in sentencing as if he was physically present, and defense counsel both actively participated and vigorously advocated on defendant's behalf at the sentencing hearings. See, e.g., *id*. at 285-288 (concluding that the defendant was not entitled to relief on his unpreserved challenge to remote sentencing because, in relevant part, both he and his counsel had the opportunity to—and did—actively participate in the hearing as if they were physically present and were able to make the arguments necessary to support his position).

Furthermore, the record reflects that defendant intentionally and voluntarily left Zoom in the midst of both sentencing hearings.[10] After defendant did so during the second sentencing hearing, the court got defendant back on Zoom and instructed him that he could either voluntarily participate in the proceedings or they would put him back in his jail cell and set up a monitor by his door so that he could see and hear the proceedings. Defendant refused to voluntarily participate, and so he was returned to his cell, and a monitor streaming the sentencing hearing was placed by his door. But defendant again refused to participate in even that, intentionally covering his cell window to completely block the monitor. Thus, even if defendant had experienced any prejudice from his remote, rather than physical, presence at sentencing, defendant's own conduct undermines his attempt to now challenge his ability to participate in the proceedings. See *People v Witherspoon*, 257 Mich App 329, 333; 670 NW2d 434 (2003) (explaining that "an appellant may not benefit from an alleged error that the appellant contributed to by plan or negligence").

In sum, defendant does not point to, nor do we see, anything in the record demonstrating that his remote appearance affected the trial court's determination of an appropriate sentence or was connected to any other "irregularities with the sentencing other than that he was not [physically] present in the courtroom at the time of sentencing." *Anderson*, 341 Mich App at 287. "There is no evidence, inference, or indication that defendant's treatment likely would have been different had he been face-to-face with the sentencing judge." *Id*. Accordingly, defendant has not demonstrated that he is entitled to relief on this basis, either. See *id*. at 287-288.

VII. EFFECTIVE ASSISTANCE OF COUNSEL

In his Standard 4 brief, defendant argues, on multiple different bases, that he was denied the effective assistance of counsel. We have already addressed some of these challenges, and turn now to the remainder of them.

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[10] Defendant left the first sentencing hearing after the trial judge refused to rule on his *pro per* motion, which requested, among other things, that the judge recuse himself from the case due to an alleged disqualification; the trial court ended the sentencing hearing shortly after it learned that defendant had left the proceeding. Defendant left the second sentencing hearing after the trial court substantively addressed—and denied—defendant's *pro per* motions that, as discussed, defense counsel had noticed for the court's consideration.

Whether counsel was ineffective presents a mixed question of fact and law, with factual findings reviewed for clear error and questions of law reviewed de novo. *People v Head*, 323 Mich App 526, 539; 917 NW2d 752 (2018). "The trial court's findings are clearly erroneous if this Court is definitely and firmly convinced that the trial court made a mistake." *People v Shaw*, 315 Mich App 668, 672; 892 NW2d 15 (2016).

"To establish ineffective assistance of counsel, a defendant must show (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *Id*. "Reasonable probability means a probability sufficient to undermine confidence in the outcome." *People v Leffew*, 508 Mich 625, 637; 975 NW2d 896 (2022) (quotation marks and citation omitted). This Court presumes counsel was effective, and a defendant carries a heavy burden to overcome that presumption. *People v Muniz*, 343 Mich App 437, 448; 997 NW2d 325 (2022). This burden includes "overcom[ing] the strong presumption that counsel's performance was born from a sound trial strategy." *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). That said, "a court cannot insulate the review of counsel's performance by calling it trial strategy; counsel's strategy must be sound, and the decisions as to it objectively reasonable." *People v Ackley*, 497 Mich 381, 388-389; 870 NW2d 858 (2015) (quotation marks and citation omitted). The defendant also bears the burden of establishing the factual predicate of his claim. *People v White*, 331 Mich App 144, 148; 951 NW2d 106 (2020).

A. FAILURE TO INVESTIGATE AND RESULTING FAILURE TO IMPEACH THE VICTIM ON INCONSISTENT STATEMENTS

Defendant argues that his counsel failed to adequately investigate before trial. According to defendant, had counsel conducted an adequate investigation, he would have found inconsistent statements by the victim in police reports, medical records, body camera footage, preliminary examination testimony, and phone call records. Defendant contends that as a result of the inadequate investigation, defense counsel was unable to use the victim's inconsistent statements to impeach her at trial. But defendant has failed to establish the factual predicate of this claim, as he has not provided any of the records allegedly containing inconsistent statements or otherwise described the alleged statements in those records for our review. See *id*.; see also *Burkett*, 337 Mich App at 639 n 4. Furthermore, the record before us demonstrates that, during cross-examination, defense counsel relied heavily on statements the victim had previously made to police and medical personnel, as well as on her testimony at the preliminary hearing, to impeach the victim's trial testimony and undermine her credibility as a witness.

In making this argument, defendant primarily focuses on the cause of an injury to the victim's finger; defendant emphasizes that, while the victim testified at trial that defendant had "bit" her finger, the records show the victim reporting that defendant had "stomped" on her finger. But defense counsel used prior statements by the victim regarding her finger injury to impeach her testimony on that topic at trial. When questioned about the inconsistency of her statements regarding the injury, the victim conceded that she never told an officer or a treating physician that defendant bit her finger and that she could not recall defendant ever biting her finger on the night of the incident. She further testified that she later developed an infection in her finger and that a physician had surmised, based on a photo of her finger injury, that the injury may have come from a bite. Defendant has not shown how counsel's performance in this regard was ineffective, and we see no basis for relief as to this claim.

B. FAILURE TO REQUEST BILL OF PARTICULARS

Defendant also argues that his trial counsel was ineffective for not requesting a bill of particulars[11] because "[w]ithout a bill of particulars, defense counsel couldn't form a cohesive defense strategy." But defendant fails to acknowledge that he exercised his right to a preliminary examination at which the victim testified about the incident, which adequately informed him (and his counsel) of the nature of the charges against him and therefore obviated the need for a bill of particulars. See *People v Van Net*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 374944); slip op at 9. Accordingly, we see no basis for relief as to this claim, either.

VIII. SPEEDY TRIAL

In both his brief filed by counsel and his Standard 4 brief, defendant argues that he was denied his constitutional right to a speedy trial, and the trial court therefore erred by denying his motion to dismiss on that basis. We review de novo whether a defendant was denied his or her constitutional right to a speedy trial, and review for clear error the trial court's underlying factual findings. *People v Smith*, 351 Mich App 1, 9; 34 NW3d 593 (2024).

A criminal defendant's right to a speedy trial is guaranteed by the United States and Michigan Constitutions, statute, and court rule. See US Const, Am VI; Const 1963, art 1, § 20; MCL 768.1; MCR 6.004(A). "The time for judging whether the right to a speedy trial has been violated runs from the date of the defendant's arrest." *People v Williams*, 475 Mich 245, 261; 716 NW2d 208 (2006) (quotation marks and citation omitted). To determine whether a defendant has been denied the right to a speedy trial, a court must balance the four factors set forth in *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972): "(1) the length of delay, (2) the reason for delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant." *Smith*, 351 Mich App at 9 (quotation marks and citation omitted). "Following a delay of eighteen months or more, prejudice is presumed, and the burden shifts to the prosecution to show that there was no injury." *Williams*, 475 Mich at 262. "[A] presumptively prejudicial delay triggers an inquiry into the other factors to be considered in the balancing of the competing interests to determine whether a defendant has been deprived of the right to a speedy trial." *Id*. (quotation marks and citation omitted).

Applying this analytical framework to the instant case, we see no reversible error in the trial court's conclusion that defendant was not denied the right to a speedy trial.[12] The near-19-

[11] MCR 6.112(E) provides that "[t]he court, on motion, may order the prosecutor to provide the defendant a bill of particulars describing the essential facts of the alleged offense."

[12] Defendant contends that the trial court did not itself adequately consider each of the *Barker* factors in rejecting his speedy-trial claim. We agree with defendant that the court's articulation of its analysis was not as thorough in some respects as it could (or perhaps should) have been, but

month delay between defendant's arrest and trial gave rise to the presumption of prejudice, and the burden of proof therefore shifted to the prosecution to show that there was no injury and that defendant's speedy-trial rights had not been violated. See *id*. As the trial court found, approximately 14 months of the pretrial delay is attributable to defendant due to his significant pretrial motion practice, which resulted in an adjournment on nine separate occasions, and his request to adjourn trial due to his counsel's scheduling conflicts. See *People v Walker*, 276 Mich App 528, 542-543; 741 NW2d 843 (2007), vacated in part on other grounds 480 Mich 1059 (2008); *People v Cain*, 238 Mich App 95, 113; 605 NW2d 28 (1999). The remainder of the delay is "technically attributable to the prosecution" because it was the result of matters such as scheduling "delays and docket congestion inherent in the court system," but those delays "are given a neutral tint and are assigned only minimal weight" in the speedy-trial analysis. *Smith*, 351 Mich App at 10 (quotation marks and citation omitted). The reasons for delay therefore do not support defendant's claim of a speedy-trial violation. Defendant did, however, assert his right to a speedy trial when he moved to dismiss on that basis, which weighs in his favor. See *id*. at 15.

Finally, regarding prejudice, a defendant may experience two types: "prejudice to his person and prejudice to the defense." *Williams*, 475 Mich at 264 (quotation marks and citation omitted). Although both types must be considered, "the most serious inquiry is whether the delay has impaired the defendant's defense." *People v Simpson*, 207 Mich App 560, 564; 526 NW2d 33 (1994). Defendant argues that he suffered prejudice to his person because he experienced increased anxiety and depression during his pretrial incarceration. While we do not doubt that defendant may well have experienced anxiety and depression from his incarceration throughout the proceedings, that "alone cannot establish a speedy-trial violation." *Smith*, 351 Mich App at 15. And although defendant attempts to argue that he suffered prejudice to his defense by asserting that he could not obtain video footage that was recorded on the date of the incident by the surveillance cameras inside the home, he offers nothing to indicate that the video footage would have been helpful to his defense, nor does he explain how its absence at trial was due to the delay. By his own admissions at pretrial motion hearings, any alleged video footage from inside the home was within his control since the date of the incident, as he had purchased and installed the surveillance system and had access to the mobile application that stored any recorded footage. Furthermore, the record reflects that the prosecution was unaware of any potential video footage from inside the home until defendant first mentioned it in his motion to dismiss. The prosecution then promptly obtained a search warrant to obtain that footage from the surveillance company, but there ultimately was no video footage to obtain because the surveillance system had either been turned off or disabled at the time of the incident. On this record, we cannot conclude that defendant has shown he suffered any prejudice to his defense, let alone prejudice sufficient to entitle him to relief. See *People v Chism*, 390 Mich 104, 115; 211 NW2d 193 (1973) ("[O]n the matter of prejudice to [the] defendant because of the length of time before his trial, the most important thing is that there is no evidence that a fair trial was jeopardized by delay[.]").

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defendant has not identified, and we have not found, grounds for relief on that basis alone in this case. See *Burkett*, 337 Mich App at 639 n 4.

Accordingly, under our review of the *Barker* factors, we agree with the trial court that defendant's claim of a speedy-trial violation fails. See *Williams*, 475 Mich at 262.

IX. SENTENCING

Finally, in his Standard 4 brief, defendant argues for the first time on appeal that he is entitled to resentencing because the trial court erroneously assessed 15 points for offense variable (OV) 8, MCL 777.38 (victim asportation or captivity). According to defendant, the trial court must assess zero points for OV 8 if the sentencing offense is kidnapping, and unlawful imprisonment is a form of kidnapping. But this Court squarely addressed—and rejected—this exact argument in *People v Kosik*, 303 Mich App 146, 157-159; 851 NW2d 906 (2013). *Kosik* is a precedentially binding case, and defendant does not identify, nor do we see, any reason why it would not control our disposition here. See MCR 7.215(C)(2) and (J)(1). Accordingly, we conclude that the trial court's assessment of 15 points for OV 8 was not in error.

Affirmed.

/s/ Daniel S. Korobkin
/s/ Michael J. Riordan
/s/ Philip P. Mariani