

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
June 16, 2015

v

WILLIAM MICHAEL DHONDT,  
Defendant-Appellant.

No. 321546  
Oakland Circuit Court  
LC No. 13-246791-FC

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Before: SAAD, P.J., and M. J. KELLY and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals his jury-trial convictions for first-degree premeditated murder, MCL 750.316, and mutilation of a dead body, MCL 750.160. For the reasons stated below, we affirm.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

Defendant confessed that he strangled his girlfriend to death, and then dismembered her body. Indeed, after his arrest, defendant confessed in two separate statements: (1) he confessed in an interview with police; and (2) he also confessed in a written confession, in which he detailed how he murdered the victim (defendant specified that he strangled the victim until “she was blue”) and dismembered her body. The police interview was recorded on a DVD, and the prosecution prepared a transcript of the DVD recordings for use by the trial court. Though he does not contest his written confession, he does suggest, ambiguously, that somehow the admission of a transcript of the DVD recording prejudiced his case.

The trial court initially reviewed the DVD recordings and accompanying transcript during a hearing held pursuant to *People v Walker*.<sup>1</sup> The court stated that there were minor differences in the transcript and the DVD recording, limited to instances where the transcript

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<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965). A *Walker* hearing is held to permit a defendant to make a record on the facts and circumstances under which he confessed to the commission of a crime. See *Walker*, 374 Mich at 338.

recorded a word as “inaudible,” but the court could determine what defendant said in the DVD recording. The court accordingly found the transcript to be accurate.<sup>2</sup>

Immediately before trial, the prosecutor informed the court that a certified transcriptionist had made a transcript of defendant’s police interview,<sup>3</sup> and provided case law to support the admission of the transcript. Defense counsel objected to the admission of the transcript, and claimed that it was not needed because of the DVD recordings. The trial court made note of defendant’s objection, did not admit the transcript as evidence, and proceeded with the trial.

However, when the court played the DVD recordings of defendant’s police interview for the jury, the court’s audiovisual equipment malfunctioned, and jurors and the trial court could not clearly hear the audio recording on the DVD. Though the court partially fixed the problem with its audiovisual equipment, so the jury could hear the recordings, the trial court ordered that the jury be provided with the transcript of the DVD recording as a precaution.<sup>4</sup>

When it did so, the trial court noted that: (1) it had reviewed the case law submitted by the prosecutor on the use of transcripts of audio recordings involving criminal defendants; (2) the transcript would not be a part of the evidence; and (3) it had read the transcript and compared it with the recording contained on the DVD, and found the transcript to be an accurate representation of the audio recording, except for a few instances in which the trial court could understand a word the transcriptionist had found inaudible. The trial court told the jurors they would be allowed to have a copy of the transcript while they listened to the DVD recording of defendant’s police interview. The court further stressed that the DVD recording was the actual evidence and that the transcript was merely an aid to help the jurors understand the recording.

At trial, though defendant did not testify, his lawyer argued that defendant killed his girlfriend in the heat of passion by striking her in the head. The prosecution responded that defendant’s unsubstantiated theory was undermined by overwhelming evidence of premeditation, namely: (1) defendant’s police interview, in which he confessed to strangling his girlfriend; (2) defendant’s written confession, in which he admitted to strangling his girlfriend “until she was blue”; (3) the medical examiner’s determination (and testimony as such) that the victim’s death was caused by strangulation, not a blow to the head or other injuries; and (4) defendant’s effort

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<sup>2</sup> The trial court did not admit the transcript as evidence at the *Walker* hearing.

<sup>3</sup> The transcript of the DVD recording prepared by the certified transcriptionist is a different document than the transcript the trial court reviewed and determined to be accurate at the *Walker* hearing. For the purposes of defendant’s appeal, the only relevant transcript is the transcript reviewed by the trial judge—the transcript prepared by the certified transcriptionist was not used or relied upon by the jury or the trial court.

<sup>4</sup> Defense counsel generally objected to the trial court’s decision to give the transcript to the jury, but failed to point out specific inaccuracies in the transcript.

to conceal the murder and dismemberment of his girlfriend.<sup>5</sup> The jury heard additional testimony from the victim's parents and friends, with whom defendant interacted in person and through phone communications in the hours after he murdered the victim.

To accommodate defendant's unsubstantiated theory of the case, the trial court instructed the jury on the elements of first- and second-degree murder, as well as voluntary manslaughter. Thereafter, the jury found defendant guilty as charged, and convicted him of first-degree premeditated murder under MCL 750.316, and mutilation of a dead body under MCL 750.160.

On appeal, defendant argues that the trial court erred when it provided the jury with a transcript of his police interview because: (1) the transcript contained unspecified errors that caused the jury to convict defendant for first-degree, instead of second-degree, murder; (2) the parties did not stipulate to the accuracy of the transcript.

## II. STANDARD OF REVIEW

A trial court's decision regarding the admission of evidence is reviewed for an abuse of discretion. *People v Tierney*, 266 Mich App 687, 712; 703 NW2d 204 (2005). "An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes." *People v Mineau*, 306 Mich App 325, 329; 855 NW2d 755 (2014).

## III. ANALYSIS

Though defendant does not clearly state the following in his brief, the essence of his claim on appeal is: the trial court's decision to permit the jury to see a transcript of his police interview caused him prejudice, because it convinced the jury to convict him of first-degree murder, as opposed to second-degree murder. This claim, which is unsupported by law or evidence, has three flaws: (1) defendant does not explain how the transcript's alleged inaccuracies are related to his conviction for first-degree murder; (2) even assuming the transcript has inaccuracies that *are* related to his conviction for first-degree murder, there was overwhelming evidence, wholly unrelated to the transcript, that defendant committed first-degree murder; and (3) the trial court properly admitted the transcript under the procedures mandated by Michigan case law. We address each shortcoming of defendant's appeal.

### A. THE TRANSCRIPT AND DEFENDANT'S CONVICTION

Again, defendant unavailingly asserts that the transcript's "inaccuracies" led the jury to convict him for first-degree murder instead of second-degree murder. Defendant fails to point to specific passages in the transcript that are inaccurate. Nor does he explain how the transcript's supposed inaccuracies would make a jury more likely to wrongly convict him of first-degree murder. "An appellant may not merely announce his position and leave it to this Court to

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<sup>5</sup> Specifically, the medical examiner noted that a person being strangled would usually lose consciousness after 2 to 4 minutes of continuous airflow blockage. Further strangulation after the person loses consciousness is necessary to cause death.

discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.” *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted).

Instead, defendant merely mentions the fact that the trial court noted it could understand, from the DVD recording, certain words marked “inaudible” in the transcript. To repeat, after making this statement, the trial court explicitly found the transcript to be an accurate rendering of the DVD recording. In his brief, defendant also misleadingly avers that “trial counsel reported there are portions within the transcript that are not on the tape,” presumably in an attempt to insinuate that the transcript contains passages that are not in the DVD recording. This assertion distorts the record. When the trial court’s audiovisual equipment malfunctioned, defendant’s attorney complained that the transcript contained sections she had not heard during the playback of the DVD recording *because the court’s audiovisual equipment malfunctioned*. In other words, the “missing” portions of the DVD recording were not “missing” at all—they merely were not heard, initially, by the courtroom audience because the court’s audiovisual equipment malfunctioned.

#### B. HARMLESS “ERROR”

In any event, were we nonetheless to assume the transcript contains content that caused the jury to find defendant guilty of first-degree murder, as opposed to second-degree murder, the fact that the jury read the transcript would be harmless, because defendant fails to demonstrate that he would have been acquitted or convicted of a lesser crime had the transcript not been used. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

The prosecution presented two major pieces of evidence, wholly unrelated to the transcript, that showed defendant committed first-degree murder: (1) defendant’s written confession, in which he admitted to strangling his girlfriend “until she was blue”; and (2) the medical examiner’s determination and testimony that the victim’s death was caused by strangulation, not a single blow.

In particular, the medical examiner’s testimony that it typically takes 2 to 4 minutes for someone being strangled to lose consciousness strongly supports the inference that defendant committed first-degree murder. He had time to reconsider the savagery of his actions and release the victim before she lost consciousness and died, and yet he did not do so. See *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003) (“[m]anual strangulation can be used as evidence that a defendant had an opportunity to” reconsider his actions). And looking at the totality of the circumstances that surround this murder, defendant’s conduct is consistent with someone who committed a premeditated attack, not a crime of passion. Indeed, after he committed the murder, defendant, by his own admission, methodically set about dismembering the victim’s body and cleaning her home. He also sent fabricated text messages to her phone and the phones of her friends and family members, slept for a period of time, and went for a walk. See *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998) (“[t]he elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing”).

On the basis of this evidence that has no connection to the transcript of defendant’s police interview, it is extremely unlikely the jury would have found defendant guilty of anything less

than first-degree murder. *Lukity*, 460 Mich at 495-496. Defendant's assertions to the contrary are without merit.

### C. PROCEDURAL ISSUES

When the trial court permits the jury to have a transcript of a recorded statement or conversation, so that they might "read along while they listen[] to the tape," there are, in order, three "preferred procedures for ensuring the accuracy and fairness of such transcripts." *People v Lester*, 172 Mich App 769, 775; 432 NW2d 433 (1988), citing *US v Robinson*, 707 F2d 872 (CA 6, 1983).

The first method [is] by stipulation by the parties. The second method [is] for the trial court to make an independent determination before trial by checking the transcripts against the tape. The least preferred method [is] to present the jury with two transcripts, one containing the state's version and the other defendant's. [*Lester*, 172 Mich App at 775, citing *Robinson*, 707 F2d at 876-877.]

Accordingly, when the parties do not stipulate to the accuracy of a transcript, "the trial court may verify the transcript's accuracy by relying on the verification of the transcriber or by conducting an independent determination by comparing the transcript with that of the audio recording." *Westland v Kodlowski*, 298 Mich App 647, 666; 828 NW2d 67 (2012), vacated and reversed in part on other grounds 495 Mich 871.

Here, the parties did not stipulate to the accuracy of the transcript.<sup>6</sup> However, the trial court check[ed] the transcript against the tape, and found the transcript accurate. *Westland*, 298 Mich App at 666. Defendant's assertion that the trial court found portions of the transcript inaccurate misstates the record. As noted, the trial court actually determined that the only discrepancy between the transcript and the recording was that, in a few instances, the trial court could discern in the DVD recording words that were marked "inaudible" in the transcript. This statement is hardly a testament to the transcript's "inaccuracy," and does not demonstrate that it could have misled or improperly influenced the jury.

Affirmed.

/s/ Henry William Saad  
/s/ Michael J. Kelly  
/s/ Douglas B. Shapiro

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<sup>6</sup> Although defense counsel objected to the use of the transcript because its use was supposedly unnecessary, she also admitted she had not compared the transcript to the DVD recording to ascertain the transcript's accuracy.