STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 15, 2009
v	No. 285959 Charlevoix Circuit Court
CHARLES CURTIS MERRIMAN, Defendant-Appellant.	LC No. 07-036010-FC

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

In June 2006, William "Bill" Merriman, the brother of defendant Charles Curtis Merriman, disappeared. Although neither Bill nor his body were found, the discovery of large bloodstains at the Merriman home and defendant's inconsistent statements regarding events that occurred on the night of Bill's disappearance led investigators to charge defendant with Bill's murder. After a jury trial, defendant was convicted of one count of second-degree murder, MCL 750.317, and sentenced to 20 to 40 years' imprisonment, with credit for 250 days' time served. Defendant now appeals as of right. We affirm.

I. Facts and Procedural Background

Defendant is a single man in his late 50s. In 1982, he moved back into the East Jordan, Michigan, home of his parents, Charles and Patricia Merriman.[1] He did not work or drive and depended on his parents for support. Defendant's brother, Bill, was also unmarried and worked as a self-employed graphic artist in Hudsonville, Michigan. The third Merriman brother, Richard, lived in southern Michigan with his wife, Colleen.

Defendant's lifestyle was disrupted in June 2006, when Charles Sr.'s developing Alzheimer's disease necessitated his placement in a nursing home and Patricia suddenly died. When these events occurred, Bill decided to move to East Jordan indefinitely in order to care for Charles, Sr. Bill did not think that defendant had been doing a good job caring for their parents

[1] Because defendant and his father have the same name, we will refer to defendant's father as "Charles Sr."

and thought that defendant was taking advantage of them; he wanted defendant to get a job and contribute financially to the family.

Defendant was upset by the effect that Patricia's death, Charles Sr.'s ailing health, and Bill's decision to move to East Jordan would have on his lifestyle. In particular, defendant was upset that he could no longer rely on his parents for financial support or to drive him around. Defendant grew angry when asked to sign a medical power of attorney form for Charles Sr. and when he learned that because he lacked valid state identification, he could not have access to his father's bank accounts.

On June 15, 2006, Bill disappeared. Bill's friends, relatives, and acquaintances had no contact with him after this date, Bill was no longer seen in Charlevoix County or at his Hudsonville apartment, he no longer accessed his email, and his bank account was untouched. Over the following weeks, several people who knew Bill began noticing that he was missing and asked defendant where Bill was. Defendant typically told inquirers that on June 15, Bill had gone to Indiana with a friend, "Ed," to help Bill's ex-wife, who was having marital problems.[2] Defendant also admitted to Colleen that before Bill had left, Bill had demanded that defendant either get a job and assist with household expenses or move out of the home, and the brothers had argued. Defendant indicated that he was upset that Bill would tell him to change his life, and he had told Bill that if anyone were to go, it would be Bill. According to Colleen, defendant did not appear upset that Bill had disappeared.

After a few weeks, Colleen and Richard became increasingly worried about Bill's disappearance. When Colleen conveyed her concern to defendant, defendant told Colleen that he did not want to report Bill missing because he thought that Bill would return and he was afraid that he would be considered a suspect in Bill's disappearance because he was the only one with a motive. Defendant then explained that he would have a motive to kill Bill because Bill wanted him to get a job and change his life, and defendant did not want to do so. During another conversation, defendant said that he was not worried about the police investigating the house because he had enough time to "clean up" from anything that he might have done. Later, defendant agreed that he would report Bill missing during a guardianship hearing for Charles Sr. that was scheduled for August 16, 2006, but defendant never attended the meeting. When Colleen learned that defendant had not attended the meeting, she reported Bill missing.

At the guardianship hearing, a local volunteer was appointed Charles Sr.'s guardian. Soon thereafter, she began a review of Charles Sr.'s financial records and discovered that defendant had been using his father's credit cards to buy gold (which he would later sell for cash) and to charter flights to Washington, D.C., Chicago, and New York. Employees of the charter flight companies would later testify that these trips were of short duration and that Charles had taken luggage with him on these flights that he would not allow others to handle.

[2] Bill's ex-wife testified at trial that she never lived in Indiana and that she had no contact with Bill after their 1982 divorce. The identity of "Ed" was never determined. Bill's car remained at the Merriman house after his disappearance.

In September 2006, Detective Michael Wheat of the Charlevoix County Sheriff's Department began investigating Bill's disappearance. When Wheat first went to the Merriman house, he noticed that it was largely stripped of furnishings and much of the carpeting had been removed. When investigators arrived for a prearranged search of the house in September 2006, they noticed that the house smelled like cleaning products. Further investigation revealed that defendant had thrown away a significant amount of furniture and over 20 bags of garbage during a garbage pickup in July 2006. During a search of the landfill in which this garbage was deposited, investigators discovered a bloodstained cushion from the Merriman house, and forensic analysis indicated that the stains were of Bill's blood. Investigators searching the Merriman house in October and November 2006 discovered trace evidence of bloodstains throughout the house, and DNA testing confirmed that many of these bloodstains were of Bill's blood. Some of these bloodstains were over a foot in diameter. Investigators also found a bloodstained ax in the house, but they could not identify the source of that blood.

Wheat had several conversations with defendant over the course of the investigation in which defendant provided inconsistent and occasionally implausible explanations of the events surrounding Bill's supposed disappearance. When Wheat first spoke to defendant, defendant told Wheat that Bill had left with "Ed" to help his ex-wife in Indiana. During a second conversation, defendant provided a sequence of events regarding "Ed's" arrival at the Merriman home that did not comport with his earlier explanation of events. Further, defendant claimed that he saw "Ed" drive into the driveway from his bedroom window, even though shrubbery obscured the view of the driveway from this window. Defendant also told Wheat that he was concerned that someone would take the house because he had no job, no driver's license, and had not worked in 25 years, and he mentioned that he fought with Bill before Bill disappeared.

In October 2006, when investigators began a more comprehensive search of the Merriman home, defendant told Wheat that he would find two spots of blood by the sliding-glass back door. Defendant then mentioned, for the first time, that shortly before his disappearance, Bill had cut his left hand from the base of his ring finger to the base of his thumb while pulling up carpet by the threshold of the sliding-glass door and had shed a few spots of blood. When one of the investigators explained to defendant that Bill could not have cut his hand in the manner that defendant had described if he was holding a piece of carpet when he cut his hand, as defendant had claimed, defendant changed his story to claim that Bill was not holding the carpet when he cut his hand. Defendant described the cut as an angled fillet cut of fingernail depth and not deep.

When Wheat returned to the Merriman home a few days later, defendant told Wheat that Bill had bled more profusely than he had previously indicated. According to defendant, Bill cupped one hand over the other when he cut it, but the cut was "bleeding like crazy" and blood fell on the floor. Defendant told another investigator that Bill had bled enough when he was cut to create a couple patches of blood totaling approximately one foot in diameter. Defendant also said that Bill had bled on the cement outside the sliding-glass door in the back of the house.

In November, after defendant learned that investigators had discovered the cushion containing Bill's blood, defendant told Wheat that the bloodstains on the cushion, like the other bloodstains throughout the house, were from the cut that Bill had suffered to his hand just before his disappearance. Defendant also claimed that Bill had described the cut as "capillary damage" and decided not to go to the emergency room for treatment. According to defendant, he and Bill

then cleaned the wound thoroughly and put a butterfly bandage on it. Defendant again claimed that the cut was not deep.

During this conversation, defendant also admitted to Wheat that he had used an ax and motor oil to scrape up carpet pad in the TV room that Bill had bled on, and he cleaned up blood with motor oil everywhere he found it. Although defendant admitted that he scraped up some of the carpeting and padding after he learned that Bill's disappearance was being investigated, he claimed that he was doing so to prepare the house for Charles Sr. to return home. Defendant also told Wheat, unprompted, that he did not use the ax that investigators had found in the house to crush Bill's skull.

Detective Wheat had several additional conversations with defendant, in which defendant continued to provide contradictory descriptions of Bill's injury, its severity, the amount of blood he lost, and how the injury was treated. Defendant also told Wheat that he and Bill had fought over control of the family papers and defendant's lack of a job and unwillingness to contribute to the family. Defendant said that he had not mentioned the large amount of blood in the house earlier because he did not want to trigger a forensic investigation.

By late November, as investigators continued to search the Merriman house for evidence concerning Bill's disappearance, defendant began admitting that some blood might also be present in the living room, dining room, and hallway, although he still maintained that this blood was from the cut to Bill's hand. By this time, defendant also claimed that Bill had used a cauterizing agent to stop the cut from bleeding. Wheat explained,

> As—as blood was found—initially, before any blood was found, there was no injury to the hand. And then when blood was initially found or when he knew that there was going to be a small amount of blood found, there was a fairly minor cut . . . on the left hand. As more—as he found out that more blood evidence was found, the cut on the hand became more severe. And as he knew we were going to find more evidence based on the cushion, the hand cut became more severe. So as we found more blood evidence or anticipated more blood evidence, the severity of the cut on the hand also increased.

Although several prosecution experts and investigators admitted at trial that they could not conclusively determine the exact amount of blood that Bill had lost based on the evidence available to them, especially because some of the blood that was shed would have soaked through carpeting that was later removed from the home, several expert witnesses testified that the size of the bloodstains indicated that Bill had lost a life-threatening amount of blood. Other prosecution experts testified that the cut to the hand that defendant had described would not have caused Bill to shed the amount of blood found at the scene.

II. Sufficiency of the Evidence

Defendant argues that the trial court erred when it denied defendant's motion for a directed verdict because the prosecution presented insufficient evidence to support defendant's conviction for second-degree murder. We disagree.

We review a claim of insufficient evidence in a criminal trial de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When reviewing a claim that the evidence presented was insufficient to support defendant's conviction, we view the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the essential elements of the crime were established. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). As a result, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). However, to establish that the evidence presented was sufficient to support defendant's conviction, "the prosecutor need not negate every reasonable theory consistent with innocence." *Id.* "The evidence is sufficient if the prosecution proves its theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant may provide." *People v Wolford*, 189 Mich App 478, 480; 473 NW2d 767 (1991).

The prosecutor need not present direct evidence linking a defendant to the crime in order to provide sufficient evidence to support a conviction; "[c]ircumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense." *Id.* "Questions of credibility are left to the trier of fact and will not be resolved anew by this Court." *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Furthermore, "[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The elements of second-degree murder are (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Aldrich*, 246 Mich App 101, 123; 631 NW2d 67 (2001). Defendant argues that the prosecution failed to provide sufficient evidence to establish that defendant committed second-degree murder because it failed to prove beyond a reasonable doubt "that Bill was dead, failed to prove that if he was dead it happened in the Merriman home and failed to prove how, if [defendant] did kill Bill in the home, he was able to get rid of the body without leaving anything but blood evidence." Essentially, defendant contends that the prosecution failed to establish the first two elements of second-degree murder, namely, that Bill was dead and that defendant caused Bill's death.

However, the prosecution presented sufficient evidence to permit a reasonable juror to conclude that these elements of second-degree murder had been established. First, the prosecution presented sufficient evidence to permit a reasonable juror to conclude that Bill was dead. No trace of Bill was discovered after his June 15, 2006, disappearance. He never returned to his apartment, never accessed his bank account, never contacted any friends, relatives, or acquaintances, and otherwise failed to leave any sign that he was still alive. Further, the prosecution presented evidence indicating that Bill had no intention of suddenly disappearing: Bill had told several individuals that he planned to move to Charlevoix County to care for his father and took steps to ensure that he could properly oversee his father's health and finances. More significantly, although Bill's body was never found, the prosecution presented evidence indicating that Bill had lost a significant amount of blood in the Merriman house, that defendant could have died as a result of the amount of blood lost, and that defendant had acknowledged that this blood loss occurred just before Bill's disappearance. Although much of this evidence is circumstantial, the combination of evidence that Bill disappeared on June 15, that he did not

have a reason to suddenly disappear, and that he suffered a loss of blood at the time of his disappearance that was significant enough to cause his death, would be sufficient to permit a reasonable juror to conclude that Bill was dead.

Further, the prosecution presented sufficient evidence to permit a reasonable juror to conclude that defendant had caused Bill's death. Defendant was the last person to see Bill alive, and the evidence presented at trial indicated that defendant and Bill were alone at the Merriman house during the evening of June 15. No evidence was discovered that verified defendant's claim that Bill had left with "Ed" that evening. Defendant also acknowledged that the bloodstains discovered throughout the Merriman home were caused by blood that Bill had shed just before his disappearance. Although defendant maintained that Bill had shed the blood that was discovered throughout the Merriman house after cutting his hand, expert testimony indicating that defendant had lost significantly more blood than would have been shed as a result of the cut described by defendant would permit a reasonable juror to conclude that the blood loss that Bill suffered was caused by a more significant injury than merely a cut to the hand.

Further, a reasonable juror could conclude that defendant had a reason to cause Bill's death. Defendant had not worked in over 25 years and relied on his parents for financial support and a place to live. Defendant lacked a desire to work and was distraught both at the idea of losing access to his parents' income and at Bill's threats that he needed to either get a job and contribute to the family or move out of the Merriman house. In particular, defendant admitted to his sister-in-law that he and Bill had argued after Bill had told him that he needed to either get a job and help with household expenses or move out of the home, that he was upset that Bill was ordering him to change his life, and that he had threatened Bill that if anyone were to go, it would be Bill.

Defendant even acknowledged that he had a reason to cause Bill's death. When his sister-in-law indicated that she wanted to report Bill missing, he asked her not to make the report because he feared that he would be a suspect in Bill's disappearance because he was the only person with a motive to harm Bill, explaining that he had such a motive because Bill wanted defendant to get a job and change his lifestyle, and defendant did not want to do so. Although defendant promised his sister-in-law that he would report Bill missing at his father's guardianship hearing, he did not attend the hearing; instead, he took a chartered flight to New York on that day.

Further, defendant made references to Bill's possible death and his efforts to "clean up" evidence that Bill had bled throughout the house that, in light of Bill's disappearance, constituted additional circumstantial evidence that defendant might have been responsible for Bill's death. In particular, defendant mentioned to his sister-in-law that he was not worried about the police investigating the Merriman house because he had enough time to "clean up" from anything that he might have done in the house. Also, defendant admitted to Detective Wheat that he had used an ax to remove carpeting and padding that Bill had bled on and threw the carpeting and padding away, and he then stated, unprompted, that he did not use the ax to crush Bill's skull.

Admittedly, most of the aforementioned evidence is circumstantial; defendant has maintained his innocence, and there is no eyewitness testimony or direct forensic evidence indicating that defendant caused Bill's death. However, evidence that defendant and Bill were alone in the Merriman house on the night of Bill's disappearance, that Bill had shed enough

blood that night to cause his death, that Bill and defendant had been arguing about Bill's insistence that defendant change his lifestyle and get a job, that defendant had acknowledged that he had a motive to kill Bill, and that defendant had thrown away evidence that could have helped investigators determine what exactly happened in the Merriman house on the night of June 15, taken together, could lead a reasonable juror to conclude that defendant was responsible for Bill's death.[3]

III. Admission of Expert Testimony

Defendant argues that the trial court erroneously permitted testimony from three expert witnesses for the prosecution, board-certified orthopedic surgeon Dr. Roland Brandt, forensic pathologist Dr. Steven Cohle, and Dr. Reed Freidinger, the chief medical examiner of Charlevoix County for over twenty years. To make his argument, defendant raises multiple specific allegations of error. However, none warrant reversal of defendant's conviction.

"This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. Similarly, a trial court's decision to admit or exclude expert testimony is reviewed for an abuse of discretion." *People v Dobek*, 274 Mich App 58, 93; 732 NW2d 546 (2007) (internal citations omitted). "[T]he determination regarding the qualification of an expert and the admissibility of expert testimony is within the trial court's discretion." *People v Murray*, 234 Mich App 46, 52; 593 NW2d 690 (1999). An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The proper interpretation of the Michigan Rules of Evidence presents a question of law, which we review de novo. *Dobek*, *supra* at 93. "A trial court necessarily abuses its discretion when the court permits the introduction of evidence that is inadmissible as a matter of law." *Id.* However, "[a]n error in the admission or exclusion of evidence will not warrant reversal unless refusal to do so appears inconsistent with substantial justice or affects a substantial right of the opposing party." *Id.* We review a trial court's findings of fact for clear error. MCR 2.613(C).

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[3] Additionally, although the elements of second-degree murder do not require the prosecution to separately establish how defendant might have disposed of Bill's body, the prosecution presented evidence indicating how defendant might have done so. In particular, the prosecution presented evidence indicating that defendant disposed of substantial amounts of garbage a couple weeks after Bill disappeared, that individuals disposing of this garbage would not necessarily have noticed that human remains were being thrown away if the remains were disposed of in garbage bags, and that it can be difficult to locate human remains in a landfill. A reasonable juror could infer that defendant might have disposed of Bill's remains by throwing them in the trash. The prosecution also presented evidence that defendant chartered three flights in the days and weeks following Bill's disappearance, bringing luggage with him that he would not permit others to handle. A reasonable juror could infer from this circumstantial evidence that defendant had an opportunity to destroy evidence of Bill's death by taking it to a far-away location for disposal. This evidence that defendant had the opportunity to dispose of Bill's body constitutes additional circumstantial evidence that defendant killed his brother.

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. [MRE 702.]

In *People v Unger*, 278 Mich App 210; 749 NW2d 272 (2008), this Court addressed how a trial court should approach its role as a gatekeeper with regard to the proper admission of expert testimony:

> [T]he trial court's role as gatekeeper does not require it to search for absolute truth, to admit only uncontested evidence, or to resolve genuine scientific disputes. Instead, the proper role of the trial court is
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> > to filter out expert evidence that is unreliable, not to admit only evidence that is unassailable. The inquiry is not into whether an expert's opinion is necessarily correct or universally accepted. The inquiry is into whether the opinion is rationally derived from a sound foundation.
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> The standard focuses on the scientific validity of the expert's methods rather than on the correctness or soundness of the expert's particular proposed testimony. An expert's opinion is admissible if it is based on the methods and procedures of science rather than subjective belief or unsupported speculation. [*Id.* at 217-218 (citations and quotations omitted).]

First, we note that defendant insinuates throughout his argument that because all three witnesses were not experts in the interpretation of forensic photographs, they improperly based their testimony regarding the amount of blood loss on forensic photographs of bloodstains found at the Merriman house. However, although these doctors viewed the photographs in question before rendering their opinions, evidence that the experts relied on regarding the size of the bloodstains in question did not come from the experts' estimations of the sizes of the bloodstains in question as determined by simply viewing the photographs, but from testimony by the investigators regarding measurements they had taken of the sizes of these bloodstains. Accordingly, defendant's contention that these experts based their opinions merely on their interpretations of forensic photographs is incorrect.

Second, defendant claims that these experts should not have opined on the amount of blood loss because the only evidence on which they relied to render expert opinions regarding the amount of blood loss, besides the forensic photographs, was defendant's description of Bill's injury and the amount of blood that he lost as a result. However, these experts did not use defendant's description of Bill's injury in order to estimate the amount of blood that was lost, but to explain that defendant's description of Bill's injury, including the amount of blood that defendant said that Bill lost and how defendant claimed that Bill reacted when he was cut, did not comport with the amount of blood loss indicated by the forensic evidence collected. Further, defendant provides no support for the proposition that an expert cannot consider a layperson's

testimony when determining whether that layperson's description of events is consistent with corresponding forensic evidence. Defendant fails to establish outcome-determinative error.

Third, defendant insinuates that Brandt and Cohle could not opine regarding the amount of blood loss represented by the bloodstains because they "did not describe the scientific foundations for their opinions, based on the descriptions and forensic photographs, regarding how much blood was lost." However, defendant fails to provide any authority to explain how the "scientific foundation" for an expert opinion should be established, and he does not explain how Brandt and Cohle failed to describe these "scientific foundations." Because defendant failed to properly establish this claim of error, we need not address it further. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Fourth, defendant more particularly challenges that the trial court should not have admitted Brandt's testimony regarding the amount of blood that Bill had lost, claiming that "[a]s an orthopedic surgeon, Dr. Brandt had no apparent expertise in interpreting forensic photographs." Defendant appears to argue that because Brandt was not admitted as an expert in the interpretation of forensic photographs, he should not have been permitted to testify regarding the amount of blood lost because he would need to use the photographs of the crime scene to "interpret" the amount of blood that Bill would have lost. This claim of error lacks merit. Brandt's expert testimony did not exclusively require him to interpret forensic photographs, as defendant contends. Brandt testified as an expert in the field of orthopedic medicine and had the necessary expertise to render an opinion regarding the amount of blood loss that could occur as the result of a cut to the hand. Further, although defendant attempts to claim that Brandt determined the amount of blood loss by "interpreting" forensic photographs of the bloodstains, the investigators who discovered and collected this evidence testified regarding the size of these bloodstains, and Brandt appeared to base his opinion regarding the amount of blood that Bill lost primarily on the bloodstain evidence introduced by the forensic investigators and defendant's descriptions of the amount of blood that Bill had lost.

Fifth, defendant appears to argue that Brandt should not have been permitted to testify regarding the amount of blood that Bill lost because the prosecution had stated during a motion hearing that Brandt was not "going to say that [Bill] bled two-thirds of his volume of blood there and, therefore, he had to die." However, defendant provides no support for his apparent assertion that an expert cannot offer testimony within his area of expertise if the prosecutor makes an offhand remark before trial that the expert does not plan to provide this testimony. Regardless, Brandt never opined at trial that Bill bled two-thirds of his blood volume and had to die as a result. Instead, Brandt opined that based on the size of the bloodstains found in the Merriman house and the investigators' determinations regarding the loss of blood that this represented, the amount of blood loss was life-threatening (as opposed to life-ending). In addition, defendant fails to explain why Brandt, as a medical doctor and orthopedic surgeon, should not opine regarding what would constitute a life-threatening loss of blood, especially considering that a proper understanding of the amount of blood needed to survive, to avoid shock, and to maintain good health is basic medical knowledge and, more importantly, is something that Brandt would need to be aware of as an orthopedic surgeon in order to monitor for and address excessive blood loss during surgery. Consequently, Brandt's testimony regarding the amount of blood loss that Bill experienced was within the realm of Brandt's area of

expertise and was properly based on evidence introduced at trial. The admission of this testimony did not constitute an abuse of discretion.

Sixth, defendant claims that the trial court erred when it permitted Brandt to testify at trial that he was making "just a common sense determination" of how much blood was on the cushion when he estimated that between 12 ounces and a quart of blood had seeped into the cushion. However, defendant provides no explanation for how this would constitute outcome-determinative error and, therefore, we need not address this claim of error further. *Mitcham, supra* at 203.

Seventh, defendant argues that the trial court improperly permitted Brandt to testify that "common sense" dictates that an individual who received a cut of the sort that defendant claimed that Bill had received would try to stop the bleeding by putting pressure on the cut and going to an area where the cut would not "make a mess." Although expert testimony regarding opinions considered to be within the realm of "common knowledge" are not admissible, *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 790; 685 NW2d 391 (2004), Brandt's brief remark concerning well-known human impulses to put pressure on a bleeding cut and to attempt to prevent blood from dripping and causing a stain does not constitute outcome-determinative error.

Eighth, defendant argues that the trial court abused its discretion when it permitted the admission of Cohle's testimony into evidence. Although defendant briefly describes the nature of Cohle's testimony, he does not identify in his brief on appeal the exact testimony whose admission he opposes. Instead, defendant appears to claim that Cohle's testimony should not have been admitted because he "had no apparent expertise in interpreting forensic photographs." However, Cohle did not base his opinions exclusively on his viewing of the forensic photographs of the bloodstains found at the Merriman house. Instead, several of the investigators who collected and analyzed evidence at the Merriman house described the size of the bloodstains and the nature and effect of Luminol application, and Cohle used information regarding the size of the bloodstains, as well as defendant's description of Bill's cut, to determine that the blood loss described by defendant did not comport with the amount of blood loss that Bill experienced based on the size of the bloodstains in the house. Defendant does not argue that Cohle lacked the expertise to opine regarding the amount of blood loss indicated by the stains, nor does he claim that Cohle must address any weaknesses in using Luminol to determine the size of a bloodstain in order to render an expert opinion. Consequently, defendant fails to establish how Cohle's testimony that the cut described by defendant would not create enough blood loss to create bloodstains of the sizes discovered in the Merriman house is unreliable. The admission of Cohle's testimony did not constitute an abuse of discretion.

Ninth, defendant argues that the trial court erred when it permitted Freidinger to testify regarding his "opinion as a human being." Defendant bases this allegation of error on the following statement by Freidinger in response to a question by the prosecution:

> Q: And so when you gave your opinion today, you relied on the history of 250 pounds, the description of where this blood came from, and you heard a bunch of slides, and you saw a bunch of photographs. The data was from those papers that you had. Then you were able to interpret this information, and you gave an opinion based on the pictures that you saw about much blood that person would lose and then what would happen to that person, and your opinion is what?

> A: Well, I have two opinions. First of all, I'm a human being. Before I was a doctor, I was a human being, and there was a tremendous amount of blood loss at that scene, which was a very nauseating—I mean, you just—you know something terrible happened at that scene if all that blood came from a victim. That victim was incapacitated, and I've never seen that much blood.
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> I've seen people put shotguns to their chest and shotguns in their mouth, and there's some blood—when people are shot, you see pictures of people shot in Iraq or whatever. There isn't usually big pools of blood streaming down from them. This is the most blood I have personally seen, assuming it came from one individual and it all was blood from a wound.

After identifying this exchange between Freidinger and the prosecutor, defendant merely claims that "Dr. Freidinger's opinion as a human being was not relevant and was inadmissible under MRE 702." Defendant appears to insinuate that Freidinger's entire statement was inadmissible because it was his opinion "as a human being." However, defendant fails to explain why he believes that this statement constitutes Freidinger's opinion "as a human being," especially considering that Freidinger's expertise to opine that the amount of blood loss at the scene was "tremendous" and "the most blood [he] ha[s] personally seen" derives more from his years of experience as the chief medical examiner of Charlevoix County than his "experience" as a human being. Because defendant fails to explain why this statement constitutes Freidinger's opinion "as a human being," this claim of error lacks merit.[4] *Mitcham*, *supra* at 203.

Tenth, defendant disagrees with Freidinger's claim that "a blood spill cannot be made larger in the process of cleaning." Defendant argues that Freidinger's statement is inadmissible because it is inconsistent with the "common experience of cleaning up spilled blood." However, defendant provides no support for his assertion that a trial court should not admit expert testimony if it conflicts with "common experience." Similarly, defendant argues that Freidinger's statement is inadmissible because it is not consistent with an investigator's testimony "that any fluid used to clean up a blood stain would add volume to the stain" and Brandt's testimony "that blood can be diluted to increase its volume." However, an expert's testimony is not inadmissible simply because it conflicts with the opinions of other experts. See *People v Ross*, 145 Mich App 483, 493; 378 NW2d 517 (1985) ("With experts offering conflicting opinions . . . , the decision as to which expert was more credible was left up to the jury."). Defendant does not claim that Freidinger's testimony is unreliable and has otherwise

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[4] Instead, Freidinger's comment that he has an opinion "as a human being" might have been an attempt to explain his emotional reaction to the amount of blood loss in this case, which he described as "nauseating."

Defendant also claims that this statement by Freidinger constituted outcome-determinative error because it "inflamed the jury's passion." Yet although Freidinger used colorful language to describe his reaction to the amount of blood at the scene, as well as to explain the difference between the amount of blood typically lost from a gunshot wound and the amount of blood loss at issue in this case, we do not believe that Freidinger's statements so "inflamed" the jury's passions that any error that might have occurred would be outcome-determinative.

failed to address whether Freidinger's claim satisfies the qualifications for admitting expert testimony set forth in MRE 702. Accordingly, defendant's claim that the trial court should not have admitted Freidinger's testimony that a blood spill cannot be made larger in the process of cleaning lacks merit.

Finally, defendant argues that Freidinger's opinion regarding the amount of blood loss at the scene was inadmissible because he based his estimate of the volume of blood loss at the scene on a study at "an unnamed university" and did not provide any evidence to indicate that this study was reliable or "that the extrapolation of blood volume from surface area was reliable methodology." We disagree. Freidinger explained how the study in question was conducted and discussed distinctions between the study and the circumstances of this case. At trial, Freidinger testified that three pints of uncoagulated blood poured onto plastic would create a puddle 40 inches in diameter. Freidinger explained that he used this ratio to estimate the amount of blood loss that Bill probably experienced based on the total surface area of the bloodstains in the Merriman house, and he also explained the limitations of using this ratio, noting that some of Bill's blood might have coagulated or soaked into the carpeting instead of staining the floor. Freidinger explained how the expert opinion that he presented regarding the amount of blood loss that occurred was consistent with the "methods and procedures of science," and the trial court's admission of this testimony was not an abuse of discretion. *Unger*, *supra* at 217-218.

IV. Appointment of a Defense Expert

Next, defendant challenges the trial court's denial of his request for funds to hire an expert to testify regarding blood loss. We conclude that defendant has failed to establish how his proposed expert testimony would likely benefit his defense and, therefore, he has failed to establish outcome-determinative error. We review a trial court's decision whether to grant an indigent defendant's motion for the appointment of an expert for an abuse of discretion. MCL 775.15.

Defendant claims that his proposed expert witness "would testify that 'a hand could be injured without severing tendons and incapacitating the hand, and you could create the amount of blood that's found in the house, which is in direct contradiction to the prosecution' . . . [and] would also testify that the wound may not require medical treatment." Defendant contends that because the prosecution introduced expert testimony regarding the amount of blood that Bill lost, his ability to provide expert testimony "that it was impossible to determine either the amount of blood loss from the stains or when the bloodstains occurred" was critical to his defense, and the trial court's failure to permit him to provide expert testimony in this respect was erroneous.

A trial court is not required to provide funds on demand for the appointment of an expert witness for the defense, unless the defendant can establish that he cannot proceed safely to trial without the testimony of the proposed expert witness. MCL 775.15. "To obtain appointment of an expert, an indigent defendant must demonstrate a 'nexus between the facts of the case and the need for an expert.'" *People v Tanner*, 469 Mich 437, 442-443; 671 NW2d 728 (2003), quoting *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995). In *Tanner*, our Supreme Court explained, "It is not enough for the defendant to show a mere possibility of assistance from the requested expert. Without an indication that expert testimony would likely benefit the defense, a trial court does not abuse its discretion in denying a defendant's motion for appointment of an expert witness." *Id.* at 443 (internal quotations omitted).

In this case, defendant fails to establish that the expert testimony that he seeks would have benefited his defense. Defendant believed that at trial, his expert would be able to testify that "a hand could be injured without severing tendons and incapacitating the hand" and that Bill's hand injury "could create the amount of blood that's found in the house, which is in direct contradiction to the prosecution." However, defendant's defense throughout trial was that the bloodstains found in the Merriman house did not indicate that Bill had shed the fatal amount of blood that the prosecution posited that he had lost, but that they reflected a much smaller loss of blood consistent with the cut to the hand that defendant had described. Further, defendant admitted in his brief that his purpose in seeking the admission of the proposed expert witness was to elicit testimony "that it was impossible to determine either the amount of blood loss from the stains or when the bloodstains occurred." The relevant question on which defendant's defense rested was not whether Bill could lose half or a third of his blood and still live, but what the forensic evidence indicated regarding how much blood was shed in this case.

However, defendant has failed to establish that expert testimony, which would, at best, indicate that a cut to the hand could cause bloodshed in the amount that defendant suggested had occurred in this case and reiterate that "it was impossible to determine either the amount of blood loss from the stains or when the bloodstains occurred," would have likely benefited his defense to the extent that he could not safely proceed to trial without it. Defendant elicited from other witnesses at trial most, if not all, of the information necessary to his defense that he would have elicited from his proposed expert. On cross-examination, defendant elicited testimony from Freidinger that an expert would not be able to determine whether the bloodstains on the floor were caused by blood mixed with something else that would have diluted the blood and to what extent the blood would have been diluted. Brandt conceded that he could not conclusively determine if anything was mixed with the blood that stained the floor and cushion, while Cohle admitted that he could not conclusively determine how much blood loss occurred in this case. Defendant also elicited testimony from one of the forensic investigators that less than eight ounces of paint would have been needed to cover all the bloodstains found in the house. Although having another expert agree with the acknowledgements of these prosecution witnesses is a nice way to emphasize certain helpful evidence, defendant fails to explain how the appointment of an expert witness is necessary in order to safely proceed to trial when he could establish a valid and compelling defense without one.

V. Admission of Evidence

Defendant also argues that the trial court should have admitted evidence concerning his defense that Bill disappeared. We disagree. We review a trial court's decision regarding the admission of evidence for an abuse of discretion, *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999), and a trial court's ultimate decision on a motion to suppress evidence de novo, *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003).

Although defendant argues that the trial court erred when it precluded him from offering evidence that would explain why Bill disappeared, he does not clarify in his brief specifically what evidence he contends the trial court should have admitted.[5] Defendant briefly mentions in

[5] Defendant describes the evidence simply as "testimony and documents from Bill's computer (continued…)

his brief on appeal that this evidence apparently concerns "Bill's regular use of LSD, including a conviction[,] and his association with the KKK and Storm Front . . . ." Defendant claims that this evidence is admissible because it is relevant under MRE 401 and cannot be excluded under either MRE 403 or MRE 404.

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Evidence must meet two requirements to be admissible under MRE 401. *People v Mills*, 450 Mich 61, 67; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995). First, the evidence must be material; in other words, "'the matter sought to be established by the evidence must be "in issue,"'" or otherwise of consequence to the determination of the action. *Id*. at 67 & n 4, quoting *People v McKinney*, 410 Mich 413, 418-419; 301 NW2d 824 (1981). Second, the evidence must have probative value with respect to the issue; that is, it "makes a fact of consequence more or less probable than it would be without the evidence." *Id.* "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." MRE 403.

Although defendant maintains that this evidence was relevant under MRE 401 and should not have been excluded under MRE 403, he fails to explain how this was the case. Defendant merely claimed, "As defense counsel argued at trial, this information provided the defense with a counter to the prosecution's argument that Bill was a reliable and stable person who would not have abandoned his obligations." Yet defendant cannot simply make an assertion of error and leave it up to this Court to "to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham, supra* at 203. Considering defendant's failure to identify more clearly the particular evidence that he claims should have been admitted at trial and his failure to present a comprehensive argument explaining why the challenged testimony was relevant under MRE 401, yet not so prejudicial to require exclusion under MRE 403, we need not address this claim of error further. *Id.* Further, we do not see how any evidence of Bill's alleged past drug use and possible association with undesirable organizations is particularly relevant with respect to challenging the prosecution's evidence concerning Bill's reliability, nor do we see how any relevance that this evidence might pose would outweigh the significant prejudice that might arise from the admission of this testimony.[6]

VI. Admissibility of Defendant's Statements to Investigators

(…continued)

that would support an explanation of why Bill disappeared to counter the prosecution's theory that the only conceivable explanation for his disappearance was that Charles killed him."

[6] For example, if this evidence were admitted, a juror might decide to acquit defendant despite believing that the prosecution had established beyond a reasonable doubt that he had committed the offense in question because the juror believed that Bill was a Klansman, a drug addict, or simply a bad person and, therefore, "got what he deserved" when he was killed. Although defendant has an absolute right to present a vigorous defense, this does not mean that a trial court should admit evidence that has little value besides painting the victim as a bad person in order to insinuate that any harm that occurred to that victim was "justified" and should not warrant conviction of a defendant.

Defendant argues that his conviction should be reversed because the prosecution failed to provide sufficient evidence independent of defendant's inculpatory statements to establish that he murdered the victim. In particular, defendant argues that because the prosecution was unable to establish that the victim died by criminal means, the corpus delicti rule precluded the prosecution from using defendant's statements regarding the amount of blood that Bill had lost when he cut his hand to establish that he killed Bill. We disagree. Because defendant's statements constitute a confession, the corpus delicti of an offense need not be established in order to admit these statements.[7]

In *People v McMahan*, 451 Mich 543; 548 NW2d 199 (1996), our Supreme Court discussed the establishment and purpose of the corpus delicti rule:

> In Michigan, it has long been the rule that proof of the corpus delicti is required before the prosecution is allowed to introduce the inculpatory statements of an accused. *People v Williams*, 422 Mich 381, 388; 373 NW2d 567 (1985); *People v Allen*, 390 Mich 383; 212 NW2d 21 (1973). The underlying purposes of the corpus delicti requirement are (1) "to guard against, indeed to preclude, conviction for a criminal homicide when none was committed," *Williams* at 388, and (2) "to minimize the weight of a confession and require collateral evidence to support a conviction." Hall, General Principles of Criminal Law (2d ed), ch VII, p 226.
>
> In Michigan, the corpus delicti of murder requires proof both of a death and of some criminal agency that caused that death. *Williams*, *supra*. We emphasize that such proof must consist of evidence that is independent of the accused's confessions. *People v Konrad*, 449 Mich 263, 269-270; 536 NW2d 517 (1995) ("the rule provides that a defendant's confession may not be admitted unless there is direct or circumstantial evidence independent of the confession establishing [1] the occurrence of the specific injury [for example, death in cases of homicide] and [2] some criminal agency as the source of the injury"). Once the corpus delicti of the crime is established, appropriate extrajudicial confessions of the accused are admissible. [*Id.* at 548-549.]

However, as our Supreme Court noted in *People v Porter*, 269 Mich 284; 257 NW 705 (1934), the corpus delicti rule only applies to the admission of a defendant's confession into evidence. The *Porter* Court explained,

> If the fact admitted necessarily amounts to a confession of guilt, it is a confession. If, however, the fact admitted does not of itself show guilt, but needs proof of other facts, which are not admitted by the accused, in order to show guilt, it is not a confession, but an admission . . . .
>
> The distinction between confessions and admissions is pointed out in 2 Wharton's

[7] Whether defendant's statements constitute a confession is a question of law that we review de novo. *Dobek*, *supra* at 93.

Criminal Evidence, vol 3 (10th Ed.) p. 1266 *et seq*. He says:

> "§ 622a. * * * A confession is an acknowledgment of guilt. * * *
>
> "§ 622b. A confession, although differently phrased by different courts, being an acknowledgment, in express terms, by a party in a criminal case, of the truth of the crime charged, by the very force of the definition logically excludes: first, acts of guilty conduct; second, exculpatory statements; third, admission of subordinate facts that do not constitute guilt. Much of the confusion that exists in the case law would be readily avoided if courts carefully measured every confession by the rule of direct acknowledgment of guilt, as entirely distinguished from acts, exculpatory statements, and admissions. * * *
>
> "3. There must be some distinctive feature, showing guilt, in the fact acknowledged, and all other statements than those directly stating the fact of guilt are without the scope of the rule affecting the use of confessions. * * * Hence, the third ground of exclusion is that the admission of subordinate facts, not directly involving guilt, do not constitute a confession."

As illustrating statements which are not confessions, Wharton cites:

> "Nor the statement of incriminating facts; nor a statement from which guilt might be inferred; nor, on a trial for forgery, an admission by accused that he wrote the signature, unless he also admits that he did it with a fraudulent intent; nor where, sometime after the burning of a barn, the accused stated that the house was insured and might 'go to blazes with the barn,' it not even being an admission that accused had burned the barn."

In 16 C.J. p. 716, it is said:

> "Although it may be received in evidence, an admission by word or act of an inculpatory fact from which the jury may or may not infer guilt, but which falls short of being an acknowledgment of guilt, is not a confession. Also an admission of one, but not of all, the essential elements of the crime is not a confession." [*Id.* at 290-291.]

The *Porter* Court concluded that statements by a defendant "which needed other facts to give them convicting force" did not constitute a confession and, therefore, "were admissible on the *corpus delicti*." *Id.* at 291.

Defendant claims that "[t]he only evidence of Bill's death and of criminal agency is [defendant's] extrajudicial inculpatory statements about the bleeding" and that "[t]he only evidence that led the medical doctors to conclude that the [sic] Bill had died was [defendant's] inculpatory statements regarding the blood found in the home and the injury Bill sustained." However, defendant's inconsistent statements regarding the nature of Bill's supposed injury do not constitute an acknowledgement of guilt. Defendant never admitted that he killed Bill or that

he was responsible for any injury that might have caused Bill's blood to be shed throughout the Merriman house. In fact, defendant's statements are the opposite of an acknowledgement of guilt—defendant made these statements in an attempt to exculpate himself from wrongdoing. The fact that the prosecution presented evidence at trial that undermined the credibility of defendant's statements does not mean that these statements suddenly constituted an "acknowledgement of guilt." Consequently, defendant's statements do not amount to a confession, and the corpus delicti of the offense need not be established in order to admit defendant's statements into evidence.

VII. OV 19

Finally, defendant argues that the trial court erred when it scored OV 19 at ten points because he has maintained his innocence and did not interfere with the administration of justice. We disagree. "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Therefore, we shall affirm a sentence that is within the guidelines range unless an error was made in scoring the sentencing guidelines or the trial court relied on inaccurate information when determining defendant's sentence. MCL 769.34(10). "'Scoring decisions for which there is any evidence in support will be upheld.'" *Hornsby*, *supra* at 462, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

Under MCL 777.49(c), ten points are scored for OV 19 if "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice." "The investigation of crime is critical to the administration of justice." *People v Barbee*, 470 Mich 283, 288; 681 NW2d 348 (2004). Providing false information to police investigating whether an offense has been committed constitutes an interference with the administration of justice. See *id.* at 288 (providing a false name to the police constitutes an interference with the administration of justice).

The trial court did not err when it scored OV 19 at ten points because defendant repeatedly lied to the police, hindering the investigation. The record evidence indicates that when the police first spoke with defendant about Bill's disappearance, defendant did not mention that Bill's blood was present throughout the house. Further, defendant only claimed that Bill had cut his hand after blood was discovered in the home, and his description of Bill's cut, the amount of blood loss resulting from this cut, and how the cut was treated changed as investigators discovered more blood in the house and in a manner designed to account for the newly discovered forensic evidence. Defendant also admitted that he had removed carpeting stained with Bill's blood from the house after Bill's disappearance. Further, defendant was aware that investigators planned to come to his home on September 26 to investigate, and when they arrived, the house smelled like cleaning products, as if it had been cleaned recently. Also, the house contained little furniture and the carpeting had been removed. Defendant did not merely remain silent in this case; instead, he provided the police with contradictory statements regarding the claimed source of the forensic evidence that was found in the Merriman house and made an effort to remove evidence from the house before investigators could find it. His actions constitute an interference with the administration of justice, and the trial court's decision to score ten points for OV 19 is not an abuse of discretion.

Defendant admits that he was not upfront with the police, but he claims that he initially

lied to the police because he feared that he would be considered a suspect in Bill's disappearance and did not want the police to intrude into his life. However, defendant provides no support for his claims that his desire for privacy and fear of being treated as a suspect should be mitigating factors precluding a score of ten points for OV 19. We suspect that few suspects in criminal investigations, whether guilty or not, would welcome a police investigation into their actions. Regardless, any reluctance on the part of an individual to be the subject of a criminal investigation does not justify engaging in active attempts to thwart that investigation.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis