

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIP PAUL MACK,

Defendant-Appellant.

UNPUBLISHED

October 19, 2026

11:23 AM

No. 374208

Isabella Circuit Court

LC No. 2024-000942-FH

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of operating a motor vehicle without insurance, MCL 500.3102, and operating an unregistered vehicle, MCL 257.215, for which the trial court sentenced him to seven days’ incarceration, with credit for three days served and the remaining four days suspended pending completion of probation. On appeal, defendant raises claims of ineffective assistance of counsel, prosecutorial error, and instructional error. We affirm.

I. BACKGROUND

In July 2024, Michigan State Police troopers observed defendant in the driver’s seat of a pickup truck on the side of a road in Isabella County. The troopers pulled behind the truck to see whether defendant needed assistance and observed that the truck did not have a license plate. Defendant reported that he had been driving the truck when it overheated. He acknowledged that he did not have insurance and did not provide his driver’s license or registration when asked. The troopers ran defendant’s name and the vehicle’s information through the Law Enforcement Information Network (LEIN) and found that defendant had a valid driver’s license from another state, but the truck was not insured and was last registered under someone else’s name, the most recent registration having expired in 2019. Defendant was subsequently charged with operating without insurance and operating an unregistered vehicle, and the case proceeded to trial.

During voir dire, defense counsel asked members of the venire whether they would “put the same value and credibility on the law enforcement [officers’] testimony” as they would the lay witness testimony. Juror Number 87 answered that he would “kind of consider [an officer] to be maybe more of an expert witness on something that just an average person might not know,”

particularly on vehicle-related matters. The trial court clarified that the “[p]olice officers are not expert witnesses” in this case, and Juror Number 87 affirmed that he “would value . . . their observations the same as anyone else’s” and that he could listen to the testimony and reach a fair and impartial decision. Neither side exercised any juror challenges, either peremptorily or for cause, and Juror Number 87 was seated on the jury that was ultimately empaneled.

Before evidence was presented, the trial court gave a general instruction that a crime consists of elements that the prosecution must prove beyond a reasonable doubt, though the court did not recite the elements of the charged offenses in those preliminary instructions. The prosecutor then began his opening statement by asking the jurors to imagine that they had been “T-boned” at an intersection by a driver who ran a red light, breaking the jurors’ arms and totaling their cars, and to imagine that the other driver either fled without a license plate or turned out to have no insurance—leaving them, in the prosecutor’s words, “screwed” either way. The prosecutor told the jury that, although this case involved no accident and no victim, the hypothetical illustrated why registration and insurance requirements exist. He then identified the elements the prosecution intended to prove: that defendant owned or operated the truck, that he drove it on a public roadway, that the truck lacked a license plate, and that it was uninsured.

The two responding troopers were the only witnesses called to testify, and footage from one of the troopers’ body cameras was admitted into evidence. After the close of proofs, the trial court instructed the jury on the elements of the charged offenses, among other things. The jury ultimately convicted defendant of both charges, and the trial court later sentenced him as described above. This appeal followed.

II. DISCUSSION

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant contends that defense counsel provided ineffective assistance when he failed to challenge Juror Number 87 and failed to effectively voir dire the jurors regarding their relationships with and biases regarding police officers.

“Whether a defendant has received ineffective assistance of counsel is a mixed question of fact and constitutional law.” *People v Yeager*, 511 Mich 478, 487; 999 NW2d 490 (2023). “A judge must first find the facts, then must decide whether those facts establish a violation of the defendant’s constitutional right to the effective assistance of counsel.” *Id.* (quotation marks and citation omitted). We review the trial court’s factual findings for clear error and questions of law de novo. *Id.* “When no *Ginther*¹ hearing was held, this Court’s review is limited to mistakes apparent from the record.” *People v Miller*, 326 Mich App 719, 726; 929 NW2d 821 (2019).

Both the Michigan and United States constitutions guarantee criminal defendants the right to the assistance of counsel. Const 1963, art 1, § 20; US Const, Am VI. “This right guarantees the effective assistance of counsel.” *Yeager*, 511 Mich at 488, citing *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984). A defendant seeking relief on the basis of

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

ineffective assistance “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 Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 US at 694.

To establish deficient performance, a defendant must demonstrate that “counsel made errors so serious that counsel was not performing as the counsel guaranteed by the Sixth Amendment.” *People v Cooper*, 309 Mich App 74, 80; 867 NW2d 452 (2015) (quotation marks and citation omitted). But “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 US at 691. Counsel is presumed effective, and a defendant alleging ineffective assistance “must overcome the strong presumption that counsel’s challenged actions were sound trial strategy.” *Cooper*, 309 Mich App at 80. We do not “second-guess counsel on matters of trial strategy” or “assess counsel’s competence with the benefit of hindsight.” *People v Traver (On Remand)*, 328 Mich App 418, 422-423; 937 NW2d 398 (2019) (quotation marks and citation omitted).

During voir dire, “potential jurors are questioned in an effort to uncover any bias they may have that could prevent them from fairly deciding the case. It is the only mechanism, and the only safeguard a defendant has, for ensuring the right to an impartial jury.” *People v Tyburski*, 445 Mich 606, 618; 518 NW2d 441 (1994). “Part of the guarantee of a defendant’s right to an impartial jury is an adequate voir dire to identify unqualified jurors.” *Morgan v Illinois*, 504 US 719, 729; 112 S Ct 2222; 119 L Ed 2d 492 (1992). But a prospective juror who expresses a view unfavorable to a party, yet affirms that he or she can render a fair and impartial verdict, is not subject to challenge for cause. *People v Roupe*, 150 Mich App 469, 474; 389 NW2d 449 (1986). This Court “has been disinclined to find ineffective assistance of counsel on the basis of an attorney’s failure to challenge a juror,” because the reviewing court, unlike trial counsel, cannot observe a prospective juror’s facial expressions, body language, and manner of answering questions, which are “[p]erhaps the most important criteria in selecting a jury.” *People v Unger*, 278 Mich App 210, 257-258; 749 NW2d 272 (2008).

On appeal, defendant asserts that Juror Number 87 “indicated that [he] would view an officer as an expert in the matter at hand,” and trial counsel should have challenged the juror for cause or peremptorily. The record does not support that claim. Juror Number 87’s initial comment—that officers might have more specialized knowledge of vehicle-related matters than a layperson—was addressed directly by the trial court, which clarified that officers are not expert witnesses. Asked whether the juror could weigh an officer’s testimony the same as that of any other witness, the juror affirmed that he would. As in *Unger*, the potentially troubling response from Juror Number 87 was not ignored but was instead addressed by counsel or the court, resulting in the juror’s affirmation of his ability to be fair and impartial. See *id.* Additionally, trial counsel could reasonably have viewed the juror’s initial candor about law enforcement’s greater exposure to vehicle-related evidence as a potential asset rather than a liability, particularly where the defense theory centered on the adequacy of the officers’ investigation. Because the juror affirmed that he would give the officer’s testimony “no greater weight than any other witness” and could be fair and impartial, the record does not support that counsel’s failure to challenge Juror Number 87 was

objectively unreasonable or that there is a reasonable probability that the outcome would have been different had counsel challenged the juror.

Nor did counsel provide ineffective assistance when he opted not to individually question the remaining jurors regarding their relationships with and biases regarding police officers. After the trial court's clarifying exchange with Juror Number 87, counsel asked the members of the venire to raise their hands if they could not keep an open mind and listen to all of the testimony before deciding the case. Having observed the jurors' nonverbal responses to that inquiry—responses unavailable to us on this record—counsel was better positioned than this Court to judge whether further individual questioning was necessary. Defendant offers no basis from which we can conclude that further inquiry would have “uncover[ed] any bias . . . that could prevent [the prospective jurors] from fairly deciding the case.” *Tyburnski*, 445 Mich at 618. On this record, defendant has not overcome the presumption that counsel's approach to jury selection reflected sound trial strategy, nor has he demonstrated a reasonable probability of a different outcome had counsel further questioned the prospective jurors.

B. PROSECUTORIAL ERROR

Defendant next submits that the prosecutor committed error² in his opening statement because his discussion of hypothetical automobile accidents was an improper appeal to the jurors' sense of civic duty.

To preserve a claim of prosecutorial error, a defendant must contemporaneously object and request a curative instruction. *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). Defendant did neither here, so we review this unpreserved claim for plain error affecting his substantial rights. *People v Isrow*, 339 Mich App 522, 529; 984 NW2d 528 (2021). “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,” which occurs when “the error affected the outcome of the lower court proceedings.” *Id.* (quotation marks and citation omitted). Even if those requirements are met, reversal is warranted only if the error “resulted in the conviction of an actually innocent defendant” or “seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence.” *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999) (cleaned up).

Prosecutors “are not the attorneys of the complaining party, but represent the people, who are as much interested to protect the innocent as in the conviction of the guilty.” *People v Evans*, 72 Mich 367, 383; 40 NW 473 (1888). It is thus the role of the prosecutor to seek justice, not merely to procure convictions. See *People v Jones*, 468 Mich 345, 354; 662 NW2d 376 (2003); *People v Lane*, 308 Mich App 38, 62; 862 NW2d 446 (2014). Claims that improper prosecutorial

² Defendant characterizes this claim as “prosecutorial misconduct,” but the more appropriate characterization is “prosecutorial error.” “Although the term ‘prosecutorial misconduct’ has become a term of art often used to describe any error committed by the prosecution, claims of inadvertent error by the prosecution are better and more fairly presented as claims of ‘prosecutorial error,’ with only the most extreme cases rising to the level of ‘prosecutorial misconduct.’ ” *People v Jackson (On Reconsideration)*, 313 Mich App 409, 425 n 4; 884 NW2d 297 (2015) (cleaned up).

remarks infected a defendant's trial are decided on a case-by-case basis, and the reviewing court must evaluate the challenged remarks in context. *Lane*, 308 Mich App at 62-63. Prosecutorial comments must be read as a whole and evaluated in the light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Brown*, 279 Mich App 116, 135-136; 755 NW2d 664 (2008).

"Opening statement is the appropriate time to state the facts that will be proved at trial." *People v Ericksen*, 288 Mich App 192, 200; 793 NW2d 120 (2010). Thus, during opening statement, a prosecutor may tell the jury the facts he or she reasonably expects the evidence to show. *Id.* A prosecutor may not, however, inject issues broader than the defendant's guilt or innocence by appealing to the jury's fears and prejudices or by urging the jurors to convict the defendant as part of their civic duty. *People v Bahoda*, 448 Mich 261, 282-284; 531 NW2d 659 (1995).

Defendant contends that the prosecutor improperly appealed to the jurors' sense of civic duty when he told the jury during opening statement:

I want to talk through a scenario with you guys. We're driving down the road, it's on Mission, the light for you—it's green. Going through the intersection, all of a sudden, someone blows through the red light. They hit you. Your car has been T-boned. Your arm is broken and your car is totaled. And then, you see this person pulling away.

You look because you want to see who that person was. You want to be able to tell the police who did this to you, but there is no license plate, so you can't. You're screwed.

I'm going to walk through another scenario. We're driving down the road again. This time you're on Pickard. You're over on Pickard Road and the same thing happens. You're going through a green light, someone T-bones you. This time their [sic] a lot nicer. They come over to your car and they're asking if you're okay and you're feeling not very okay. I mean, your car just got T-boned, your car is totaled, your arm is broken. But they are being really nice, but then they tell ya [sic] they . . . don't have insurance. Once again, you're screwed.

But this case is even simpler than that. This case there was no accident. But that's why we have insurance and that's why we have registration. That's why you have to have that license plate on the back of your vehicle because in the case that you do . . . something wrong or in the case that someone does something wrong to you on the roads, we need to be able to identify that person. And ideally, if you have medical bills, or if you're injured, or your car is totaled, you should be able to get money from them through their insurance.

The apparent purpose of the prosecutor's statements was to illustrate why vehicle registration and automobile insurance are important and why the charges should be taken seriously even though there was no accident or victim in the instant case. The hypothetical scenarios posed by the prosecutor had nothing to do with the facts the evidence would show in this case, as the

prosecutor himself acknowledged. The clear effect, if not the intent, of the hypotheticals was to arouse the jurors' fears and to enlist their sense of civic duty to enforce the insurance and registration laws, quite apart from the evidence of defendant's own conduct. That was improper and is a textbook example of prosecutorial error. See *Bahoda*, 448 Mich at 282-283; *People v Cooper*, 236 Mich App 643, 651; 601 NW2d 409 (1999).

Because defendant did not object below, however, relief is available only if the error was outcome-determinative, *Isrow*, 339 Mich App at 529, or so prejudicial that it could not have been cured with an appropriate instruction, *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). We conclude that it was not. The trial court repeatedly instructed the jury that the attorneys' statements were not evidence and that the jurors must render a verdict based on the evidence and the law, not on any sympathies or prejudices, and jurors are presumed to follow their instructions. See *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Additionally, the prosecutor emphasized in his opening statement that there was no accident or victim in this case. More fundamentally, the evidence of defendant's guilt was overwhelming and essentially undisputed: defendant admitted to driving a truck with no license plate, no proof of insurance, and no registration in his name, and LEIN confirmed that the truck was both uninsured and unregistered. Given that record, there is no reasonable probability that the prosecutor's improper remarks affected the verdict, and the error does not warrant a new trial.

C. JURY INSTRUCTIONS

Defendant finally contends that the trial court committed error when it failed to instruct the jury on the elements of the charged offenses in the preliminary instructions. We conclude the issue is waived.

To preserve a claim of instructional error, a defendant must raise the challenge in the trial court. *People v Czuprynski*, 325 Mich App 449, 466; 926 NW2d 282 (2018). In this case, however, defendant did not merely fail to preserve his instructional challenge by raising it in the trial court; he affirmatively waived the claim. "[W]aiver is the intentional relinquishment or abandonment of a known right." *Carines*, 460 Mich at 762 n 7 (quotation marks and citation omitted). A defendant who expressly approves the jury instructions may not later seek appellate review of those instructions, "for his waiver has extinguished any error." *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (quotation marks and citation omitted).

After the trial court read the preliminary instructions to the jury, it asked whether counsel had any objections to the instructions as read, and defense counsel stated that she had "[n]o objection." That affirmative approval of the instructions waived the claim of instructional error defendant now raises on appeal. See *id.* at 504-505.³

³ To the extent that defendant's statement of this issue additionally raises a claim of error based on the prosecution's recitation of the elements during its opening statement, he presents no analysis or authority in support of that claim and he has therefore abandoned it. See *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001) (recognizing that an appellant may not simply

Affirmed.

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock

“announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate his arguments, and then search for authority either to sustain or reject his position”) (citation omitted).