If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v DOUGLAS MICHAEL LAMING, Defendant-Appellant.	UNPUBLISHED November 02, 2026 1:19 PM No. 373809 St. Clair Circuit Court LC No. 24-000086-FC

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

PER CURIAM.

Defendant Douglas Michael Laming appeals as of right his 2024 conviction for first-degree murder under the alternate theories of premeditation and felony murder, MCL 750.316(1)(a) and (b). He was sentenced as a second-offense habitual offender, MCL 769.10, to life in prison without the possibility of parole.[1] On appeal, defendant argues that the trial proceedings were erroneous in several respects. We disagree and affirm.

I. FACTS

This is a "cold case" from 1980 in which the victim, a young woman, was abducted, sexually assaulted, and then murdered by firearm in a wooded area near Port Huron. Her body was found several hours later. Eventually, following scientific developments, two men—defendant and Anthony Harris—were linked to that crime by DNA. In January 2024, defendant was charged with open murder.

At trial, Kathy Gutierrez testified that in the early morning hours of November 2, 1980, while she was near the 10th Street Bridge in Port Huron, she observed "a young white male, a

[1] The jury separately found defendant guilty of both first-degree premeditated murder and felony murder. However, because this case only involved one murder victim, the trial court amended the judgment of sentence to reflect that defendant was convicted of one count of first-degree murder under two alternate theories.

young white female, I believe to have a gun on the woman." The man forced the woman into a "[d]ark color" pickup truck, and then the truck drove away.[2] She attempted to follow the truck and, after being unsuccessful, immediately reported the abduction to the police.

Frederick Hill testified that he dated the victim for a few years before her death. On the evening of November 1, 1980, Hill and the victim attended a "joint bachelor/bachelorette party" in Port Huron where they eventually had an argument. The two left the party together, with the victim driving and Hill as a passenger. The argument continued, and Hill exited the car in frustration at a red light near 10th Street and walked away. Shortly thereafter, Hill heard the victim shout his name, apparently because she had exited the car to follow him. Hill immediately "took off running" because "[w]e were in an argument, and I wasn't going to deal with it that night[.]" He went home on foot.

Hill explained that the police contacted him within a day after the victim's body was found to discuss the matter. He agreed to submit "semen, things of that nature" to the police and, as the relevant science evolved, eventually submitted a DNA sample to the police without protest. The following brief exchange then occurred:

> Q: During the course of this Investigation, um, you were suspect number one?
>
> A: I believe up until I passed the lie detector test, yes.

Defense counsel immediately objected and, following a brief bench conference, the trial court directed the jury to disregard the answer.[3]

At trial, the prosecution then presented several witnesses from law enforcement. First, Bruce Lindke testified that when he was a St. Clair County Sheriff's Department Detective he investigated the case in November 1980. On November 2, 1980, he responded to the scene of the victim's body, which was located near a wooded area in Clyde Township. Her shoes were on the wrong feet. He and other witnesses testified about collecting materials from the scene. Unfortunately, while it was apparent from the autopsy performed shortly after the murder that "spermatozoa" was found on the victim, it could not be used to identify any suspects at the time. However, these biological materials from the victim were nonetheless saved.

---

[2] Gutierrez could not recall at trial whether there was another man involved in the abduction. However, she agreed with the prosecution that she told the police in her 911 call that night that a second man was in the truck. The 911 call was admitted into evidence.

Another witness, Deborah Bowen, testified that while driving in the area that night, she observed a pickup truck with two occupants near 10th Street "just sitting, sitting there." She characterized this as "odd," given the location and time of night.

[3] The following day, defense counsel moved for a mistrial on the basis that Hill referenced passing a polygraph examination. The trial court denied the motion.

Catherine Maggert, a forensic scientist with the Michigan State Police, testified that when she analyzed the saved biological materials from the victim in 2023, DNA from defendant matched DNA found in the victim's "vaginal swab" and in her underwear worn on the night of her assault. In addition, DNA from Harris matched the "jean sperm fraction" pursuant to another analysis performed in 2024.

The original 1980 autopsy was performed by Dr. Clemens Kopp, who was deceased at the time of trial. Dr. Daniel Spitz, the medical examiner for St. Clair County at the time of trial, testified that he reviewed the original 1980 autopsy materials prepared by Dr. Kopp, as well as other related information for this case. Dr. Spitz opined that the cause of death for the victim was two gunshot wounds to the head. At the end of direct examination, Dr. Spitz explained that given the presence of "seminal fluid" on the victim, the fact that the victim's sweater was on backwards when her body was recovered, and other circumstances of the death, he had the following observations:

> Q: And when you look in terms of the biological evidence, the status of her clothing and things of that nature, do you have any other noteworthy observations regarding the type of homicide that that was?
>
> A: Uh, yes. In the, in the death investigation world that I function in, this is a sexually-motivated homicide.
>
> * * *
>
> Q: And besides what we've talked about thus far this morning, um, in your world as a forensic pathologist, what gets you to that level of sexually-motivated homicide?
>
> A: Well, we have a young woman who is, uh, clearly deceased as a result of gunshot wounds. We have the presence of, uh, foreign DNA. Um, so in light of the circumstances of then her being found in a sort of wooded area, um, that really leads itself to, to that conclusion that this, in fact, is a sexually-motivated homicide.

Karen Dale testified that she was married to defendant between 1979 and about 1983, and that when she married defendant in 1979, he had a "dark green" Chevy pickup. In addition, at some point before February 1981, defendant received a "dark blue Ford F-150." Dale also testified that defendant and Harris spent time together on a daily basis, partially because they worked at a gas station together.

Harris testified that he recently pleaded guilty to second-degree murder in exchange for cooperating with the prosecution against defendant. Harris explained that he has known defendant for about 50 years. Defendant currently is married to Harris's sister-in-law, and Harris was the best man at his wedding. On the night of November 1, 1980, defendant and Harris drove around the neighborhood in "a dark colored truck" driven by defendant, with defendant saying something to the effect of, "see what we can find on the road." Harris understood this comment as referring to abducing and raping a woman. Defendant and Harris circulated the area for "a while" before seeing a woman near 10th and Griswold. Harris exited the truck and forced her inside, and then the three drove away. Defendant drove them to a state game area, where he removed the victim from the

truck, pulled her down a pathway, and apparently sexually assaulted her while Harris waited in the truck. Defendant returned to the truck a few minutes later and told Harris that "it's your turn," so Harris went down the pathway and sexually assaulted the victim as well. Harris then returned to the truck where defendant was waiting, and defendant "said I'll be right back." Harris heard "a couple pops" (i.e., gunshots) a few minutes later. Defendant returned to the truck and the two men drove away, disposing of the victim's purse in a river before returning home.

Near the end of direct examination, after testifying about the events in question, Harris denied knowing that defendant intended to murder the victim. Harris also denied knowing that there was a gun in the truck during these events, at least until he heard the gunshots. Harris generally denied having "that all planned."

On cross-examination, Harris agreed with defense counsel that he had "a gigantic incentive to testify here today" in light of his "plea deal." Harris also agreed that he "pled to the reduced charge of second degree murder" and that he "might get out in as little as 10-years." Defense counsel then cross-examined Harris about the events themselves, attempting to cast doubt on Harris's earlier testimony that he did not know about any plan to abduct and rape a woman, and never saw a gun during these events. Defense counsel also extensively cross-examined Harris about the fact that he originally lied to the police after he was arrested, denying any knowledge of, or involvement in, this crime whatsoever.

Defendant testified on his own behalf, explaining that in November 1980, he owned a "school bus yellow" pickup truck. He owned a green Chevy pickup truck around that time as well, but not in November 1980, apparently because it was ruined in an accident before that month. He denied ever driving the blue pickup truck mentioned by Dale earlier at trial.

Defendant explained that on the night in question, he went to the Active Lounge and met a young woman inside who was upset with her boyfriend. The young woman explained that she had argued with her boyfriend earlier that night, "and next thing I know we ended up in my truck." The two then had sex inside his yellow pickup truck, and then the woman returned to the bar while defendant returned home. Defendant never saw her again. Defendant expressly denied abducting, sexually assaulting, and murdering the woman, contrary to Harris's testimony.

In rebuttal, the prosecution called Patricia Greuber and Deborah Coporale, the victim's sisters. Greuber testified that "I have never known [the victim] to go to a bar, period, let alone after a fight." Caporale similarly testified that she had never known the victim to go to a bar, at least by herself.

In its closing argument, the prosecution urged the jury to accept Harris's testimony, implying that a plea agreement for a minimum of 10 years in prison for a 64-year-old man was not a "sweetheart deal." During his closing argument, in response, defense counsel asserted that the jury should disbelieve Harris because "what he was looking at was a heck of a lot longer than that. The rest of his life." The trial court then held a bench conference upon the prosecution's objection, ruling that it would strike defense counsel's comment and instruct the jury to disregard it. The trial court reasoned that "[y]ou are trying to get the Jury to consider the possible penalty to your client. It has already come out that it was beneficial. Now there is nothing, there is no evidence of that whatsoever."

During its final instructions, the trial court instructed the jury that defendant was charged with first-degree murder under the alternate theories of premeditation and felony-murder with the predicate felony of criminal sexual conduct (CSC) in the third degree. The trial court further instructed that the jury could find defendant guilty of either committing the murder himself or aiding and abetting the murder. However, the trial court did not provide the standard accomplice instructions, M Crim JI 5.4 and 5.6.

As noted, the jury found defendant guilty of first-degree murder under both theories. This appeal followed.

On appeal, defendant argues that (1) he received ineffective assistance of counsel when counsel failed to object to Dr. Spitz's testimony that "this is a sexually-motivated homicide," failed to object to the aiding-and-abetting instruction, and failed to request the standard accomplice instructions; (2) the prosecution erred by eliciting Dr. Spitz's testimony at issue and by relying upon it during closing argument; (3) the felony-murder conviction was supported by insufficient evidence; (4) the trial court erred by denying his motion for a mistrial when Hill testified about successfully "pass[ing] the lie detector test" about the murder; (5) the trial court erred by precluding his argument in closing that Harris had a motive to lie because murder is punishable by life in prison; and (6) the cumulative effect of these errors denied him a fair trial.

II. INEFFECTIVE ASSISTANCE

Defendant argues that he received the ineffective assistance of counsel in three respects. We disagree.

"Whether a defense attorney performed ineffectively is a mixed question of law and fact; this Court reviews for clear error the trial court's findings of fact and reviews de novo questions of constitutional law." *People v Thigpen*, 349 Mich App 437, 446; 27 NW3d 647 (2023) (quotation marks and citation omitted). "A trial court's finding of fact is clearly erroneous when, although there is evidence to support it, we, on the whole record, are left with a definite and firm conviction that a mistake was made." *Id*. at 446-447. Because the trial court did not conduct a *Ginther*[4] hearing, our review is limited to mistakes apparent from the record. See *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003).

"Criminal defendants are entitled to the assistance of counsel under both the Michigan and United States Constitutions. Const 1963, art 1, § 20; US Const, Am VI. This right guarantees the effective assistance of counsel." *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023). "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 Taylor*, 275 Mich App 177, 186; 737 NW2d 790 (2007) (quotation marks and citation omitted). "[T]o demonstrate that counsel's performance was deficient, the defendant must show that it fell below an objective standard of reasonableness under prevailing professional norms." *Id*. (quotation marks and citation omitted). "Prejudice" means that "but for counsel's deficient

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

performance, there is a reasonable probability that that outcome would have been different." *Yeager*, 511 Mich at 488 (quotation marks and citation omitted).

Defendant first contends that defense counsel was ineffective for failure to object to Dr. Spitz's testimony that this case involved a "sexually-motivated homicide" because this testimony "usurped the jury's role and improperly cloaked the prosecution's theory of motive in scientific authority." In this regard, "proposed expert testimony must involve a matter beyond common understanding to be admissible under MRE 702." *People v McFarlane*, 325 Mich App 507, 518-519; 926 NW2d 339 (2018). Further, "the expert witness [may] not be permitted to testify about the requirements of law which apply to the particular facts in the case or to phrase his opinion in terms of a legal conclusion." *Id*. at 519 (quotation marks and citation omitted). "In the former case, the claim is that the province of the judge is invaded, while in the latter, the contention is that the province of the jury is invaded." *Id*. (quotation marks and citation omitted).

Here, it likely was appropriate for Dr. Spitz to draw upon his experience and expertise in homicide cases to opine that this case was "sexually-motivated," as he has specialized knowledge in the field of pathology beyond that of the "average juror" for the purposes of MRE 702. See *People v Kowalski*, 492 Mich 106, 121; 821 NW2d 14 (2012). Moreover, while the felony-murder charge incorporated a predicate felony of third-degree CSC, see MCL 750.520d, his testimony was not improperly phrased in terms of that statute. See *McFarlane*, 325 Mich App at 519. However, even if we were to conclude that Dr. Spitz's testimony violated MRE 702 or otherwise invaded the province of the jury, there is no reasonable probability that the outcome of trial would have been different, but for defense counsel's failure to object. See *Yeager*, 511 Mich at 488.[5] Testimony established that the victim was abducted at gunpoint and driven away in a truck with two men, and her body was found the following day in a wooded area with her shoes on the wrong feet. Additionally, subsequent testing revealed "the presence of . . . sperm cells on [her] panties," "possible presence of seminal fluid" on her jeans, and "the presence of sperm cells . . . from the cervix." The testing also revealed that this genetic material was from two male donors. Thus, the general facts of this case clearly indicate that the victim was abducted, sexually assaulted, and then murdered that night. Dr. Spitz's testimony that this case was "sexually-motivated" could not have informed the jury of anything novel or surprising. In other words, an average juror would

[5] In a supplemental filing, defendant compares this case to *People v Alexander*, ___ Mich ___; ___ NW3d ___ (2026) (Docket No. 168009). In that case, our Supreme Court held that "it was improper for an expert witness to testify that she diagnosed the child victim with 'medical torture' at a trial where defendant was accused of the crime of 'torture,' MCL 750.85," but that the error was not prejudicial under the plain-error standard of review. *Id*. at ___; slip op at 1. The alleged error in this case is distinguishable from the error in *Alexander* because, among other reasons, Dr. Spitz had "specialized knowledge" under MRE 702 and did not suggest a legal conclusion by invoking the terminology of the criminal statute at issue. See *id*. at ___; slip op at 11-14. In any event, as explained herein, we assume for the purposes of our opinion that Dr. Spitz's testimony was erroneous but conclude, as did the Court in *Alexander*, that the error was not prejudicial. This is particularly true in light of the fact that neither first-degree premeditated murder nor felony murder with a predicate felony of third-degree CSC requires a "sexual" motive, or indeed any particular motive whatsoever. See MCL 750.316(1)(a) and (b); MCL 750.520d.

undoubtedly understand that the victim was, in all reasonable likelihood, murdered in connection with that sexual assault. Consequently, even if defense counsel had objected and the trial court had instructed the jury to disregard the testimony in question, there is no reasonable probability that its ultimate verdict would have been different. See *id*.

Second, defendant contends that defense counsel was ineffective for failure to object to the aiding-and-abetting instruction.[6] Defendant reasons that the evidence either showed that he was personally responsible for shooting the victim or was completely innocent, but nothing showed that he aided and abetted the murder. "A criminal defendant has the right to a properly instructed jury." *People v Montague*, 338 Mich App 29, 37; 979 NW2d 406 (2021) (citation modified). "The jury instructions must include all the elements of the charged offenses and any material issues, defenses, and theories that are supported by the evidence." *Id*. (quotation marks and citation omitted). "There is no error when the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights." *Id*. at 38 (quotation marks and citation omitted). "To place the issue of aiding and abetting before a trier of fact, the evidence need only tend to establish that more than one person committed the crime, and that the role of a defendant charged as an aider and abettor amounts to something less than the direct commission of the offense." *People v Vaughn*, 186 Mich App 376, 382; 465 NW2d 365 (1990). "[U]nder Michigan law, a defendant who intends to aid, abet, counsel, or procure the commission of *a* crime, is liable for that crime as well as the natural and probable consequences of that crime." *People v Robinson*, 475 Mich 1, 3; 715 NW2d 44 (2006).

We acknowledge that Harris testified that defendant shot the victim, while defendant himself denied any involvement in the overall crime. However, the jury was not required to accept this either-or version of events. In other words, the jury was not constrained to conclude that defendant either was the principal or was completely innocent. See *People v Stewart*, 36 Mich App 93, 100; 193 NW2d 184 (1971) (recognizing that a jury may "accept some" and "reject some" of a witness's testimony).[7] While Harris testified that defendant shot the victim, his particular testimony in this regard was vague and arguably suffered from credibility issues. That is, while the evidence showed that both defendant and Harris were involved in the overall scheme to abduct, sexually assault, and murder the victim, one reasonable view of the evidence is that Harris minimized his own involvement in the murder itself to obtain a favorable 10-year plea agreement or because he simply was unwilling to admit in open court that he had a greater role in the murder. For example, Harris indicated that defendant murdered the victim without saying anything to him beforehand, and that he did not abduct the victim at gunpoint, contrary to the testimony of an impartial eyewitness who said that the victim was abducted at gunpoint. These aspects of his testimony are questionable. Indeed, defense counsel vigorously cross-examined Harris about his credibility issues and implied that Harris was himself responsible for the murder but lied about defendant to obtain a favorable plea deal. Moreover, the prosecution, on direct and re-cross

[6] During its deliberations, the jury asked the trial court, "Can aiding and abetting apply to first degree premediated murder or felony murder, or both?" The trial court, with the express approval of both the prosecution and defense counsel, told the jury that it may apply to "both."

[7] We note that a jury need not be unanimous as to whether a defendant is guilty under a principal or an aiding-and-abetting theory. *People v Burgess*, 67 Mich App 214, 220; 240 NW2d 485 (1976).

examination, implied that Harris may be diminishing his role in the crime, including his use of the handgun in the abduction and possibly the murder itself.

Based on this, the evidence supports a finding that defendant was involved in the overall crime but that one or both of the gunshots may have been fired by Harris, not defendant. If so, defendant would be guilty of the murder as an aider and abettor. See *Vaughn*, 186 Mich App at 382. Simply put, where the evidence clearly showed that defendant was one of the two men who abducted, sexually assaulted, and was present when the victim was murdered, the prosecution was entitled to seek a conviction based on a principal or an aiding-and-abetting theory. Thus, no error occurred by providing the jury with an aiding-and-abetting instruction, so counsel cannot be deemed ineffective for failing to object. See *People v Thomas*, 260 Mich App 450, 457; 678 NW2d 631 (2004).

Third, defendant contends that defense counsel was ineffective for failure to request the standard accomplice instructions.[8] We are inclined to agree with defendant that defense counsel

---

[8] M Crim JI 5.4 is titled "Witness as Undisputed Accomplice," and it defines the term "undisputed accomplice" for the jury. M Crim JI 5.6 is titled "Cautionary Instruction Regarding Accomplice Testimony," and it provides as follows:

> (1) You should examine an accomplice's testimony closely and be very careful about accepting it.
>
> (2) You may think about whether the accomplice's testimony is supported by other evidence, because then it may be more reliable. However, there is nothing wrong with the prosecutor's using an accomplice as a witness. You may convict the defendant based only on an accomplice's testimony if you believe the testimony and it proves the defendant's guilt beyond a reasonable doubt.
>
> (3) When you decide whether you believe an accomplice, consider the following:
>
> (a) Was the accomplice's testimony falsely slanted to make the defendant seem guilty because of the accomplice's own interests, biases, or for some other reason?
>
> (b) Has the accomplice been offered a reward or been promised anything that might lead [him / her] to give false testimony? [*State what the evidence has shown. Enumerate or define reward*.]
>
> (c) Has the accomplice been promised that [he / she] will not be prosecuted, or promised a lighter sentence or allowed to plead guilty to a less serious charge? If so, could this have influenced [his / her] testimony?
>
> [(d) Does the accomplice have a criminal record?]

was ineffective in this regard. See *People v Young*, 472 Mich 130, 135; 693 NW2d 801 (2005) (recognizing the "dangers that inhere in accomplice testimony, including the effect of fear, threats, hostility, motives, or hope of leniency") (quotation marks and citations omitted). Indeed, the Use Note to M Crim JI 5.4 provides that "[t]his charge should be given automatically where the witness has admitted his guilt or has been convicted of the crime, or where the evidence clearly indicates his complicity." Use Note, M Crim JI 5.4. However, we conclude that reversal is not warranted because there is no reasonable probability that the outcome of trial would have been different, but for defense counsel's failure to request the accomplice instructions. See *Yeager*, 511 Mich at 488.

Defense counsel ably cross-examined Harris at length about his plea agreement and alleged personal interest in deflecting blame to defendant. In other words, defense counsel clearly and strenuously implied to the jury that Harris had an interest in lying about defendant's involvement in this matter to receive fewer years in prison. Thus, the jury was aware of the substantive concerns reflected by the accomplice instructions. "Fundamentally, it is the province *of the jury* to assess the credibility of witnesses. In making that assessment, the jury should decide whether witnesses harbor any bias or prejudice." *Young*, 472 Mich at 143. "And it is the role of defense counsel, through cross-examination of prosecution witnesses and closing argument, to expose potential credibility problems for the jury to consider." *Id*. Defense counsel did so here. Moreover, as explained in Part VII, *infra*, the evidence against defendant—particularly his own implausible story on the witness stand and inability to credibly explain how his DNA and the DNA of his close friend were found on the victim's body—provides substantial evidence of guilt beyond Harris's testimony. Therefore, reversal is not warranted.

III. PROSECUTORIAL ERROR

Defendant argues that the prosecution erred by eliciting Dr. Spitz's testimony about this case being a "sexually-motivated homicide" and by relying upon this testimony during closing argument. We disagree.

"To preserve a claim of prosecutorial error, a defendant must timely and specifically challenge the prosecutor's statements or conduct." *People v Thurmond*, 348 Mich App 715, 735; 20 NW3d 311 (2023). Here, defendant did not object at trial, so this issue is unpreserved. See *id*. Unpreserved issues are reviewed for plain error affecting substantial rights. *People v Evans*, 335 Mich App 76, 88; 966 NW2d 402 (2020). "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." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (cleaned up).

> (4) In general, you should consider an accomplice's testimony more cautiously than you would that of an ordinary witness. You should be sure you have examined it closely before you base a conviction on it.

"Generally, prosecutors are accorded great latitude regarding their arguments and conduct." *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (citation modified). "The test for prosecutorial error is whether the defendant was denied a fair trial." *Thurmond*, 348 Mich App at 736. "A prosecutor commits error by abandoning his or her responsibility to seek justice and, in doing so, denying the defendant a fair and impartial trial." *Id*. (cleaned up). "A prosecutor's good-faith effort to admit evidence does not constitute [prosecutorial error]." *People v Dobek*, 274 Mich App 58, 70; 732 NW2d 546 (2007).

Here, the prosecution asked Dr. Spitz near the end of direct examination, "[W]hen you look in terms of the biological evidence, the status of her clothing and things of that nature, do you have any other noteworthy observations regarding the type of homicide that that was?" This was an open-ended question that seemingly was intended to ascertain whether Dr. Spitz had any other information for the jury that the prosecution had not yet elicited. There is nothing to suggest that the prosecution did not act in good faith when posing this question. For this reason alone, no prosecutorial error occurred. See *id*. Moreover, as previously explained, Dr. Spitz's answer itself that "this is a sexually-motivated homicide" likely was an appropriate opinion commentary about the nature of the homicide under MRE 702. See *Kowalski*, 492 Mich at 121. Thus, even if the entire question-and-answer exchange challenged by defendant was somehow erroneous, it was not plainly erroneous because such error was not "clear or obvious." See *Carines*, 460 Mich at 763. Further, even if it was plainly erroneous, defendant is not entitled to relief because it was not prejudicial. See *id*. As explained, Dr. Spitz's testimony that this case involved a "sexually-motivated homicide" was a straightforward commentary about the facts that could not feasibly have presented any unique information to the jury.

For the same reasons, we conclude that defendant is not entitled to relief on his related argument that the prosecution improperly stated during closing argument that "[w]e get from Doctor Spitz that this was a sexually-motivated homicide." Again, the exchange between the prosecution and Dr. Spitz was not plainly erroneous, so it follows that the prosecution did not plainly err by referencing the exchange during closing argument. See *id*. Alternatively, even if plain error occurred, it was not prejudicial because any reasonable juror would understand the underlying sexual nature of this case. See *id*.

IV. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the prosecution submitted insufficient evidence to prove felony murder beyond a reasonable doubt because, according to Harris's testimony, "the homicide occurred immediately after Harris himself had committed a sexual assault—it was not incident to any act of [defendant]." We disagree.[9]

"A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law." *People v Lane*, 308 Mich App 38, 57; 862 NW2d 446 (2014). "This Court reviews de novo defendant's challenge to the sufficiency of the evidence."

[9] We note that even if we agreed with defendant, the proper remedy would be remanding this case to the trial court to reflect that the first-degree murder conviction only is based upon a premeditation theory.

People v Meissner, 294 Mich App 438, 452; 812 NW2d 37 (2011). "We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime to have been proved beyond a reasonable doubt." *Id*. "Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of a crime, and it does not matter that the evidence gives rise to multiple inferences or that an inference gives rise to further inferences." *People v Walker*, 330 Mich App 378, 382; 948 NW2d 122 (2019) (citation modified). "A reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *Id*. (citation modified).

MCL 750.316(1)(b) provides that felony murder is "[m]urder committed in the perpetration of, or attempt to perpetrate," an enumerated felony. Generally, the elements of felony murder are as follows:

> (1) the killing of a person, (2) with the intent to kill, do great bodily harm, or create a high risk of death or great bodily harm with the knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of an enumerated felony. [*Lane*, 308 Mich App at 57-58.]

Enumerated felonies include "criminal sexual conduct in the first, second, or third degree." MCL 750.316(1)(b). Moreover, to prove felony murder under an aiding-and-abetting theory, the prosecution must prove the following:

> (1) [the defendant] performed acts or gave encouragement that assisted the commission of 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 the predicate felony. [*People v Riley*, 468 Mich 135, 140; 659 NW2d 611 (2003).]

"In order to satisfy the malice standard required under *People v Aaron*, 409 Mich 672; 299 NW2d 304 (1980), the prosecution must show that the aider and abettor either intended to kill, intended to cause great bodily harm, or wantonly and willfully disregarded the likelihood that the natural tendency of his behavior was to cause death or great bodily harm." *Id*. at 140-141.

Here, defendant argues only that the prosecution failed to prove the "perpetration" element of MCL 750.316(1)(b).[10] In this regard, " 'perpetration' encompasses acts by a defendant that occur outside the definitional elements of the predicate felony and includes acts that occur during the unbroken chain of events surrounding that felony." *People v Gillis*, 474 Mich 105, 140; 712 NW2d 419 (2006). "Thus, a felon is engaged in the perpetration of the crime while he is

[10] Defendant does not dispute the remaining elements of felony murder. Regardless, the facts of this case clearly indicate that the victim was intentionally killed following a sexual assault, thus satisfying the first two elements of felony murder, as well as the requirement of a predicate felony. See *Lane*, 308 Mich App at 57-58; *Riley*, 468 Mich at 140.

endeavoring to escape, and a murder committed immediately after a felony, apparently for the purpose of preventing detection, is felony murder." *Id*. (citation modified).

> In determining whether the defendant is still "in the perpetration of" the predicate felony when the defendant commits a murder, factors to be evaluated by the jury include: (1) the length of time between commission of the predicate felony and the murder; (2) the distance between the scene of the predicate felony and the scene of the murder; (3) whether there is a causal connection between the murder and the predicate felony; and (4) whether there is continuity of action between the predicate felony and the murder. [*Id*. at 140-141.]

We conclude that the evidence was sufficient to prove the "perpetration" element of felony murder under either a principal theory or an aiding-and-abetting theory. See *Lane*, 308 Mich App at 57-58; *Riley*, 468 Mich at 140. Harris testified that he abducted the victim, and then both he and defendant drove her to a secluded area where they proceeded to sexually assault and eventually murder her nearby. Other evidence introduced at trial, such as the DNA evidence, supports this testimony. Moreover, while Harris testified that defendant was directly responsible for the fatal gunshots, as previously discussed, another reasonable view of the evidence is that Harris himself was directly responsible for one or both of the gunshots.

In either case, there was an "unbroken chain of events" between the sexual assault(s), by both defendant and Harris, and the eventual murder. See *Gillis*, 474 Mich at 140. Harris did not testify that he or defendant were interrupted or otherwise delayed that night, the murder occurred almost immediately after the sexual assault and within a relatively short walking distance of the sexual assault, the murder itself presumptively was intended to prevent the victim from identifying her assailants, and the record does not suggest any type of intervening event that would break the "chain of events" between the sexual assault and the subsequent murder. See *id*. at 140-141. Moreover, while defendant correctly observes that Harris testified that he sexually assaulted the victim after defendant did so, the law does not require defendant himself to be the final assailant in these circumstances, particularly where both Harris and defendant engaged in continuous, interrelated conduct that night that aided and abetted the other. See *Riley*, 468 Mich at 140. Therefore, the prosecution submitted sufficient evidence to prove the "perpetration" element of felony murder beyond a reasonable doubt. See *Meissner*, 294 Mich App 452.

V. MOTION FOR MISTRIAL

Defendant argues that the trial court erred by denying his motion for a mistrial when Hill testified about successfully "pass[ing] the lie detector test" about the murder. We disagree.

"The denial of a motion for a mistrial is reviewed for an abuse of discretion." *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). "This Court will find an abuse of discretion if the trial court chose an outcome that is outside the range of principled outcomes." *People v Beesley*, 337 Mich App 50, 54; 972 NW2d 294 (2021) (quotation marks and citation omitted). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *Alter*, 255 Mich App at 205 (citation modified). "Thus, for a due process violation to result in reversal of a criminal conviction, a defendant must prove prejudice to his or her defense." *Beesley*, 337 Mich App at 54 (citation modified).

"Normally, reference to a polygraph test is not admissible before a jury." *People v Nash*, 244 Mich App 93, 97; 625 NW2d 87 (2000). "Indeed, it is a bright-line rule that reference to taking or passing a polygraph test is error." *Id*. "However, the inadvertent, unsolicited mention by a witness that a polygraph was administered does not necessarily require a mistrial." *People v Ortiz-Kehoe*, 237 Mich App 508, 514; 603 NW2d 802 (1999). To determine whether the trial court abused its discretion by failing to grant a mistrial when a witness mentions a polygraph, this Court may consider the following factors:

> (1) Whether defendant objected and/or sought a cautionary instruction; (2) whether the reference was inadvertent; (3) whether there were repeated references; (4) whether the reference was an attempt to bolster the witness's credibility; and (5) whether the results of the test were admitted rather than merely the fact that a test had been conducted. [*Id*. (citation modified).]

Here, when the prosecution asked Hill to confirm that he was "suspect number one" at one point during this investigation, Hill answered, "I believe up until I passed the lie detector test, yes." Defense counsel immediately objected and, following a brief bench conference, the trial court struck that answer and directed the jury to disregard it. The next day, defense counsel moved for a mistrial, which the trial court denied. Lastly, however, during its final instructions to the jury, the trial court instructed the jury as follows:

> Lie detector tests and/or polygraphs are not scientific. They are unreliable and inadmissible as evidence in court. You should not infer or consider anything about a lie detector or polygraph test, nor whether a witness took and/or passed a lie detector or a polygraph test.

We conclude that the trial court did not abuse its discretion by the manner in which it addressed this issue. The trial court correctly struck Hill's answer about the polygraph and directed the jury to disregard it. See *Nash*, 244 Mich App at 97. This presumptively eliminated any prejudice to defendant. See *People v Mahone*, 294 Mich App 208, 212; 816 NW2d 436 (2011) ("Jurors are presumed to follow their instructions, and it is presumed that instructions cure most errors."). In addition, the trial court reinforced its ruling by again instructing the jury during final instructions that polygraph results are inadmissible and should be disregarded. This further eliminated any possible prejudice to defendant. See *id*.

Moreover, while some of the *Ortiz-Kehoe* factors nominally weigh in favor of granting a mistrial, when the singular reference to the polygraph is considered in the overall context of these proceedings, the trial court did not abuse its discretion by denying defense counsel's motion for a mistrial. In particular, while Hill did affirmatively indicate that he passed the polygraph, which may have been an attempt to improve his own credibility, and defense counsel timely objected, it also is true that the reference to the polygraph was singular and inadvertent, as the prosecution asked a simple yes-or-no question upon which Hill briefly elaborated. See *Ortiz-Kehoe*, 237 Mich App at 514-515.

More importantly, Gutierrez indicated in her original 911 call on the night in question that there were two men in the truck, i.e., the abductor himself and another man. Bowen corroborated this testimony by explaining that she observed two men suspiciously loitering in a pickup truck

that night. Harris testified that both he and defendant were responsible for abducting and then sexually assaulting the victim, which was consistent with the fact that the DNA of both Harris and defendant was found on the victim. In contrast, Hill testified about a plausible story in which he fled from the victim on foot after an extended argument, which was consistent with the testimony of others at the party that night. Further, there was nothing at trial to suggest that Hill was connected to Harris or defendant. From this evidence, the most compelling conclusion is that Harris truthfully testified about sharing criminal responsibility with defendant, and Hill was not involved in the murder. Thus, regardless of whether Hill "passed" a polygraph and the jury learned about this fact, we doubt that the jury would have otherwise considered him to be a prime suspect at this date.

Accordingly, the trial court did not abuse its discretion by denying defense counsel's motion for a mistrial.

VI. RIGHT TO PRESENT A DEFENSE

Defendant asserts that the trial court erred by precluding his argument in closing that Harris had a motive to lie because murder is punishable by life in prison, which Harris was able to avoid by cooperating with the prosecution. According to defendant, this ruling deprived him of his right to present a defense. We disagree.

"Whether a defendant was denied his constitutional right to present a defense is a question of law we review de novo." *People v King*, 297 Mich App 465, 472; 824 NW2d 258 (2012).

"A criminal defendant has a state and federal constitutional right to present a defense." *People v Unger*, 278 Mich App 210, 250; 749 NW2d 272 (2008) (citation modified). "However, an accused's right to present evidence in his defense is not absolute." *Id*. "A defendant's interest in presenting evidence may thus bow to accommodate other legitimate interests in the criminal trial process." *Id*. (citation modified). "States have been traditionally afforded the power under the constitution to establish and implement their own criminal trial rules and procedures." *Id*.

In this case, defendant does not challenge the general proposition that a jury should not be instructed on, or otherwise consider, the possible criminal penalty facing the defendant. See *People v Warner*, 289 Mich 516, 520-521; 286 NW 811 (1939). Rather, defendant argues that because the prosecution was allowed to argue before the jury that Harris's 10-year sentence was substantial, he should have been allowed to argue in response that Harris could have been subject to life imprisonment for murder. See generally, *People v Allen*, 201 Mich App 98, 103; 505 NW2d 869 (1993) (explaining that one party may "open[] the door" to admission of otherwise inadmissible evidence). See also MCL 750.316(1) (providing that "imprisonment for life without eligibility for parole" is the punishment for first-degree murder).

We have recognized that a defendant generally is entitled to cross-examine a cooperating witness about the specific benefits of his or her plea agreement, even if those details also suggest to the jury the possible penalty faced by the defendant. See *People v Mumford*, 183 Mich App 149, 151-154; 455 NW2d 51 (1990). Thus, hypothetically, if defense counsel had sought to elicit testimony from Harris that he was facing possible life in prison before his agreement to cooperate

with the prosecution, the trial court would have erred by precluding that line of questioning. See *id*.

The case before us, however, is different because defense counsel did not attempt to raise that matter on cross-examination. Rather, he sought to raise it in his closing argument. "The attorneys' statements and arguments are not evidence." *Unger*, 278 Mich App at 240 (citation modified). Further, it is well-settled that the jury "must decide the case on the evidence alone." *People v Rich*, 237 Mich 481, 491; 212 NW 105 (1927). Thus, while the trial court may have erred by briefly implying that the jury simply could not learn about the possible penalty faced by Harris, see *Mumford*, 183 Mich App at 151-154, the trial court correctly ruled that defense counsel's closing argument about the possible penalty faced by Harris was not supported by the trial evidence, see *Unger*, 278 Mich App at 240, and, as a result, was improper in closing argument. See *Rich*, 237 Mich at 491. Indeed, *Mumford* based its ruling upon the Confrontation Clause, US Const Am VI, see *Mumford*, 183 Mich App at 153, which would not apply here because defense counsel sought to discuss an alleged fact during closing that he did not seek to introduce during trial itself.[11] See generally, *People v Washington*, 514 Mich 583, 592-593; 22 NW3d 507 (2024) (explaining that the Confrontation Clause generally applies to "substantive evidence") (quotation marks and citation omitted). Therefore, the trial court did not err by precluding defense counsel from arguing during closing that Harris was facing possible life imprisonment because, as the trial court correctly ruled, "there is no evidence of that whatsoever."

Alternatively, even if we assume that the trial court erred by precluding defense counsel from arguing during closing that Harris was facing possible life imprisonment, we cannot conclude that the error was prejudicial. See *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999); *People v Sammons*, 505 Mich 31, 56; 949 NW2d 36 (2020). While an average juror likely is unaware of the various nuances of Michigan's sentencing system, such as the felony-firearm statute, see MCL 750.227b, and the procedures that may apply when a juvenile offender is convicted of first-degree murder, see MCL 769.25 and MCL 769.25a, we strongly doubt that an average juror would be oblivious to the fact that abducting, sexually assaulting, and murdering a young woman may subject the offender to a penalty beyond 10 years in prison. Indeed, defense counsel clearly implied during his cross-examination of Harris that 10 years in prison was quite favorable, given the facts of the case. Simply put, given the various courtroom dramas that have been televised for decades, the countless news articles discussing penalties imposed upon convicted murderers, and other such media sources, we cannot conclude that the jury here was somehow unaware of the possibility that both Harris and defendant himself were facing more than 10 years in prison. Under these circumstances, reversal is not warranted.

VII. CUMULATIVE ERROR

Finally, defendant argues that the cumulative effect of the above-discussed errors entitles him to relief. We disagree.

"The cumulative effect of several errors can constitute sufficient prejudice to warrant reversal even when any one of the errors alone would not merit reversal, but the cumulative effect

[11] Defendant does not raise a Confrontation Clause issue on appeal.

of the errors must undermine the confidence in the reliability of the verdict before a new trial is granted." *People v Lowrey*, 342 Mich App 99, 119; 993 NW2d 62 (2022) (quotation marks and citation omitted). "However, each of the errors must be of some consequence." *Id*.

In this case, as previously explained, the only possible errors identified by defendant—the failure to request the standard accomplice instructions and Dr. Spitz's testimony that this case involved a "sexually-motivated homicide"—were inconsequential in the context of the overall trial. As defense counsel successfully established during his cross-examination of Harris, the jury undoubtedly was aware that Harris substantially reduced his incarceration exposure in exchange for cooperating with the prosecution, which may have undermined his credibility as a witness against defendant. Thus, the failure to request the standard accomplice instructions could not have prejudiced defendant. Similarly, given the particular facts of the murder, the jury also undoubtedly was aware that this case involved a "sexually-motivated homicide." Thus, Dr. Spitz's testimony was redundant.

Ultimately, the jury considered the evidence before it and found defendant guilty after an hour of deliberations. In this regard, the testimony showed that on the night in question, the victim was abducted by two men, sexually assaulted, and then murdered. DNA from Harris and defendant was found on the victim. Harris testified that he and defendant were the two men responsible for this criminal activity, while defendant testified about a highly unlikely, if not implausible, story in which he had consensual sex with the victim—thereby explaining the presence of his DNA on the victim—before the victim coincidentally, and independently, was presumptively abducted, sexually assaulted, and murdered by his close friend a short while later. The implausibility of this story is strong evidence of guilt.[12] See *People v Seals*, 285 Mich App 1, 5; 776 NW2d 314 (2009). Therefore, we cannot conclude that the cumulative effect of the errors identified by defendant undermines confidence in the reliability of the verdict. See *Lowrey*, 342 Mich App at 119.

VIII. CONCLUSION

There are no errors warranting relief. Accordingly, we affirm.

/s/ Christopher M. Murray
/s/ Mark T. Boonstra
/s/ Michael J. Riordan

[12] There are other implausible aspects of defendant's testimony when compared with the undisputed facts of the case. For example, while defendant testified that he met the victim at the Active Lounge, the victim's car was located in an unusual and unexpected location for a patron of that bar.