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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 09, 2026 1:45 PM
v	No. 375527 Saginaw Circuit Court
EARL LEE MACK, Defendant-Appellant.	LC No. 2021-047863-FC

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

PER CURIAM.

In the early morning hours of March 19, 2021, a 10-year-old boy awoke to his grandparents—Avele Mack and defendant Earl Mack—arguing in their bedroom. He then heard a gunshot ring out and observed defendant running away. The boy entered the bedroom. In it lay Avele, bleeding to death from a gunshot wound to her head.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a); three counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1); one count of felon in possession of a firearm, MCL 750.224f(1); and one count of felon in possession of ammunition, MCL 750.224f(7). The trial court sentenced him as a fourth-offense habitual offender, MCL 769.12, to serve a mandatory life sentence in prison for the murder conviction, 60 to 120 months for the felon-in-possession convictions, and two years for the felony-firearm convictions.

Defendant raises two issues on appeal: (1) the admissibility of statements he gave to law enforcement officials while subjected to custodial interrogation, and (2) the trial court's categorical exclusion of certain jurors based on their having been previously prosecuted by the Saginaw County Prosecutor's Office. On thorough review of the parties' arguments and the record developed below, we affirm.

I. WAIVER OF *MIRANDA* RIGHTS

We take first defendant's contention that his request for a lawyer during custodial interrogation rendered inadmissible his subsequent statements under *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

A. PERTINENT FACTUAL BACKGROUND

On the morning of the murder, Saginaw County Detectives Kathryn Mercer and Rob Frazier took defendant into custody and transported him to the Saginaw Police Department. They advised him of his *Miranda* rights, which defendant waived (and does not dispute the validity of on appeal). The detectives then commenced a custodial interrogation.

For purposes of this appeal, the first 45 minutes of the interview were uneventful. The interrogation became animated when the conversation turned to why defendant's grandson woke up and called 911, after which Detective Frazier told defendant that he would perform a gunshot-residue test on defendant's hands. Defendant then requested an attorney during a minute-long exchange, to which the detectives reacted by acknowledging the request, packing up their materials, and moving toward the room's door. The following excerpt from the video of the interrogation represents our understanding of what each person said in the fast-flowing interaction,[1] which included multiple instances of defendant and the detectives talking over each other:

> *Defendant*: I tell you what, you trying to blame this on me, my own wife.
>
> *Det. Frazier*: I'm not trying to blame anything on you.
>
> *Defendant*: Yes you are. Of course you are. You're the only one that continues to point your fingers at me, man. My grandson was asleep. I went in there and shook him, told him, to call 9-1-1. Now bring me a lawyer. I'm not gonna say nothing else. I talked to you over and over and over and I'm telling the truth. You know.
>
> *Det. Frazier*: No you're not. Your grandson hid from you, that's what you don't know.
>
> *Defendant*: My grandson what?
>
> *Det. Frazier*: You lawyered up. We're done.
>
> *Defendant*: No I'm saying—my grandson—
>
> *Det. Frazier*: We're done talking. You said you wanted a lawyer, right?

[1] The parties did not submit a transcript of the interrogation.

Defendant: Yeah, I want a [unintelligible]. I've been talking to you ever since I—

Det. Frazier: No it's fine! You want a lawyer? We're done talking. And I'm—I'll have an officer here, we gonna get you over to the jail. You—

Defendant: I'm going to jail? For no proof—

Det. Frazier: For murder. We have enough proof that you're going to jail for murder this morning. You don't want to talk here? Well, we're done.

Defendant: What the Hell, I mean—what you want to talk about? You're telling me the same thing—

Det. Mercer: So, do you want to talk with us, Earl? Can we talk?

Defendant: I could talk all day long with y'all.

Det. Mercer: K, so you don't want to lawyer up? We can still talk about this.

Defendant: Yeah. We can still talk about it.

Det. Mercer: Ok. Then let's work this out.

The detectives recommenced questioning, took about a two-hour break to visit the crime scene, and then resumed questioning again, during which defendant gave significant inculpating statements. On defendant's motion to suppress those statements as violative of *Miranda* given his request for an attorney and following a hearing pursuant to *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965), the trial court found defendant "clearly reinitiated the discussion and indicated his willingness to continue the interview without a lawyer" and thus denied his motion to suppress.

B. ANALYSIS

The Fifth Amendment of the United States Constitution, as applied to the States by operation of the Fourteenth Amendment, states, "No person . . . shall be compelled in any criminal case to be a witness against himself." US Const, Am V. See *Malloy v Hogan*, 378 US 1, 3; 84 S Ct 1489; 12 L Ed 2d 653 (1964). *Miranda* guarantees "a corollary of the right against compelled self-incrimination," *People v Tanner*, 496 Mich 199, 207; 853 NW2d 653 (2014): "the right to the presence of an attorney" during custodial interrogation, *Miranda*, 384 US at 479. An accused, of course, may waive his *Miranda* rights "provided the waiver is made voluntarily, knowingly and intelligently." *Id*. at 444. But even with a prior waiver, "after invocation of the Fifth Amendment right to counsel, questioning of a suspect must cease." *People v Fenderson*, ___ Mich ___, ___; ___ NW2d ___ (2026) (Docket No. 167391); slip op at 14.

Defendant and the prosecution agree that defendant initially waived his *Miranda* rights and then clearly and unequivocally asked for counsel thereafter. That invocation created what the United States Supreme Court has described as a "judicially prescribed prophylaxis," a

"presumption of involuntariness." *Maryland v Shatzer*, 559 US 98, 105; 130 S Ct 1213; 175 L Ed 2d 1045 (2010). More specifically, under its seminal post-*Miranda* decision in *Edwards v Arizona*, "when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." 451 US 477, 484; 101 S Ct 1880; 68 L Ed 2d 378 (1981). This is because the "traditional standard for waiver [is] not sufficient to protect a suspect's right to have counsel present at a subsequent interrogation if he had previously requested counsel," *Maryland*, 559 US at 104 (quotation marks and citation omitted); accordingly, the *Edwards* rule is "designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights." *Michigan v Harvey*, 494 US 344, 350; 110 S Ct 1176; 108 L Ed 2d 293 (1990). In sum, an accused who requests counsel may not be "subject to further interrogation by the authorities until counsel has been made available to him . . . ." *Edwards*, 451 US at 484-485.

There is an important caveat to the no-further-interrogation-until-an-attorney-is-present rule. It does not apply if "*the accused himself initiates further communication, exchanges, or conversations with the police.*" *Id*. at 485 (emphasis added). In these situations, courts consider not "a bright-line rule requiring police officers to readvise a suspect of his *Miranda* rights before speaking with him after he asserts his right to counsel but subsequently reinitiates a conversation with police," *People v Clark*, 330 Mich App 392, 418; 948 NW2d 604 (2019), but rather "whether the defendant reinitiated a conversation on the subject matter of the investigation and whether, under the totality of the circumstances, the defendant knowingly and intelligently waived his rights to counsel and to remain silent," *id*. We address these initiation and waiver considerations in turn.

1. INITIATION

Defendant first challenges the trial court's finding as a matter of fact that defendant "clearly reinitiated the discussion and indicated his willingness to continue the interview without a lawyer." We review that factual finding for clear error. See *People v White*, 294 Mich App 622, 627; 823 NW2d 118 (2011). No error, clear or otherwise, occurred on the record before us.

"[T]he defendant must initiate communication concerning the investigation in order to avoid running afoul of the rule articulated in *Edwards*." *People v McRae*, 469 Mich 704, 716; 678 NW2d 425 (2004). In making this reinitiation inquiry, our Supreme Court recently instructed that we should "look to" the defendant's statements to police, *Fenderson*, ___ Mich at ___; slip op at 20, as informed by their "context," *id*. at ___; slip op at 22. After the detectives here ceased the interrogation, defendant asked them "what [do] you want to talk about," said he "could talk all day long with y'all," and then affirmatively agreed with Detective Mercer's statement that he did not "want to lawyer up" and instead wanted to "talk about it." These statements—which came directly after the close of significant interrogation concerning his wife's murder and as the detectives were leaving the interrogation room—reflect several "affirmative request[s] to reinitiate the interrogation without an attorney," *id*. at ___; slip op at 21, and "an expression of willingness to talk generally about the investigation without counsel," *id*. at ___; slip op at 23. They also cannot be reasonably construed as being "in pursuit of his invocation of the right to counsel . . . ." *Id*. The trial court therefore did not err, clear or otherwise, when it determined defendant initiated communication with the detectives after having previously invoked his right to counsel as guaranteed by *Miranda*.

Defendant sees the encounter differently. In his view, we should discard the trial court's initiation finding because Detective Frazier continued the conversation with him after his *Miranda* invocation, characterizing his statements as "brow beating" defendant into agreeing not to "lawyer up." To this end, he notes federal caselaw holding that "an *Edwards* initiation occurs when, *without influence by the authorities*, the suspect shows a willingness and a desire to talk generally about his case." *United States v Whaley*, 13 F3d 963, 967 (CA 6, 1994) (emphasis added). We find this argument unpersuasive on several fronts.

Start with *Whaley*, a federal case that we need to consider only for persuasive value. See *People v Patton*, 325 Mich App 425, 435 n 1; 925 NW2d 901 (2018). We cannot agree its "without influence by the authorities" line does the work defendant suggests. On our reading, that "influence" language is merely a restatement of the rules set forth in *Miranda* and *Edwards*: *Miranda* applies during custodial interrogation, i.e., "questioning *initiated* by law enforcement officers," 384 US at 444, and *Edwards* forbids interrogation after an accused requests counsel, 451 US at 484-485, and nothing more.

Nor does caselaw require police officers to cease all discussion with an accused upon a request for counsel. At its core, defendant's argument here is the same the defendant in *People v Kowalski* advanced: that "*Edwards* prohibits all communication between the police and a suspect who has requested an attorney." 230 Mich App 464, 478; 584 NW2d 613 (1998). *Kowalski* rejected that bright-line articulation of the *Edwards* rule, and noted instead, for example, that "a mere inquiry into whether an accused has changed his mind about wanting to speak without an attorney present is not considered 'interrogation' within the meaning of *Edwards.*" *Id*. For this reason, then, Detective Mercer permissibly inquired of defendant whether he wanted to talk without a lawyer present and did not trigger the prophylactic exclusion required by *Edwards*. We also do not see any significance—as defendant suggests—in Detective Mercer's response to defendant by asking "do you want to talk with us" and "can we talk" in rapid succession. In the context of the fast-flowing conversation, we understand those slightly different phrases as reasonably pursuing the same answer—confirmation as to whether defendant wanted to continue interrogation following his reinitiation.

Detective Frazier also interacted with defendant after his attorney invocation, but not impermissibly so. Again, "what is prohibited is further 'police-initiated custodial interrogation,' " for "*Edwards* rests upon the concepts of 'initiation' and 'interrogation.' " *Id*. An interrogation occurs when "a police practice is designed to elicit an incriminating response" on the basis of the objective manifestation of the officer's words. *People v White*, 493 Mich 187, 195-196; 828 NW2d 329 (2013) (quotation marks and citation omitted). After reviewing the video of the encounter with an eye towards defendant's statements to the officers and their surrounding context, *Fenderson*, ___ Mich at ___; slip op at 20, 22, we conclude that no reasonable officer "should have known" that Detective Frazier's statements to defendant—including his reference to jailing defendant for murder and raising his voice while on his way toward the room's door with his interview materials in hand—"were reasonably likely to elicit an incriminating response," *White*, 493 Mich at 195 (quotation marks, emphasis, and citation omitted). Nor can we agree with defendant that what Detective Frazier said and how he did so constituted "brow beating" defendant into submission.

In sum, the detectives' brief exchanges with defendant are evidence of careful police work, not unconstitutional pressure placed on defendant to continue to custodial interrogation.

2. WAIVER

Having found no reversible error in the trial court's determination that defendant initiated further communication with the detectives, we move to whether, under the totality of the circumstances, defendant knowingly, voluntarily, and intelligently waived his *Miranda* rights. *Clark*, 330 Mich App at 418. The trial court found an enforceable waiver, which we review for clearly erroneous factual findings and its application of the facts to the law with fresh eyes. *White*, 294 Mich App at 627. We cannot agree with defendant that he is entitled to reversal on this point either.

To assess the validity of a *Miranda* waiver, a court must review "the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Edwards*, 451 US at 482 (quotation marks and citation omitted). We focus on the voluntariness of defendant's waiver as defendant does not contest the knowingly and intelligently requirements. Our Supreme Court has articulated a list of factors to consider when determining the voluntariness of a statement made to the police:

> the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).]

"[E]xpress or implied assurances that cooperation will aid the interrogee's defense or result in a lesser sentence may" also render a statement involuntary. *People v Stewart*, 512 Mich 472, 481; 999 NW2d 717 (2023).

Below, the trial court found most of these factors weighed against suppression: defendant was 70 years old, with no evidence that his age or education affected his ability to exercise his rights; he had significant prior interactions with police due to his multiple prior felony convictions; the relative interrogation time was short leading up to his reinitiation of the conversation; and the detectives provided defendant with food and water. The trial court also acknowledged that the interrogation was contentious at times, but observed that defendant was not physically abused or threatened. It additionally considered defendant's mental state due to lack of sleep and high emotion, but determined that he was coherent and fully aware of the circumstances surrounding the examination "at all times." Further, while the detective told defendant he would be taken to jail when defendant ended the interview, "neither detective stated or suggested that Defendant would be released or granted specific leniency if he waived his rights and continued the interview."

We agree with the trial court's analysis, which appropriately concluded that suppression was not warranted based on the totality of the circumstances and balancing the voluntariness factors identified by our Supreme Court.

II. JUROR DISMISSAL

The second claim of error relates to the trial court's dismissal for cause of six prospective jurors at the prosecutor's request under MCR 2.511(E)(10) for having been prosecuted to conviction (two had felonies and the rest misdemeanors) by the Saginaw County Prosecutor's Office. He claims error because the trial court did not inquire—for each prosecutive juror—"whether he or she harbor[ed] any bias" against the prosecutor.[2] This Court reviews errors in the jury selection process de novo. *People v Fletcher*, 260 Mich App 531, 554; 679 NW2d 127 (2004). Binding precedent forecloses defendant's position.

MCR 2.511(E) provides that "[t]he parties may challenge jurors for cause, and the court shall rule on each challenge." It then sets forth many such "grounds for a challenge for cause," including "that the person . . . has been accused by that party in a criminal prosecution[.]" MCR 2.511(E)(10). And under this Court's decision in *People v Eccles*, which considered strikes due to prior misdemeanor criminal prosecutions by the same prosecuting office, "once a party shows that a prospective juror falls within . . . [this provision], the trial court is without discretion to retain that juror, who must be excused for cause." 260 Mich App 379, 383, 385; 677 NW2d 76 (2004). This no-discretion rule applies "regardless of whether they asserted an ability to be fair and impartial." *Id*. at 386. Bound by *Eccles* as an on-point and published opinion from this Court, see *People v Bennett*, 344 Mich App 12, 21; 999 NW2d 287 (2022), defendant's final claim of error is without merit.[3]

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[2] Defendant's brief suggests the trial court also did not clearly determine that each prospective juror subject to a for-cause dismissal was indeed prosecuted by the Saginaw County Prosecutor's Office. But his statement of questions presented is limited to his "individualized inquiry as to bias" assertion, and thus his additional claim here is not properly before us. See MCR 7.212(C)(5); *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). And even if we were to more broadly construe his statement of questions to include such a challenge, it is meritless. He did not raise this line of argument before the trial court, rendering it unpreserved and subject to plain error review under *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Here, the record developed after trial demonstrates the struck jurors were indeed prosecuted by the Saginaw County Prosecutor's Office and thus defendant cannot establish prejudice as required by *Carines*. *Id*.

[3] We note our Supreme Court recently scheduled oral argument on an application to consider "whether MCR 2.511(E)(10) requires a potential juror to be struck for cause on the sole basis that the potential juror has previously been subject to criminal charges by the office prosecuting a given case, see *People v Eccles*, 260 Mich App 379 (2004)." *People v Perry*, ___ Mich ___ (Oct 30, 2026) (Docket No. 167833). Until the Supreme Court renders a decision on that issue, we remain bound by *Eccles*. See MCR 7.215(J)(1).

III. CONCLUSION

For these reasons, we affirm the trial court's judgment.

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