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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 13, 2026 1:43 PM
v	No. 372077 Alger Circuit Court
JON EVERET MCNALLY YOUNG, Defendant-Appellant.	LC No. 2023-002559-FH

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

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of second-degree child abuse, MCL 750.136b(3), and witness intimidation, MCL 750.122(3). We affirm.

I. BACKGROUND

On December 7, 2022, two Michigan State Troopers and a Department of Health and Human Services (DHHS) employee responded to a complaint of child abuse, regarding defendant's 11-year-old child, at defendant's home. Defendant met the officers and the DHHS employee at the door to his garage. After the officers and the DHHS employee identified themselves and explained that they were there to investigate a complaint about an alleged cut on the child's head with glass in it, the DHHS employee asked to speak with the child and physically see him. Defendant brought the child to the garage and stood with him at the entrance to the house from the garage. The DHHS employee explained that the child was too far away to examine the injuries; however, defendant told the child to go back inside the house and told the officers and the DHHS employee that he did not want them to enter his home without a warrant.

The officers informed defendant that if he did not go get the child, they would enter the home. Defendant then called the child back. However, before the officers or the DHHS employee could speak to the child, defendant grabbed the child's arm, looked the child in his eyes, and said: "This is how far this has gone. If I go to jail tonight for this, I'm going to jail tonight for this, but I still love you. Go ahead and show them." The child then hugged defendant and defendant said: "it's okay, it's okay." When asked why he said that defendant explained, "because I've watched myself get handcuffed for less and he's watched me get nine cops called on me because of his

mother." The officers and the DHHS employee clarified that no one was going to jail and that they just wanted to make sure that the child was safe. When the DHHS employee asked the child what happened, he responded, "I got in trouble—trouble, so—so dad got mad and punished me."

Defendant then explained that the child had stolen a phone from school and when defendant asked, "hey what are those" the child "came up swinging." Defendant then explained that he "put [his] knee into [the child's] hip, [] rotated him, grabbed his wrists, grabbed the phone, and said 'what the hell are you doing with this?' " Defendant also explained that when he grabbed the child, the child swung at him again and defendant pulled the child off a bed and the child's head "ricocheted" off the floor. Then when the child was on the floor, defendant explained that he hit the child with a "normal black belt." Defendant also explained that the "welt that [the child] got [was] from when [defendant] cocked back and [] swung, and [] hit him with the belt, and the buckle came off on the back side." Defendant further stated that he "didn't hit him with the buckle on purpose." Defendant also explained that he "whooped [the child's] ass" because he did not know who the child stole the phone from. Defendant admitted that he hit the child with the belt 11 times. Defendant was subsequently arrested and charged with child abuse.

The child was taken to the hospital and evaluated, and a substantial amount of bruising and abrasions were documented. Specifically, the child had bruising from his mid-hip on the left side down to his mid-thigh, a large bruise "probably fist size" on his inner thigh, blue and black "belt marks across his back and across his butt," an abrasion on his neck, two abrasions on his chest, two abrasions on his upper back by his shoulder blades, and bruising on his forehead and from his temple to his chin.

Defendant was then convicted as stated earlier, and he now appeals.

II. VOID FOR VAGUENESS

First, defendant argues that his child-abuse conviction should be vacated because the second-degree child-abuse statute, MCL 750.136b(3), is unconstitutionally vague. We disagree.

Defendant did not argue before the trial court that the second-degree child-abuse statute was void for vagueness. Therefore, this issue is unpreserved. See *People v Lawhorn*, 320 Mich App 194, 197 n 1; 907 NW2d 832 (2017). We review unpreserved claims of constitutional error for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. (quotation marks and citation omitted).

"The void for vagueness doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property, without due process of law." *Lawhorn*, 320 Mich App at 198 (quotation marks and citation omitted); see also US Const, Am XIV; Const 1963, art 1, § 17. "It is a basic principle of due process that an enactment is void for vagueness if its

prohibitions are not clearly defined." *Id*., quoting *Grayned v City of Rockford*, 408 US 104, 108-109; 92 S Ct 2294; 33 L Ed 2d 222 (1972).

Defendant argues that the statute governing second-degree child abuse, MCL 750.136b(3), is unconstitutionally vague because it does not provide fair notice of the difference between reasonable force in disciplining a child and what constitutes criminal conduct. A statute provides fair notice of its proscribed conduct when persons of ordinary intelligence can decipher what is prohibited or required, without speculating about the statute's meaning or differing in its application. *Lawhorn*, 320 Mich App at 200. "For a statute to be sufficiently definite, its meaning must be fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words." *Id*. (quotation marks and citation omitted).

In relevant part, MCL 750.136b(3) provides that a person is guilty of child abuse in the second-degree if any of the following apply:

> (b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.
>
> (c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

MCL 750.136b(9) also explicitly provides that the child-abuse statute "does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force." Notably, this Court has addressed and rejected the argument that the term "reasonable force" is unconstitutionally vague under MCL 750.136b. See *People v Gregg*, 206 Mich App 208, 212-213; 520 NW2d 690 (1994); *Lawhorn*, 320 Mich App at 201-202.

In *Gregg*, 206 Mich App at 213, this Court rejected a vagueness challenge to MCL 750.136b(9) because it "expressly provides that a parent may use 'reasonable force' to discipline a child." The *Gregg* Court determined that the term "reasonable" is easily ascertained by consulting dictionaries. *Id*. Accordingly, the Court held that the child-abuse statute was not unconstitutionally vague and clearly provides fair notice to persons of ordinary intelligence of the conduct proscribed, namely, an act that causes serious physical or mental harm to a child or an act that is cruel to the child. *Id*. at 211.

Further, defendant's argument that the statute is unconstitutional as applied to him also fails because his actions of pulling the child off the bed and repeatedly beating the child with a belt, causing severe bruising, clearly falls within the conduct prohibited under MCL 750.136b(3). See *Lawhorn*, 320 Mich App at 204. Multiple witnesses, including the child, the doctor who evaluated the child, and the defendant himself, testified about the bruises that had resulted from the incident. Defendant gave graphic descriptions of the incident, including statements that the child's head "ricocheted" off the floor, that defendant hit the child with the belt 11 times, including with the belt buckle, and overall defendant stated he "whooped the child's ass."

Notably, in *Lawhorn*, 320 Mich App at 201-202, this Court reaffirmed the holding in *Gregg* and held that when a defendant beats a child with a belt, causing bruises, a jury may reasonably conclude that the defendant knowingly or intentionally caused physical harm to the child "and that the force [the] defendant exerted in disciplining the victim exceeded that which would be reasonable . . . ." *Id*. at 204. Therefore, it is reasonable to conclude that defendant's infliction of numerous severe bruises on the child from striking him with the belt properly meets the definition of child abuse in the second degree. MCL 750.136b(3).

Lastly, defendant argues that the second-degree child-abuse statute's lack of definitions may lead to arbitrary and discriminatory enforcement. This argument also lacks merit. A criminal statute is required to provide standards for its enforcement and administration to guard against arbitrary enforcement. *Lawhorn*, 320 Mich App at 203. Intent requirements alleviate vagueness concerns. *Id*. MCL 750.136b(3) requires that the physical or mental harm to a child is done "knowingly or intentionally," providing sufficient standards to prevent the statute from being applied arbitrarily. MCL 750.136b(3)(b) and (c). See also *Lawhorn*, 320 Mich App at 203.

III. SUFFICIENCY OF THE EVIDENCE

Defendant next contends that the evidence was insufficient to support his conviction of witness intimidation in violation of MCL 750.122 because there was no evidence that defendant intimidated the victim or interfered with the victim's ability to testify in an "official proceeding" under the statute. We disagree.

No action is necessary to preserve a challenge to the sufficiency of evidence. *People v Williams*, 294 Mich App 461, 471; 811 NW2d 88 (2011). We review challenges to the sufficiency of evidence de novo, reviewing the evidence in the light most favorable to the prosecution. *People v Harverson*, 291 Mich App 171, 176-177; 804 NW2d 757 (2010). In doing so, we must consider whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt. *Id*. at 175. "Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of a crime." *Id.* (quotation marks, brackets, and citation omitted). Additionally, "[w]e review de novo questions of statutory interpretation." *People v Anthony*, 494 Mich 669, 676; 837 NW2d 415 (2013).

In the present case, defendant was convicted of violating MCL 750.122 by threatening or intimidating a witness. The relevant parts of MCL 750.122 are as follows:

> (3) A person shall not do any of the following by threat or intimidation:
>
> (a) Discourage or attempt to discourage any individual from attending a present or future official proceeding as a witness, testifying at a present or future official proceeding, or giving information at a present or future official proceeding.
>
> (b) Influence or attempt to influence testimony at a present or future official proceeding.
>
> (c) Encourage or attempt to encourage any individual to avoid legal process, to withhold testimony, or to testify falsely in a present or future official proceeding.

* * *

> (9) This section applies regardless of whether an official proceeding actually takes place or is pending or whether the individual has been subpoenaed or otherwise ordered to appear at the official proceeding if the person knows or has reason to know the other person could be a witness at any official proceeding.

* * *

> (12) As used in this section:
>
> (a) "Official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.

When interpreting the statute, we first look at the clear and unambiguous language of the statute. *Anthony*, 494 Mich at 676. However, MCL 750.122 does not define "threat" or "intimidation." Accordingly, pursuant to the rules of statutory interpretation, we consider the language of the statute and interpret the undefined words and phrases according to their plain meaning. *People v DeBono*, 346 Mich App 64, 69; 11 NW3d 546 (2023). Courts consistently consult dictionary definitions "to give words and phrases their plain and ordinary meaning." *People v Shami*, 501 Mich 243, 253; 912 NW2d 526 (2018). Notably, *Merriam-Webster's Collegiate Dictionary* (11th ed) defines "to intimidate" as "to make timid or fearful."

In the present case, the pertinent exchange resulting in the charge of witness intimidation occurred when defendant brought the child to the doorway to speak with the officers and the DHHS employee. The prosecution argued that defendant intimidated the child when he grabbed the child by the arm, stared at the child, and implied that he would be going to jail because of the child. These actions occurred directly in front of police, and immediately before the child was expected to speak to police and the DHHS about the abuse that occurred that morning.

On appeal, defendant argues that these actions do not constitute intimidation under MCL 750.122. However, at trial, the DHHS employee and officers testified that defendant's actions made the child "scared" and "timid" and put a look of "pure fear on the child's face." This description falls squarely under the plain meaning of intimidation. Further, we review all the evidence in the light most favorable to the prosecution, including all circumstantial evidence. Here, it was undisputed that earlier that morning defendant abused the child, and considering the child's age, size, strength, the relationship between defendant and the child, and the witness testimony that confirmed the child was timid and fearful after defendant grabbed him, a reasonable jury could conclude that defendant intimidated the child. See *Harverson*, 291 Mich App at 175.

Defendant also argues that there was no evidence that defendant discouraged the child from testifying at any future or present proceeding. This is incorrect.

As an initial matter, defendant may be convicted of witness intimidation not only by discouraging the child from testifying at an official proceeding, but also by encouraging or attempting to encourage the child to avoid legal process. See MCL 750.122(3). Notably, this Court has stated that the witness-intimidation statute seeks to criminalize all the different ways in which an individual can prevent a witness from appearing and providing truthful information in some sort of official proceeding. *Greene*, 255 Mich App at 437. However, MCL 750.122(9) also provides that a person may be convicted of witness tampering "regardless of whether an official proceeding actually takes place" or is pending. This Court has also previously held that this section indicates that actions taken to interfere with the reporting of a crime to a police officer violate MCL 750.122 because it is an "attempt to encourage any individual to avoid legal process." MCL 750.122(3)(c). See also *People v Ramseur*, unpublished per curiam opinion of the Court of Appeals, issued October 28, 2021 (Docket No. 350192), pp 23-24 (holding that attempting to reveal the victim's affair while the victim was attempting to call the police constitutes witness intimidation). See also *People v Papineau*, unpublished per curiam opinion of the Court of Appeals, issued May 31, 2005 (Docket No. 254240), pp 2-3 (holding that attempting to get the victim committed to a psychiatric hospital after the victim was assaulted constituted witness intimidation).[1]

In the present case, the officer's body camera footage demonstrated that before defendant allowed the child to speak with the DHHS employee regarding the abuse that occurred that morning, defendant grabbed the child, looked him in the eye, and effectively told the child that defendant could go to jail because of him. Again, considering defendant's relationship with the child and the extent of the abuse that occurred that morning, a reasonable jury could conclude that defendant's interaction before allowing the child to speak about the abuse was an attempt to prevent the child from providing truthful information to the police and the DHHS regarding the abuse because he was scared that his father, i.e., defendant, would go to jail because of him. Therefore, defendant's actions of discouraging the victim from speaking with the officers and the DHHS employee fall under the conduct prohibited under MCL 750.122(3).

Finally, a defendant must also have reason to know that the victim could be a witness at any official proceeding. MCL 750.122(9). This Court has stated: "it could be inferred that defendant as the perpetrator of the assault against the victim, either knew or had reason to know of the possibility of future judicial proceedings as a result of the assault." *Ramseur*, unpub op at 24, quoting *Papineau*, unpub op at 2-3. Notably, defendant also knew that charges could arise from a substantiated DHHS complaint of child abuse, and he conveyed this knowledge when he explicitly stated that he was "going to jail tonight for this."

Therefore, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to support defendant's conviction under MCL 750.122 because defendant intimidated the child as an attempt to prevent him from speaking truthfully to the DHHS and police about defendant's abuse. See *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

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[1] Although unpublished opinions are not binding, an unpublished opinion may be considered for its persuasive value. See *People v Green*, 260 Mich App 710, 720 n 5; 680 NW2d 477 (2004).

IV. JURY INSTRUCTIONS

Defendant also argues that the trial court erred by failing to give a unanimity instruction and by providing confusing instructions regarding the second-degree child abuse charge. We address each argument in turn.

In order to preserve a jury-instruction challenge for review, a defendant must object on the record and state specifically the basis for the objection. *People v Sabin (On Second Remand)*, 242 Mich App 656, 657; 620 NW2d 19 (2000). Defendant did not object to the jury instructions and failed to preserve any such challenge for appellate review. Nonetheless, we review unpreserved claims of constitutional error for plain error affecting a party's substantial rights. *Carines*, 460 Mich at 763. An error is plain if it is clear or obvious, and it affects substantial rights if it affected the outcome of the lower-court proceedings. *Id*.

A. UNANIMITY INSTRUCTION

Defendant first argues that the trial court erred by failing to give a unanimity instruction to the jury regarding alternative means of proving second-degree child abuse. We disagree.

In reviewing an instructional-error argument, this Court "examines the instructions as a whole, and, even if there are some imperfections, there is no basis for reversal if the instructions adequately protected the defendant's rights by fairly presenting to the jury the issues to be tried." *People v Dumas*, 454 Mich 390, 396; 563 NW2d 31 (1997).

Criminal defendants are guaranteed the right to a unanimous jury verdict. US Const, Am VI; Const 1963, art 1, § 14; *People v Chelmicki*, 305 Mich App 58, 67; 850 NW2d 612 (2014). "In order to protect a defendant's right to a unanimous verdict, it is the duty of the trial court to properly instruct the jury regarding the unanimity requirement." *People v Cooks*, 446 Mich 503, 511; 521 NW2d 275 (1994); see also MCR 6.410(B). Often, as done in the present case, "the trial court fulfills that duty by providing the jury with a general instruction on unanimity." *Chelmicki*, 305 Mich App at 68.

Generally, an all-encompassing unanimity instruction is sufficient to protect a defendant's right to a unanimous verdict. *Id*. However, a specific unanimity instruction may be necessary when "more than one act is presented as evidence of the *actus reus* of a single criminal offense." *Id*., quoting *Cooks*, 446 Mich at 512-513. In *Cooks*, 446 Mich at 513, our Supreme Court stated that a specific unanimity instruction is only required when "either party has presented evidence that *materially* distinguishes any of the alleged multiple acts from the others." "In other words, where materially identical evidence is presented with respect to each act, and there is no juror confusion, a general unanimity instruction will suffice." *Id*. at 512-513.

In the present case, the prosecution did not separate defendant's actions into materially distinct acts. Instead, the prosecution presented a single incident to satisfy the *actus reus* of second-degree child abuse (i.e., defendant pulled the child off the bed and beat the child with a belt multiple times). Further, there is no reason to believe that the jurors may have been confused or disagreed about the factual basis of defendant's guilt because the prosecution only presented one factual basis. Notably, a specific unanimity instruction is not required when an action is

continuous and "so closely connected in time that they form part of one transaction." See *id*. at 522 (citation omitted).

In addition, "when a statute lists alternative means of committing an offense, which means in and of themselves do not constitute separate and distinct offenses, jury unanimity is not required with regard to the alternate theories." *People v Gadomski*, 232 Mich App 24, 31; 592 NW2d 75 (1998). Under MCL 750.136b(3), in relevant part, a person is guilty of child abuse in the second degree if either of the following applies:

> (b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.
>
> (c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

Although there are alternative means of committing second-degree child abuse, this Court has held that these separate means do not constitute separate and distinct offenses and do not warrant a more specific unanimity instruction. See *id*. See also *People v Rao*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2012 (Docket No. 289343), p 9. As discussed, the prosecution presented a single incident, and the jury was not required to make a unanimous decision on what theory the incident fell under. Therefore, a specific unanimity instruction was not required, and the trial court did not err by providing only a general unanimity instruction.

B. SECOND-DEGREE CHILD ABUSE INSTRUCTIONS

Defendant next argues that the trial court's delivery of jury instructions regarding second-degree child abuse was confusing and deprived him of his right to a properly instructed jury. We disagree.

"A criminal defendant has the right to have a properly instructed jury consider the evidence against him." *People v Mills*, 450 Mich 61, 80; 537 NW2d 909 (1995). "[T]he trial court is required to instruct the jury concerning the law applicable to the case and fully and fairly present the case to the jury in an understandable manner." *Id*. "Jury 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." *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007). Additionally, "[j]ury instructions must include all elements of the offenses charged against the defendant and any material issues, defenses, or theories that are supported by the evidence." *Id*.

In the present case, the trial court read to the jury the Michigan model criminal jury instructions for second-degree child abuse. See M Crim JI 17.20a and M Crim JI 17.20b. In doing so, the trial court combined two alternative means of conviction into one complete instruction, deleting duplicative portions and instructing the jury that it could convict the defendant under either theory.

Defendant's argument that by deviating from the model criminal jury instructions, the court combined two distinct offenses into one is without merit. First, the trial court was under no

obligation to follow the model jury instructions verbatim. *People v Stephan*, 241 Mich App 482, 496; 616 NW2d 188 (2000). Second, as stated previously, the alternative means of convicting a defendant of second-degree child abuse do not constitute separate and distinct offenses. See *Rao*, unpub op at 8. Additionally, the trial court properly recited all the elements of second-degree child abuse to the jury and sufficiently presented all triable issues to the jury, including the prosecution's two theories of conviction under the statute. See MCL 750.136(3)(b) and (c). Therefore, the trial court committed no error requiring reversal because it fully instructed the jury of the applicable law and theories of second-degree child abuse in an understandable manner that was not confusing or duplicative. See *Mills*, 450 Mich at 80.

V. EFFECTIVE ASSISTANCE OF COUNSEL

Lastly, defendant argues that his trial counsel was ineffective in two ways: (1) for failing to object to the trial court's failure to provide a specific unanimity instruction, and (2) for failing to object to the trial court's second-degree child abuse instruction. We disagree.

A defendant's ineffective-assistance-of-counsel claim is a mixed question of fact and constitutional law. *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012). "[T]his Court reviews for clear error the trial court's findings of fact and reviews de novo questions of constitutional law." *Id*.

Criminal defendants have a constitutional right to the effective assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20. To establish that defense counsel was ineffective, defendant must demonstrate that "(1) counsel's performance was below an objective standard of reasonableness under prevailing professional norms and (2) there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *People v Lockett*, 295 Mich App 165, 187; 814 NW2d 295 (2012). "In examining whether defense counsel's performance fell below an objective standard of reasonableness, a defendant must overcome the strong presumption that counsel's performance was born from a sound trial strategy." *Trakhtenberg*, 493 Mich at 52.

Regarding the unanimity instruction, any objection would have been futile. See *Chelmicki*, 305 Mich App at 69. As discussed, defendant has not established that a specific unanimity instruction was necessary because the prosecution did not rely on materially distinct acts to support the alternative theories of second-degree child abuse. Because no specific unanimity instruction was required, "it necessarily follows that defendant's claim of ineffective assistance of counsel must fail because defense counsel is not required to make a meritless request or objection." *Id*. Therefore, defendant has failed to show that his trial counsel performed deficiently or that he was prejudiced in this regard.

Defendant's argument regarding the second-degree child abuse instructions also fails for the same reason. As discussed earlier, defendant has not established any deficiency in the jury instruction. Defense counsel's failure to raise a meritless objection does not constitute deficient performance. *Id*. Accordingly, defense counsel's representation did not fall below the objective standard of reasonableness and defendant's ineffective-assistance-of-counsel claim must fail.

Affirmed.

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