

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISAIAS AURELIO PORRAS,

Defendant-Appellant.

UNPUBLISHED

October 15, 2026

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No. 374913

Oakland Circuit Court

LC No. 2022-281600-FC

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of first-degree felony murder, MCL 750.316(1)(b), and first-degree child abuse, MCL 750.136b(2). Defendant was sentenced to life imprisonment for his murder conviction and 15 to 70 years’ imprisonment for his child abuse conviction. On appeal, defendant argues that his constitutional right against self-incrimination was violated when his inculpatory statements were obtained in violation of his right to counsel¹ and admitted at trial. See US Const, Am V. Relatedly, defendant argues that his trial counsel was unconstitutionally ineffective for failing to challenge and suppress these statements. We affirm.

I. FACTS

Defendant’s 14-month-old son, Isaias, was found dead in a motel room occupied by defendant and Isaias’s mother Amanda Jajou, in Farmington Hills. As a result, defendant and Jajou were placed under arrest and transported to the Farmington Hills Police Department. While Jajou was booked into jail, defendant remained in the backseat of a patrol vehicle. As Officer Nicklas Ross entered the patrol vehicle to monitor defendant, he heard defendant speaking. According to Officer Ross’s trial testimony, “After a couple seconds of him speaking I advised him that I did not want to talk to him and that he was more than welcome to say whatever he wanted to, but I would not respond and I would not engage him in any way.” Defendant continued speaking, stating that he made a bad choice and disciplined Isaias like his mother used to discipline

¹ *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

him. Defendant stated he had to discipline his son so he would not be a problem later in life, and while he missed Isaias, he believed he was in a happier place.

After defendant was booked into jail, he was interviewed by Detectives Robert Gerak and Brian Vogel. Detective Gerak read defendant his constitutional rights, which defendant stated he understood. At that point, the following discussion occurred:

Detective Gerak: Do you want to talk to a lawyer before answering any questions?

Defendant: Uh, that'd be a smart idea, yes.

Detective Gerak: So, I mean this last question then is redundant, uh, will you waive the right to remain silent and answer any questions we may ask you?

Defendant: Will you read that again? Will you . . . ?

Detective Gerak: Will you waive the right to remain silent and answer any questions we may ask you?

Detective Vogel: Waive is a fancy way of saying give up.

Defendant: The right to remain silent?

Detective Vogel: Yeah.

Detective Gerak: What it's saying is if you say yes, then you'll talk to us, if you say no, then we don't talk.

Defendant: Oh. So I can talk to you guys too though? That makes sense. And then the judge—

Detective Gerak: Well if you wanna talk to a lawyer, then we're not talking, if you wanna talk to a lawyer.

Defendant: Well I can talk to you guys, that's fine.

At that point, Detective Gerak informed defendant that he was not asking him to waive his rights, and the three engaged in a discussion about what it meant for defendant to waive his rights. During this time, defendant continued to ask questions about his case, and each time the detectives explained that they could not discuss the case with him if he was requesting a lawyer. Defendant emphasized that he wanted to speak with the detectives, and the detectives told him that it was his decision and that they did not want him to have "any misconceptions" about speaking with them. After about 10 minutes of defendant vacillating between thinking it was smart to speak with a lawyer but also wanting to speak with detectives, defendant decided to waive his right to counsel and speak with the detectives.

After the first interview concluded, an autopsy was conducted on Isaias. The primary cause of death was determined to be a head injury that caused a subdural hemorrhage, and the manner of death was classified as homicide. Detective Gerak received photographs from the autopsy, which showed that Isaias's entire body was covered in bruises. The detectives decided to interview defendant again, reminded him of his constitutional rights, to which defendant agreed he was still waiving. At this second interview, when Detective Gerak showed him the autopsy photographs, defendant admitted to causing the bruising and explained that he used his hands, a plastic hanger, and a telephone-charging cord to do so. On Detective Gerak's instruction, defendant wrote down how he inflicted the bruises shown in each photograph, signing and dating them at the bottom.

At trial, Officer Ross and Detective Gerak testified about the statements defendant made, and defense counsel stipulated to admitting and playing redacted videos from defendant's two interviews. Admitted into evidence were the autopsy photographs on which defendant identified Isaias's injuries, photographs of bruising on defendant's hands, and DNA evidence which showed the possible presence of blood on a charging cord, two hangers, and a nightstand from the motel room. Defendant, Jajou and their son were all likely contributors to the DNA profile found on the charging cord and the nightstand. At the trial's conclusion, defendant was convicted and sentenced as described.

II. CONSTITUTIONAL VIOLATIONS RELATED TO DEFENDANT'S STATEMENTS TO POLICE

Defendant's principal arguments are premised upon his belief that his statements to police, as well as the videos depicting the two interviews with police, were taken in violation of his right against self-incrimination and were therefore inadmissible. More specifically, defendant argues that he was deprived of his constitutional right against self-incrimination when the prosecution used at trial the incriminating statements he made to Officer Ross, while his constitutional right to due process was violated when Detectives Gerak and Vogel failed to immediately cease interrogating him and scrupulously honor his demand for counsel. We disagree with both arguments.²

² In his brief defendant makes reference to a violation of his "*Miranda* rights," and that police failed to adhere to the invocation of his right to counsel after receiving his "*Miranda* warnings." There is an important distinction between the two phrases, with the latter being more accurate. The *Miranda* Court did not create constitutional rights for those accused of crimes. Instead, it created prophylactic rules to ensure police do not tread on rights contained in the constitution itself. See *Vega v Tekoh*, 597 US 134, 148-149; 142 S Ct 2095; 213 L Ed 2d 479 (2022). The rules laid out in *Miranda* are constitutionally based, but their violation does not amount to a violation of the Fifth Amendment. *Id.* at 148-150. See also *Duckworth v Eagan*, 492 US 195, 203; 109 S Ct 2875; 106 L Ed 2d 166 (1989) quoting *Michigan v Tucker*, 417 US 433, 444; 94 S Ct 2357; 41 L Ed 2d 182 (1974) ("*Miranda* warnings are 'not themselves rights protected by the Constitution but [are] instead measures to insure that the right against compulsory self-incrimination [is] protected.' ") (alterations in original).

A. STANDARD OF REVIEW

This Court generally reviews constitutional issues de novo. *People v Wiley*, 324 Mich App 130, 150; 919 NW2d 802 (2018). However, defendant failed to raise these arguments in the trial court, so we review these unpreserved, constitutional arguments for plain error affecting substantial rights. *People v Anderson*, 341 Mich App 272, 279; 989 NW2d 832 (2022).

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. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. [*People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999) (citation omitted).]

“If defendant satisfies those three requirements, we must make a fourth determination: whether the plain error seriously affected the fairness, integrity, or public reputation of the judicial proceedings independent of defendant’s innocence.” *Anderson*, 341 Mich App at 280.

B. ANALYSIS

A criminal defendant has a constitutional right against self-incrimination. See US Const, Am V; Const 1963, art 1, § 17. Accordingly, “[a] criminal defendant enjoys safeguards against involuntary self-incrimination during custodial interrogations.” *People v Henry (After Remand)*, 305 Mich App 127, 145; 854 NW2d 114 (2014). In *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966), the Supreme Court “determined that the Fifth and Fourteenth Amendments’ prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney.” *Edwards v Arizona*, 451 US 477, 481-482; 101 S Ct 1880; 68 L Ed 2d 378 (1981). See US Const, Am V and XIV. If, after a defendant is provided his *Miranda* warnings, he then requests an attorney, “ ‘the interrogation must cease until an attorney is present.’ ” *Edwards*, 451 US at 482, quoting *Miranda*, 384 US at 474. A defendant’s “right to cut off questioning” must be “scrupulously honored” by interrogating officers. *Michigan v Mosley*, 423 US 96, 104; 96 S Ct 321; 46 L Ed 2d 313 (1975). “Statements made by a defendant to the police during a custodial interrogation are not admissible unless the defendant voluntarily, knowingly, and intelligently waives the constitutional right against self-incrimination.” *People v Barritt*, 325 Mich App 556, 561-562; 926 NW2d 811 (2018).

1. STATEMENTS TO OFFICER ROSS

Defendant first challenges statements he made to Officer Ross that were admitted at trial because they were made before defendant was read the *Miranda* warnings. However, *Miranda* warnings are not required unless a defendant is subject to custodial interrogation, *People v Steele*, 292 Mich App 308, 316; 806 NW2d 753 (2011), and defendant was not being interrogated when he spoke in the patrol car. “Generally, a custodial interrogation is a questioning initiated by law enforcement officers after the accused has been taken into custody or otherwise deprived of his or her freedom of action in any significant way.” *Id.* See *Miranda*, 384 US at 444. There is no doubt that defendant was in custody when he was in the back of the patrol vehicle outside the police

station, awaiting booking after his arrest. But contrary to defendant's argument, he was not subject to interrogation by Officer Ross.

"Interrogation refers to express questioning and to any words or actions on the part of police that the police should know are reasonably likely to elicit an incriminating response from the subject." *People v Raper*, 222 Mich App 475, 479; 563 NW2d 709 (1997). Here, Officer Ross testified that defendant was already speaking when he entered the patrol vehicle, and after a couple of seconds of defendant speaking, he told defendant that he did not want to talk to him, and while he was "more than welcome to say whatever he wanted to," Officer Ross would not respond or engage with him. After Officer Ross's statement, defendant continued to talk about how he disciplined Isaias. According to defendant, Officer Ross's "direct statement" constituted interrogation because any police officer would know it was reasonably likely to elicit an incriminating response.

Initially, defendant has abandoned this argument because at no point does he explain *why* Officer Ross's statement would be reasonably likely to elicit an incriminating response. Defendant's brief cites the relevant law, summarizes the testimony, and then states that when applying the law to the facts of this case, this Court must find he was subject to interrogation in violation of *Miranda*. Because defendant's appellate argument presupposes the conclusion without offering any analysis, he has effectively abandoned this issue. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority."); *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004) ("The failure to brief the merits of an allegation of error constitutes an abandonment of the issue.").

Nonetheless, Officer Ross's single statement did not constitute an interrogation under *Miranda*. The record shows that after Officer Ross entered the vehicle he made no attempt to question or interrogate defendant. To the contrary, Officer Ross explicitly told defendant that he did not want to speak with him and that he would not be responding to anything he said. Nothing in the record indicates Officer Ross was attempting to elicit information from defendant or that he should reasonably have known his statement would result in defendant incriminating himself. In fact Officer Ross's statement had no effect on defendant, as he continued speaking after the statement. Further, in his first interview with detectives, defendant made statements about attempting to talk to the officers in the patrol vehicle, but that the officers either did not respond to him or told him to ask the detectives. As such, the record indicates defendant was repeatedly attempting to initiate conversations with the officers, to the point Officer Ross explicitly told him they would not be speaking. Because defendant volunteered his statements to Officer Ross, no *Miranda* violation occurred. See *Raper*, 222 Mich App at 479. And because defendant's statements to Officer Ross were not obtained in violation of *Miranda*, his "fruit of the poisonous tree" argument necessarily fails. See *id.* at 481.

2. STATEMENTS TO DETECTIVES

Defendant also argues that his constitutional right to due process was violated when detectives failed to immediately stop custodial interrogation and scrupulously honor his demand for counsel. As a result, defendant argues, the videos of his two interviews with detectives should

not have been admitted at trial. This argument is waived because defendant stipulated to the admission of the videos at trial. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (Waiver is the “intentional relinquishment or abandonment of a known right.”) (quotation marks and citation omitted). “One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error.” *Id.* (quotation marks and citation omitted). “When defense counsel clearly expresses satisfaction with a trial court’s decision, counsel’s action will be deemed to constitute a waiver.” *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011).

At the beginning of the third day of defendant’s trial, the parties stipulated to the admission of two videos from defendant’s police interviews. The parties agreed to make certain changes and redactions to the videos, with defense counsel indicating the redacted portions would be harmful to defendant. The parties agreed not to admit a third video that defense counsel did not want played. Before each of the videos were played for the jury, the trial court again asked defense counsel if he objected. Defense counsel stated that the first video was stipulated to, and that he had no objection to the second. Counsel may waive a defendant’s rights with respect to the admission of evidence and may decide “what agreements to conclude regarding the admission of evidence.” *Carter*, 462 Mich at 217-219 (quotation marks and citation omitted). Because defense counsel stipulated to the admission of the videos, this “waiver has extinguished any error.” *Id.* at 215 (quotation marks and citation omitted). See *People v Eisen*, 296 Mich App 326, 328-329; 820 NW2d 229 (2012) (“A stipulation constitutes a waiver of any alleged error, so there is no error for us to review.”), and *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998) (“A defendant may not waive objection to an issue before the trial court and then raise it as an error before this Court. To hold otherwise would allow defendant to harbor error as an appellate parachute.”) (citation omitted).

Even if this argument was not waived, defendant has not established a meritorious argument. According to defendant, Detective Gerak acknowledged on cross-examination that defendant repeatedly asked for a lawyer, but despite this request, Detective Gerak continued to make “remarks” in an effort to get him to reconsider his decision and keep talking. However, in doing so, defendant does not cite to either of his interviews, instead basing his argument entirely on a portion of Detective Gerak’s cross-examination testimony. As the appellant, defendant had the burden of identifying a factual basis in the lower court record for his appellate arguments. *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). The record he cites from Detective Gerak’s testimony does not support the proposition he argues.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Relatedly, defendant argues that his constitutional rights (1) against self-incrimination and (2) to effective assistance of counsel were violated by trial counsel’s failure to move to suppress both sets of incriminating statements.

A. STANDARD OF REVIEW

An ineffective assistance of counsel argument “presents a mixed question of fact and constitutional law.” *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). “The trial court must first find the facts and then decide whether those facts constitute a violation of the

defendant's constitutional right to effective assistance of counsel." *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). "A trial court's findings of fact, if any, are reviewed for clear error, and this Court reviews the ultimate constitutional issue arising from an ineffective assistance of counsel claim de novo." *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008). Defendant preserved these arguments by moving in this Court to remand to the trial court for a *Ginther*³ hearing; however, because no evidentiary hearing was held, this Court's review is limited to mistakes apparent on the record. See *People v Lopez*, 305 Mich App 686, 693; 854 NW2d 205 (2014).

B. ANALYSIS

The United States and Michigan Constitutions entitle a criminal defendant to not only the assistance of counsel, US Const, AM VI; Const 1963, art 1, § 20, but the effective assistance of counsel. *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984). "Effective assistance is strongly presumed, and the defendant bears the heavy burden of proving otherwise." *People v Haynes*, 338 Mich App 392, 429; 980 NW2d 66 (2021) (quotation marks and citations omitted). "In order to obtain a new trial because of ineffective assistance of counsel, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that [the] outcome would have been different." *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023) (quotation marks and citation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (quotation marks and citations omitted).

"The defendant has the burden of establishing the factual predicate of his ineffective assistance claim." *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014). To show trial counsel's performance failed to meet an objective standard of reasonableness, "a defendant must overcome the strong presumption that counsel's performance was born from a sound trial strategy." *Id.* at 585 (quotation marks and citation omitted). "This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight." *Petri*, 279 Mich App at 411 (quotation marks and citation omitted). "If this Court can conceive of a legitimate strategic reason for trial counsel's act or omission, this Court cannot conclude that the act or omission fell below an objective standard of reasonableness." *Haynes*, 338 Mich App at 429-430. However, the strategy "in fact must be sound, and counsel's decisions as to it objectively reasonable; a court cannot insulate the review of counsel's performance by calling it trial strategy." *Douglas*, 496 Mich at 585 (quotation marks and citation omitted).

1. STATEMENTS TO OFFICER ROSS

For the reasons already discussed, defendant's first ineffective-assistance argument fails. Because defendant was not subject to custodial interrogation when he made the statements to Officer Ross, no *Miranda* violation occurred. Any motion to suppress these statements would

³ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

have been futile, and trial counsel is not ineffective for failing to file a futile motion. See *People v Fike*, 228 Mich App 178, 182-183; 577 NW2d 903 (1998).

2. STATEMENTS TO DETECTIVES

With respect to defendant's statements to detectives, defendant "has abandoned this issue by failing to provide any analysis in the text of his brief on appeal." *People v Payne*, 285 Mich App 181, 188; 774 NW2d 714 (2009). While defendant's statement of questions presented states an ineffective-assistance argument, he does not otherwise mention or present any argument to support it in his brief. Because defendant failed to present a substantive argument, he has abandoned it. See *McPherson*, 263 Mich App at 136 ("The failure to brief the merits of an allegation of error constitutes an abandonment of the issue.").

In any event, trial counsel's decision to stipulate to admitting the videos of defendant's interviews was not objectively unreasonable under the circumstances. Decisions regarding what evidence to present are presumed to be a matter of trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). Here, the admission of the videos enabled trial counsel to argue against the elements of defendant's charged offenses without defendant testifying. Defendant was convicted of felony-murder, MCL 750.316(1)(b), and first-degree child abuse, MCL 750.136b(2). The elements of felony-murder are:

(1) the killing of a human being; (2) with the intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result; (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in [MCL 750.316(1)(b)]. [*People v Maynor*, 256 Mich App 238, 243; 662 NW2d 468 (2003) (quotation marks and citation omitted).]

First-degree child abuse is one of the enumerated felonies. *Id.* at 244. See MCL 750.316(1)(b). "A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child." *Maynor*, 256 Mich App at 240 (quotation marks and citation omitted). See MCL 750.136b(2). The "knowingly or intentionally" element requires the prosecution to prove the defendant "intended to cause serious physical harm or knew that serious physical harm would be caused by [his or] her act." *People v McFarlane*, 325 Mich App 507, 513-514; 926 NW2d 339 (2018) (quotation marks and citation omitted).

It is clear from the record that trial counsel's strategy was to argue that defendant did not knowingly or intentionally cause his son harm. In his closing statement, trial counsel reiterated defendant's interview statements that Jajou was the primary disciplinarian, but because he was concerned about Isaias's behavior, defendant recently took over this role. Trial counsel noted defendant's abusive childhood and how those patterns influenced how he disciplined his son, and emphasized the fact that defendant never mentioned to detectives hitting Isaias hard enough to cause his brain injury, despite admitting to causing his other injuries, and highlighted that those injuries were not related to the cause of death. Trial counsel then told the jury that they needed to determine whether defendant intended to murder his son. The videos displayed defendant's account of his intentions without requiring him to testify. In this context, trial counsel's stipulation

was not objectively unreasonable because it enabled him to present evidence of defendant's mindset without subjecting defendant to cross-examination.

Further, this trial strategy was not objectively unreasonable considering the evidence presented at trial. Jajou's sister testified that she asked officers to conduct a welfare check on Isaias after Jajou sent a text message stating Isaias was suffering from three head injuries. When police officers arrived at the motel, defendant and Jajou initially refused contact with officers and then lied about Isaias's whereabouts. The child's body was later found hidden underneath blankets in the motel room where he and his parents were living, covered in bruises from head to toe. After defendant and Jajou were arrested and transported to the police station, defendant made incriminating statements to Officer Ross about how he made a bad choice in how he disciplined Isaias. Photographs of the bruising on defendant's hands were admitted at trial, along with DNA evidence that showed the possible presence of blood on a charging cord, two hangers, and the nightstand from the room. Defendant, Isaias, and Jajou were all likely contributors to the DNA on the charging cord and the nightstand. Because a jury could have reasonably convicted defendant on this evidence alone, it was not unreasonable for trial counsel to stipulate to the admission of the videos in an attempt to combat at least one of the elements of the offenses. Additionally, because of this evidence, there is not a reasonable probability that without these videos, the outcome of defendant's trial would have been different. See *Yeager*, 511 Mich at 488.

Affirmed.

/s/ Christopher M. Murray

/s/ Mark T. Boonstra

/s/ Michael J. Riordan