

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAYLIN OMAR BRAZIER,

Defendant-Appellant.

UNPUBLISHED

October 08, 2026

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No. 372313

Wayne Circuit Court

LC No. 23-003818-01-FC

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317, and tampering with evidence in a criminal case, MCL 750.483a(6)(b). We affirm.

I. BACKGROUND

Defendant’s convictions arise out of events that occurred on January 4, 2022, and January 5, 2022. It is undisputed that in the evening of January 4, 2022, defendant picked up the victim from her home in Eastpointe, and the two returned to defendant’s home on Greenfield Road in Detroit—a home that defendant shared with his two young children and the children’s mother, Katrina Smith. It is also undisputed that in the early morning hours of January 5, 2022, defendant loaded the victim’s body into the trunk of his car, traveled to Highland Park, and then dumped the victim’s body into a dumpster. When the victim did not return home on January 5, 2022, her mother became concerned and called the police.

Initially, defendant claimed that the last time he had seen the victim was months earlier. However, later, defendant gave a statement to police admitting that on January 5, 2022, he dumped the victim’s body into the dumpster. Despite significant efforts, including a five-month daily search of a landfill by many volunteers, the victim’s body was never recovered. The investigation into the victim’s disappearance took over a year. However, from January 2022 to January 2023, defendant was incarcerated for lying to the Eastpointe police about his contact with the victim on the night she went missing. On August 10, 2023, nineteen months after the victim’s disappearance, defendant was charged with second-degree murder and tampering with evidence.

The prosecutor's case was based on the theory that in the months preceding the victim's disappearance, defendant, then 23 years old, groomed the 17-year-old victim, his "stepcousin," through sexually explicit text messaging and the sharing of controlled substances. Then, on the evening of January 4, 2022, or the early morning hours of January 5, 2022, the victim rejected defendant's advances. Thereafter, defendant became violent, and this violence escalated to the point that he caused the victim's death, after which he attempted to conceal his actions by disposing of the body and lying for months about the events. Defendant denied that he harmed the victim, suggesting that the victim died by her own hand, a drug overdose, or a medical condition. Ultimately, he argued to the jury that while the victim was in his home, she died from a seizure disorder and, after he discovered she had died, defendant panicked and made the ill-conceived decision to dispose of her body.

There were no eyewitnesses to any of the events, and much of the prosecutor's case was built of circumstantial evidence. The prosecution also relied on the opinion of a medical examiner, the testimony of experts in cell phone extraction and mapping, security videos, and defendant's multiple inconsistent statements. At the conclusion of trial, defendant was found guilty of second-degree murder and tampering with evidence. This appeal followed.

II. ANALYSIS

A. DIRECTED VERDICT

Defendant first argues on appeal that the trial court erred when it denied his motion for a directed verdict because there was insufficient evidence to sustain his second-degree murder charge. We disagree.

"When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). "Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of the crime." *People v Head*, 323 Mich App 526, 532; 917 NW2d 752 (2018) (quotation marks and citation omitted).

To satisfy the elements of second-degree murder, the prosecution must prove the following: "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse."¹ *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. Second-degree murder does not require a finding of a specific intent to harm or kill. *Id.* at 466. Indeed, "the accused need not actually intend the harmful result." *Id.* "The intent to do an act in obvious disregard of life-endangering consequences is a malicious

¹ In *People v Spears*, 346 Mich App 494, 517; 13 NW3d 20 (2023), this Court concluded that "the often-recited fourth element of second-degree murder, 'without justification or excuse,' actually is part of the 'cluster of ideas' of second-degree murder" and is not an element of the offense.

intent.” *Id.* “A jury may infer malice from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm.” *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999). “Because of the difficulty in proving an actor’s intent, only minimal circumstantial evidence is necessary to show that a defendant had the requisite intent.” *People v Stevens*, 306 Mich App 620, 629; 858 NW2d 98 (2014).

Defendant does not contest that there was sufficient evidence of a death. Instead, defendant contends that there was insufficient evidence that defendant caused the victim’s death and that he did so with malice. We disagree.

There was substantial and compelling circumstantial evidence that defendant both caused the victim’s death and that he did so with malice. Specifically, there was sufficient evidence from which the jury could conclude that defendant sought to have a sexual encounter with the victim, his stepcousin; that the victim resisted; that the encounter turned violent; and during this violent encounter, defendant caused the victim’s death. The record established that for more than a year before the victim’s disappearance, defendant groomed the victim. Defendant sent sexually explicit text messages to the victim and, on more than one occasion, they met to smoke marijuana. From defendant’s own text messages, it is clear that the relationship between defendant and the victim had caused other family members to question the relationship. Then, there was indisputable evidence that on the evening of January 4, 2022, defendant picked the victim up at her home and they went to defendant’s home, where they spent several hours.

Moreover, from defendant’s internet activities, the jury could infer defendant’s intent when he brought the victim back to his home. Evidence extracted from defendant’s cell phone in June 2023 demonstrated defendant used the internet to access rape and cousin-themed pornography. From this evidence, the trier of fact could conclude that defendant brought the victim to his home for purposes of a sexual encounter.

There was also compelling circumstantial evidence that a violent altercation ensued sometime that evening or in the early morning hours of January 5, 2022. Testimony and text messages establish that before defendant picked up the victim on the evening of January 4, 2022, he dropped off Smith, his live-in girlfriend and the mother of his children, to her place of employment. Smith was working the midnight shift that evening. Smith texted defendant throughout the night indicating that she was not feeling well and wanted to come home. In these text exchanges, defendant encouraged Smith to stay at work and made several excuses to delay picking her up. In one text, defendant indicated that he needed to take a shower. Then, when Smith saw defendant sometime after 2:30 a.m. on January 5, 2022, she noticed blood and a “big scratch” on defendant’s collar bone. Defendant claimed that the family cat scratched him, but Smith testified that the cat had never scratched that deep or drawn that much blood. There was also some evidence, through home security footage, that defendant appeared to have changed his clothes sometime that evening. Then, during a search of defendant’s home, investigators located a broken table in the backyard. The table was in a condition where it appeared to one investigator that it had not been out in the elements long. From this compelling circumstantial evidence, the trier of fact could have easily concluded that whatever transpired between defendant and the victim that night, it eventually turned violent.

Evidence documenting defendant's activities in the hours and days that followed the victim's disappearance also suggests that defendant caused the victim's death and did so with malice. Initially, defendant represented to law enforcement and the victim's family that it had been months, perhaps even years, since he had seen the victim. However, eventually, on January 19, 2022, defendant gave a statement to police wherein he admitted being with the victim during the relevant time period. In addition, defendant claimed that in the early morning hours of January 5, 2022, the victim simply stopped breathing and died. During his statement, defendant admitted that he panicked, and this caused him to put the victim's body in the trunk of his car, transport her to another city, and then dispose of her body in a dumpster. Even if defendant had not made the foregoing admissions, cellular phone mapping documented defendant's actions. This same cellular mapping evidence also suggested that on January 6, 2022, defendant returned to the dumpster to check on the victim's body. A rational jury could infer defendant's consciousness of guilt from evidence that defendant destroyed, arguably, the most important evidence of the crime of murder, the victim's body. See, e.g., *People v Unger*, 278 Mich App 210, 226; 749 NW2d 272 (2008).

Lastly, that defendant initiated a factory reset on his phone on January 7, 2022, that permanently deleted the contents of the phone that existed before the reset was also evidence of defendant's consciousness of guilt. It should also be noted that while investigators were not able to extract from defendant's cell phone his activities on the phone before January 7, 2022, a search warrant permitted law enforcement to obtain a record of defendant's Google searches in the days after the victim's disappearance. On January 6, 2022, a device associated with defendant searched two phrases: (1) "are trash trucks also compactors," and (2) "what is the force of a garbage truck compactor." Google searches performed on January 7, 2022 included: (1) "Are trash trucks also compactors"; (2) "How do the police track your phone"; (3) "How do the police track missing people's phones"; and (4) "Can the police take my phone without a warrant?"

Viewing the evidence in a light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to find that the essential elements of second-degree murder were proven beyond a reasonable doubt. Defendant's suspicious actions on and after January 5, 2022, including disposing of the victim's body, searching the internet to confirm that the evidence would be destroyed, lying to authorities, destroying cellular phone history, interfering with witnesses, and giving inconsistent statements to law enforcement, demonstrated a consciousness of guilt. This was strong and compelling circumstantial evidence sufficient for the jury to conclude, beyond a reasonable doubt, that defendant caused the victim's death. Moreover, the same body of evidence was sufficient for the jury to conclude that defendant acted with malice.

Accordingly, it was proper for the trial court to submit the second-degree murder charge to the jury, and there was no error in denying defendant's motion for a directed verdict.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Next, defendant asserts that on multiple fronts he was denied the effective assistance of counsel. We disagree.

Defendant preserved his claim of ineffective assistance of counsel by moving for a new trial in the lower court. See *People v Payne*, 285 Mich App 181, 188; 774 NW2d 714 (2009).

However, because the trial court denied defendant's motion for new trial and did not hold an evidentiary hearing, defendant's ineffective assistance of counsel claim is limited to errors apparent on the existing record. *People v Thorne*, 322 Mich App 340, 347; 912 NW2d 560 (2017).

The issue of ineffective assistance of counsel is a mixed question of fact and law. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012). Effective assistance of counsel is presumed, and a party claiming ineffective assistance bears a heavy burden to prove otherwise. *People v Putman*, 309 Mich App 240, 248; 870 NW2d 593 (2015). "To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003), citing *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See also *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). "In order to demonstrate that counsel's performance was deficient, the defendant must show that it fell below an objective standard of reasonableness under prevailing professional norms. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy." *Riley*, 468 Mich at 140. Establishing prejudice necessarily requires demonstrating a reasonable probability that the result of the proceeding would have been different but for counsel's error. *People v Nix*, 301 Mich App 195, 207; 836 NW2d 224 (2013). Further, the party claiming ineffective assistance bears the burden of establishing the factual predicate for the claim. *Putman*, 309 Mich App at 248.

1. FAILURE TO REQUEST INVOLUNTARY MANSLAUGHTER INSTRUCTION

On appeal, defendant argues that trial counsel's failure to request that the jury be instructed on involuntary manslaughter deprived him of the effective assistance of counsel. We disagree. Defendant has failed to show that his counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by his counsel's performance because there was insufficient evidence in the record to support the giving of an involuntary manslaughter instruction, and trial counsel's actions were a matter of trial strategy.

In the present case, at the parties' requests, the court reviewed a few jury instructions. Regarding the second-degree murder charge, the court noted that there frequently is a concurrent request for a manslaughter instruction. The court, however, indicated that because a manslaughter instruction was not consistent with the evidence, i.e., there was no evidence of reckless conduct, it was not inclined to give a manslaughter instruction. Defendant's counsel agreed with the court's assessment that the giving of an involuntary manslaughter instruction was not supported by the evidence and that defendant had maintained his innocence from the outset. Accordingly, defendant's counsel did not request an instruction on involuntary manslaughter and none was given by the court.

In Michigan, involuntary manslaughter is defined as an unlawful killing that is "neither murder nor voluntary manslaughter nor within the scope of some recognized justification or excuse." *People v Holtschlag*, 471 Mich 1, 21; 684 NW2d 730 (2004) (quotation marks and citations omitted). Involuntary manslaughter is a lesser included offense of murder, but an instruction on involuntary manslaughter must be given only if supported by a rational view of the evidence. *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003). "Conversely, an

instruction that is without evidentiary support should not be given.” *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999).

Although the existing record does not support defendant’s claim that he was entitled to have the jury instructed on involuntary manslaughter, it also did not make sense to request the instruction considering defendant’s trial counsel’s strategy. The failure to request an instruction that is inconsistent with a defense theory is a matter of trial strategy. *People v Gonzalez*, 468 Mich 636, 645; 664 NW2d 159 (2003). Notably, an “all or nothing” defense, in which the defendant forgoes instructions on any lesser offenses, is a legitimate trial strategy. *People v Nickson*, 120 Mich App 681, 687; 327 NW2d 333 (1982). We do not substitute our judgment for that of counsel on matters of trial strategy. *Unger*, 278 Mich App at 242-243. Moreover, that a trial strategy is ultimately unsuccessful does not render counsel ineffective for using it. *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001).

In his defense, defendant dangled several theories in front of the jury, including that the victim died from an untreated medical condition, from an overdose, or at her own hand. At the end of the day, defendant’s counsel argued in his closing that the victim died from a seizure disorder. All of defendant’s theories presuppose that defendant’s actions did not cause the victim’s death. Indeed, it is apparent that trial counsel’s strategy focused on whether the victim died under circumstances completely unrelated to defendant. Thus, defendant’s defense theory was inconsistent with the theory that defendant fatally injured the victim but his actions amounted to involuntary manslaughter rather than murder. Accordingly, trial counsel’s failure to request an involuntary manslaughter instruction was reasonable trial strategy when the defense’s theory of the case was that defendant did not cause the victim’s death. In sum, defendant has failed to demonstrate that his trial counsel’s performance was so deficient in this regard that it denied him the effective assistance of counsel.

2. FAILURE TO REQUEST M CRIM JI 16.15 AND M CRIM JI 16.21

Defendant also contends that trial counsel’s failure to ensure that the jury was properly instructed on the charge of second-degree murder deprived him of the effective assistance of counsel. We disagree.

“A defendant in a criminal trial is entitled to have a properly instructed jury consider the evidence against him or her.” *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007). “The trial court is required to instruct the jury concerning the law applicable to the case and fully and fairly present the case to the jury in an understandable manner.” *People v Montague*, 338 Mich App 29, 37; 979 NW2d 406 (2021) (quotation marks, brackets, and citations omitted). Jury instructions must include all the elements of the offenses charged against the defendant and any material issues, defenses, and theories supported by the evidence. *Id.* “[J]ury instructions are reviewed in their entirety, and there is no error requiring reversal if the instructions sufficiently protected the rights of the defendant and fairly presented the triable issues to the jury.” *Id.* Model jury instructions are to be given if they are applicable, accurately state the law, and are requested by a party. MCR 2.512(D)(2).

Defendant was charged with second-degree murder. As discussed above, the elements of second-degree murder are “(1) a death, (2) caused by an act of the defendant, (3) with malice, and

(4) without justification or excuse,” and “[m]alice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Goecke*, 457 Mich at 463-464. Consistent with the foregoing and M Crim JI 16.5, the trial court instructed the jury:

The defendant is charged with the crime of second-degree murder. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant caused the death of [the victim]. That is, that [the victim] died as a result of the Defendant’s actions.

Second, that the Defendant had one of these three states of minds. He intended to kill, or he intended to do great bodily harm to [the victim], or he knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of his actions.

Third, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

Notwithstanding the foregoing recitation of the elements the prosecution was required to prove, defendant contends that his trial counsel should have requested that the jury be instructed pursuant to M Crim JI 16.15 and M Crim JI 16.21.

M Crim JI 16.15 provides:

[There may be more than one cause of death.] It is not enough that the defendant’s act made it possible for the death to occur. In order to find that the death of [*name deceased*] was caused by the defendant, you must find beyond a reasonable doubt that the death was the natural or necessary result of the defendant’s act.

The use note to M Crim JI 16.15 provides that “[t]his instruction is designed for use where there is an issue as to whether the act of the defendant caused death, or whether death was caused by some intervening cause.” This is consistent with *People v Bailey*, 451 Mich 657, 677; 549 NW2d 325 (1996), amended 453 Mich 1204 (1996), in which the Court held that if a third party’s independent act “intervenes between the act of a criminal defendant and harm to a victim, that act may only serve to cut off the defendant’s criminal liability where the intervening act is the sole cause of harm.” Accordingly, by its very language and accompanying caselaw, M Crim JI 16.15 is appropriate when there is evidence of an intervening cause of death sufficient to cut off defendant’s criminal responsibility.

Similar to the prior instruction, including M Crim JI 16.15 would have been inconsistent with defendant’s trial strategy as it would have suggested that defendant was involved in the victim’s death. Defendant denied any involvement throughout the trial and, instead, argued that the victim died from, among other things, a seizure disorder. Therefore, trial counsel’s decision not to request M Crim JI 16.15 was consistent with the apparent trial strategy. Further, there was

no evidence of intervening causes of death that would have warranted including such an instruction.

Because M Crim JI 16.15 did not properly apply within the context of the instant case's facts, charges, and theories, and because the trial court's instructions otherwise fully and fairly presented the case to the jury, trial counsel's decision not to request this jury instruction did not constitute deficient performance or ineffective assistance of counsel. "Defense counsel is not ineffective for failing to request a jury instruction if there was insufficient evidence that the jury instruction would apply to the defendant's case." *People v Geary*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 371889); slip op at 3. Moreover, trial counsel is not required to advocate a meritless position. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Similarly, we find no merit in defendant's argument that trial counsel's failure to request M Crim JI 16.21 deprived him of the effective assistance of counsel. M Crim JI 16.21 provides:

(1) You must think about all the evidence in deciding what the defendant's state of mind was at the time of the alleged killing.

(2) The defendant's state of mind may be inferred from the kind of weapon used, the type of wounds inflicted, the acts and words of the defendant, and any other circumstances surround the alleged killing.

[Use paragraphs (3), (4), and (5) for inferring intent from the use of a dangerous weapon, where appropriate.]

(3) You may infer that the defendant intended to kill if [he/she] used a dangerous weapon in a way that was likely to cause death. Likewise, you may infer that defendant intended the usual results that follow from the use of a dangerous weapon.

(4) A gun is a dangerous weapon.

(5) A dangerous weapon is an instrument that is used in a way that is likely to cause serious physical injury or death.

[Use paragraph (6) for inferring premeditation and deliberation, where appropriate.]

(6) Premeditation and deliberation may be inferred from any actions of the defendant which show planning or from any other circumstances surrounding the killing. The prosecutor need not prove a motive for the killing. But, you may consider evidence of motive in deciding if there was premeditation and deliberation. Motive by itself does not prove premeditation and deliberation.

At the outset, it is readily apparent that Paragraphs (3) through (6) of M Crim JI 16.21 are simply not applicable considering the case's facts, charges, and theories. There was no evidence that any weapon was used, let alone a dangerous weapon. Giving this instruction as written would have likely confused the jury.

Nonetheless, defendant argues that he was prejudiced when M Crim JI 16.21 was not given because this instruction would have informed the jury “to look to the use of a weapon, the type of weapon, how a weapon was used when deciding whether to infer a state of mind.” But this rationale is precisely why it would have been inappropriate for the trial court to give M Crim JI 16.21. The model jury instruction is consistent with caselaw that intent to kill can be inferred from the use of a dangerous weapon. See, e.g., *People v DeLisle*, 202 Mich App 658, 672; 509 NW2d 885 (1993). Taking defendant’s argument to its logical extreme, giving M Crim JI 16.21 in its entirety in a case where there is no evidence that a weapon was used would give the jury permission to infer a lack of intent to kill simply because a dangerous weapon was not used. In any event, the jury instruction’s parenthetical makes it clear that the use of Paragraphs (3), (4), and (5) is only appropriate where there is some evidence that the defendant used a dangerous weapon. Moreover, Paragraph (6) would similarly create confusion because premeditation and deliberation are not elements of second-degree murder. *People v Walker*, 330 Mich App 378, 383; 948 NW2d 122 (2019) (“First-degree premeditated murder is only distinguished from second-degree murder by the element of premeditation.”).

To the extent that defendant argues trial counsel should have requested that the court instruct the jury on intent in accordance with M Crim JI 16.21(1) and (2), the record confirms that the court did as much. The trial court instructed the jury that “[t]he defendant’s intent may be proved by what he said, what he did, how he did it, or by any other facts and circumstances in evidence.” This instruction embodied the language and intent of the first two paragraphs of M Crim JI 16.21. Because a defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim of error. Since the record confirms that the jury was instructed consistent with the language of M Crim JI 16.21(1) and (2), defendant has failed to establish the necessary factual predicate of his ineffective assistance of counsel claim. *People v Carbin*, 463 Mich 590, 600-601; 623 NW2d 884 (2001).

C. OTHER-ACTS EVIDENCE

Lastly, defendant argues that the trial court abused its discretion by admitting evidence that defendant accessed legal pornography. Defendant asserts that this evidence was not relevant, and it invited the jury to make the unreasonable inference that someone who watches pornography is motivated to rape and kill. We disagree.

We review for an abuse of discretion a trial court’s decision to admit or exclude evidence. *People v Thorpe*, 504 Mich 230, 251-252; 934 NW2d 693 (2019). “A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes.” *People v Snyder*, 301 Mich App 99, 104; 835 NW2d 608 (2013) (quotation marks and citation omitted). “Preliminary issues of law, including the interpretation of the rules of evidence and the effect of constitutional provisions, are reviewed de novo.” *People v Benton*, 294 Mich App 191, 195; 817 NW2d 599 (2011).

The admission of other-acts evidence is governed by MRE 404(b). This rule of evidence provides:

(1) *Prohibited Uses*. Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses*. If it is material, the evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident.

MRE 404(b) does not prohibit all evidence of other acts simply because it may implicate character. "MRE 404(b) is a rule of inclusion, meaning it permits the admission of any logically relevant evidence 'even if it also reflects on a defendant's character,' so long as the evidence is not 'relevant solely to the defendant's character or criminal propensity.'" *People v Spaulding*, 332 Mich App 638, 649; 957 NW2d 843 (2020), quoting *People v Mardlin*, 487 Mich 609, 615-616; 790 NW2d 607 (2010). Thus, other-acts evidence may be admissible if (1) the evidence is offered for a proper purpose, (2) the evidence is relevant, and (3) the probative value of the evidence is not substantially outweighed by unfair prejudice. *People v Denson*, 500 Mich 385, 398; 902 NW2d 306 (2017), citing *People v VanderVliet*, 444 Mich 52, 55, 63-65; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).

"Under the first prong of the *VanderVliet* test, the question is whether the prosecution has articulated a proper noncharacter purpose for admission of the other-acts evidence." *Denson*, 500 Mich at 398. The list of proper purposes set forth in MRE 404(b)(2) is not exhaustive. *Mardlin*, 487 Mich at 616. In this case, the prosecution identified motive and intent as proper noncharacter purposes for admission of the evidence. This recitation satisfied the first prong of the *VanderVliet* test.

Under the second prong of the *VanderVliet* test, the evidence must be relevant. Logical relevance is determined by the application of MRE 401 and MRE 402. *Denson*, 500 Mich at 400. Pursuant to MRE 401, evidence is relevant if (a) "it has any tendency to make a fact more or less probable than it would be without the evidence," and (b) "the fact is of consequence in determining the action." Relevant evidence is admissible unless prohibited by the United States Constitution, the Michigan Constitution, the Michigan Rules of Evidence, or another rule prescribed by the Michigan Supreme Court. MRE 402. Irrelevant evidence is not admissible. *Id.*

With regard to the second element of the *VanderVliet* test, we find that the trial court did not abuse its discretion when ruling that the evidence was both material and probative under MRE 401. The prosecution asserts that evidence that defendant accessed pornographic material was relevant to establish motive, which is always a material issue in a murder case. See *Unger*, 278 Mich App at 223 ("Although motive is not an essential element of the crime, evidence of motive in a prosecution is always relevant."). For the purposes of MRE 404(b), "motive" is defined as "[c]ause or reason that moves the will and induces action. An inducement, or that which leads or tempts the mind to induce a criminal act." *People v Hoffman*, 225 Mich App 103, 106; 570 NW2d 146 (1997) (quotation marks and citation omitted). "Motive is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such result." *Id.*

In this case, the prosecutor's theory of the case was that defendant groomed the victim, his much younger stepcousin, through months of sexually explicit text messaging and the sharing of controlled substances. Then, on the evening of January 4, 2022, or the early morning hours of January 5, 2022, the victim rejected defendant's sexual advances. Thereafter, defendant became violent, and this violence escalated to the point that he caused the victim's death, after which he attempted to conceal his actions by disposing of the body and lying for months about the events. Considering the charges against defendant and the prosecution's theory of the case, the accessing of pornographic material, particularly rape and cousin-themed, was relevant to establishing that defendant fantasized about having sex with his cousin and that when the victim rejected his advances, he intended to kill her because there was a probability that family, particularly his pregnant partner, would learn of his behavior. In short, the evidence was logically relevant for a proper purpose under MRE 404(b).

Moreover, regarding the third element of the *VanderVliet* test, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403 provides that the court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. "Unfair prejudice may exist where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence." *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008). Moreover, it is frequently recognized that "[a]ll evidence offered by the parties is 'prejudicial' to some extent, but the fear of prejudice does not generally render the evidence inadmissible. It is only when the probative value is *substantially outweighed* by the danger of unfair prejudice that evidence is excluded." *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), mod on other grounds 450 Mich 1212 (1995).

In this case, considering the prosecution's theory, the pornography evidence and internet searches were highly probative of defendant's motive. Indeed, this evidence was the primary way by which the prosecution could establish defendant's motive and his intent. The probative value was also not substantially outweighed by the danger of unfair prejudice because the jury was only exposed to a general description of the pornography defendant accessed on the internet. Although defendant accessed pornographic videos, none of these videos were shown to the jury. Thus, the trial court limited the prejudicial effect of the evidence. Further, we also do not find that the evidence was too remote to be relevant just because defendant's search for cousin-themed pornography occurred in June 2023. Notably, MRE 404(b) has no temporal limitations, and the remoteness of other-acts evidence affects the weight of the evidence, not its admissibility. *People v Rosa*, 322 Mich App 726, 735; 913 NW2d 392 (2018). Accordingly, on this record, the trial court did not abuse its discretion because there was no basis to exclude the evidence.

Affirmed.

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado