# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>June 5, 2012 |
| v | No. 295168<br>Kalkaska Circuit Court |
| DAVID CHRISTIAN DEJONGE,<br><br>Defendant-Appellant. | LC No. 08-003014-FC |

Before: MARKEY, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

This case arises from the murder of Sarah Wilson on or about May 9, 2008, the dismemberment of her body, and the disposal of her torso in a swampy area in the vicinity of a cabin owned by defendant David Christian DeJonge's parents near Kalkaska, Michigan. The cause of her death could not be determined because only her torso was recovered. The prosecutor's theory was that defendant chased her into the woods near the cabin and then beat her with a stick before killing her. Defendant's theory was that someone else killed her. A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a), and mutilation of a dead body, MCL 750.160. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to concurrent prison terms of life without parole for the murder conviction and 95 to 180 months for the mutilation conviction. Defendant appeals as of right. We affirm.

## I. FACTUAL BACKGROUND

The prosecution presented evidence that defendant Sarah Wilson ("the victim") suffered from alcoholism and had a bipolar condition. She met David James in either 1999 or 2000, and they later had a son. The victim, James, and their son lived together in James's home. In the end of 2007, the victim lived with April Bushman, a mutual friend of both defendant and the victim. Defendant did not approve of James and considered him to be a "troublemaker." Defendant told Bushman that "I'm a good guy. I'm hard working, and I care about [the victim]. She should be with me." The victim promised defendant that she would not see James anymore. However, defendant would drive to James's home to see if the victim was there and would catch her with James. In January 2008, the victim moved to the Detroit area to live with defendant and ultimately became sexually active with him. Defendant called the victim his "lover." According to Bushman, defendant was in love with the victim, but the victim only became sexually active

with defendant as "a means . . . to get what she wanted." The victim "was always about David James. That was her focus always."

Shortly before her death, the victim was trying to get her life under control. She was trying to get help for her alcoholism. She applied for social security benefits. She was considering moving back in with her parents and going to college to pursue a career in radio broadcasting; she took an aptitude test at "Ferris."

In early May 2008, the victim spent four to six days at James's home to visit James and their son. On May 5, James drove the victim to a gas station to meet defendant before James left for a business trip to California. On May 6, James and the victim had several telephone conversations. The victim told James that she had an argument with defendant. On May 8, defendant drove the victim to a cabin owned by his parents near Kalkaska. James Clem, who had a home with his wife Barbara about one-quarter mile from the cabin, saw defendant and the victim drive past his home on May 8. However, on May 9, the Clems only saw defendant driving by himself. Defendant drove "very, very fast" past their home several times that day.

Defendant was supposed to drive the victim to her parents' home on May 9 for Mother's Day weekend. Defendant and the victim never arrived. When the victim's mother was unable to reach the victim, she called defendant. Defendant told her that he last saw the victim on the night of May 8. Defendant stated that the victim jumped out of his car at a liquor store and left in a truck with two men who agreed to drive her to Big Rapids. In a later telephone conversation, defendant stated that the victim was still at the liquor store when he drove off. On May 10, James telephoned defendant after learning from the victim's mother that the victim never arrived. Defendant told James that he last saw the victim when she got out of his car.

On May 11, the victim's mother contacted the Michigan State Police to report that the victim was missing. Michigan State Police Trooper Robert Glentz telephoned defendant on May 12. Defendant told Trooper Glentz that he and the victim were in Kalkaska County on May 8 and that the victim was intoxicated. Defendant stated that they argued outside of a liquor store at about 11:30 p.m. and that the victim left his truck with a bag of clothes. She then asked two men in a blue pickup truck, which had a four wheeler and a motorcycle in the back, for a ride. Defendant said that he drove off after the victim kicked his truck.

Also on May 12, James Thelen, who had previously met the victim and "David" in April 2008 at a Greyhound bus stop, called "David" after unsuccessfully attempting to reach the victim. Thelen told "David" that he wanted to discuss a job with the victim. "David" told Thelen that he had not seen the victim in a couple weeks and did not know how to contact her. Thelen did not make any statements to "David" indicating that he knew where the victim was. And he did not ask "David" to send him any of the victim's belongings.

Defendant later told both the victim's father and Detective Todd Krumm that he and the victim argued outside of a liquor store (the East Lake General Store), the victim jumped out of his truck, kicked the truck, and then left with two other men who had a motorcycle in their truck. Defendant also told the victim's father that a man named "Jim" from Lansing had called him, stating that he wanted the victim's belongings because he was going to give her a job. Detective Krumm reviewed a videotape from the surveillance system at the East Lake General Store and

did not see defendant or the victim on that videotape at the time defendant claimed they were there.

In the days that followed, the police began surveillance on defendant. Defendant traveled throughout Michigan, including back to the cabin. Defendant told Laverne Vantatenhove, his longtime friend, that he should sell a vehicle that he previously purchased for the victim. The police performed several traffic stops on defendant. At various times, defendant had the following items in his vehicle: women's clothing in plastic tubs and baskets, a purse, a Greyhound bus ticket with the victim's name on it, latex gloves, a flashlight, garbage bags, a wallet containing items belonging to the victim, and sleeping bags. During one stop, defendant told State Trooper Doug Carey that he last saw the victim walking down highway 131 with a fifth of alcohol in her hand. The police impounded defendant's Chevrolet Trailblazer and a work vehicle that defendant was driving without authorization; defendant then purchased a Ford Bronco. The police searched the cabin, the vicinity surrounding the cabin, and defendant's home. DNA testing established that the victim's blood was on the following items: a wheelbarrow found in the cabin; a tree trunk, a branch, and a piece of plastic in the vicinity surrounding the cabin; on the rear carpet of defendant's Trailblazer; and on a boot taken from defendant's home. A bottle of bleach was found in the cabin. The police arrested defendant on May 21 pursuant to a drug warrant. Defendant was driving the Ford Bronco and wearing plastic shopping bags on his feet underneath his socks and shoes. On May 22, the police, with the assistance of a cadaver dog, located the victim's torso[1] completely covered with grass and brush in a swampy area near Mecum Road about 4-1/2 miles from the cabin. While playing a card game in jail, defendant told an inmate that "[h]e chopped his girl up and got rid of her." Defendant told the inmate not to say anything.

## II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues on appeal that his trial counsel was ineffective for not objecting to testimony by the prosecution's DNA expert that the DNA profile of muscle tissue taken from the torso was consistent with a profile of an offspring of the victim's parents. Defendant argues that counsel made a serious mistake by not objecting to the testimony where no statistical analysis was presented to support the witness's testimony.

Ineffective assistance of counsel is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Because defendant failed to raise this issue in a motion for a new trial or *Ginther*[2] hearing, our review is limited to errors apparent

[1] David Hayhurst, an expert in serology and forensic DNA testing, performed a paternity test, using full DNA profiles from muscle tissue of the torso and the victim's parents. Hayhurst concluded that the DNA profile of the torso was consistent with being an offspring of the victim's parents. Moreover, Dr. David Start performed an autopsy on the torso and made the following findings: the female had cirrhosis of the liver, which is often associated with alcohol abuse; the blood-alcohol level was .24 percent; and the torso contained a trace amount of lithium, which is a drug prescribed for a bipolar disorder.

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

from the record. *People v Seals*, 285 Mich App 1, 17; 776 NW2d 314 (2009); *People v Plummer*, 229 Mich App 293, 308; 581 NW2d 753 (1998). To prevail on his claim of ineffective assistance of counsel, defendant must meet the two-part test articulated by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). First, defendant must show that his counsel's performance "fell below an objective standard of reasonableness" under prevailing professional norms. *Strickland*, 466 US at 687-688. It is presumed that counsel rendered adequate assistance. *Id.* at 690. "Reviewing courts are not only required to give counsel the benefit of the doubt with this presumption, they are required to 'affirmatively entertain the range of possible reasons' that counsel may have had for proceeding as he or she did." *People v Gioglio (On Remand)*, ___Mich App___; ___NW2d___ (2012), slip op at 5, quoting *Cullen v Pinholster*, 563 US ___; 131 S Ct 1388, 1407; 179 L Ed 2d 557 (2011). We will not "insist that counsel confirm every aspect of the strategic basis for his or her actions." *Id.*, citing *Harrington v Richter*, 562 US ___; 131 S Ct 770, 790; 178 L Ed 2d 624 (2011). "[A] reviewing court must conclude that the defendant's trial counsel's act or omission fell within the range of reasonable professional conduct if, after affirmatively entertaining the range of possible reasons for the act or omission under the facts known to the reviewing court, there might have been a legitimate strategic reason for the act or omission." *Id.*, citing *Pinholster*, 131 S Ct at 1407. Second, defendant must show that his counsel's deficient performance prejudiced his defense. *Strickland*, 466 US at 687. To do so, "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

In this case, the prosecution's DNA expert testified that he used the PCR (preliminary chain reaction) method to develop DNA profiles, which is limited to an analysis of 13 specific locations in the DNA of the samples. We find merit to defendant's argument that a statistical interpretation of the DNA evidence is generally necessary to give meaning to the evidence. As this Court observed in *People v Coy*, 243 Mich App 283, 295; 620 NW2d 888 (2000), quoting *Nelson v State*, 628 A2d 69, 75-76 (Del, 1993), "[s]ince two unrelated individuals may have identical DNA patterns from the fragments examined in a particular analysis, the potential exists for a match to be mistakenly found."

Nonetheless, we conclude that defendant has failed to establish that counsel's conduct fell outside the range of reasonable professional conduct because, on the basis of the record before this Court, "there might have been a legitimate strategic reason for" counsel's failure to object to the DNA expert's testimony regarding the torso. See *Strickland*, 466 US at 687-688, 690; *Gioglio*, slip op at 5. It is clear from the record that defense counsel had an opportunity to explore this issue before trial. The trial court appointed Strand Analytical Laboratories to assist in educating and preparing defense counsel for cross-examination at trial regarding the DNA evidence. The record does not disclose whether trial counsel was made aware of any statistical analysis that could aid the defense. But it is apparent that the challenged evidence was not crucial to a critical issue at trial. The challenged evidence was only relevant to the identification of the recovered torso as the victim. At trial, the defense's strategy focused on establishing reasonable doubt whether defendant was responsible for the victim's death and whether there was evidence of a premeditated killing. The defense did not seriously contest that the recovered torso belonged to the victim or that the victim had been killed. Defendant has not overcome the

strong presumption that counsel's performance was sound trial strategy. See *Carbin*, 463 Mich at 600.

Furthermore, even assuming that counsel's representation was deficient as defendant insists, defendant cannot establish prejudice. See *Strickland*, 466 US at 687. The record reveals that there was overwhelming circumstantial evidence, independent of the DNA evidence, that the torso belonged to the victim: the victim disappeared, the torso was located in the vicinity where the victim was last seen, the victim's blood was found in various areas within a 4-1/2 mile radius of the torso; the torso contained cirrhosis of the liver consistent with the victim's alcohol abuse; the torso had a blood-alcohol level of .24 percent consistent with the victim's drinking before she disappeared, and the torso contained a trace amount of lithium consistent with the victim's use of medication for bipolar disorder. We reject defendant's argument that the challenged evidence would have cast doubt on the prosecution's ability to identify the blood found in the vicinity of the cabin, inasmuch as the prosecution's expert provided statistical information to assist the jury in determining whether the torso was the source of blood on the wheelbarrow found inside the cabin and the tissue found on a branch in the area of the downed tree outside the cabin. Therefore, defendant has failed to establish a reasonable probability that the result of the trial would have been different if defense counsel had objected to the challenged DNA testimony. See *id.* at 694. Accordingly, defendant's ineffective-assistance-of-counsel claim cannot succeed.

## III. SUFFICIENCY OF THE EVIDENCE

Defendant next argues that there was insufficient evidence of premeditation to support his conviction for first-degree premeditated murder. In reviewing a challenge to the sufficiency of the evidence, "this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). Circumstantial evidence and reasonable inferences arising therefrom may be satisfactory proof of the elements of a crime. *People v Unger*, 278 Mich App 210, 223; 749 NW2d 272 (2008). It is for the trier of fact to determine what inferences may be fairly drawn from evidence and the weight to be accorded the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Minimal circumstantial evidence is sufficient to prove a defendant's state of mind in a first-degree premeditated murder prosecution. *People v Lewis (On Remand)*, 287 Mich App 356, 365; 788 NW2d 461 (2010).

A conviction of first-degree premeditated murder requires proof that "the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *People v Schollaert*, 194 Mich App 158, 170, 486 NW2d 312 (1992). "To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem." *People v Furman*, 158 Mich App 302, 308; 404 NW2d 246 (1987), citing *People v Vail*, 393 Mich 460, 468; 227 NW2d 535 (1975).

> "The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation may be established through evidence of (1) the prior relationship of the parties, (2) the defendant's actions before the killing, (3) the circumstances of the killing itself, and (4) the defendant's conduct

> after the homicide. *Id*. Some time span between the initial homicidal intent and the ultimate killing is necessary to establish premeditation and deliberation. *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003). However, the time required need only be long enough "to allow the defendant to take a second look." *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). [*Unger*, 278 Mich App at 229.]

We conclude that the evidence in this case was sufficient to establish that defendant's killing of the victim was premeditated. First, with regard to events before the killing, the prosecution presented evidence of motive. See *id.* at 223 (explaining that evidence of motive is always relevant in a prosecution for murder and particularly relevant where the evidence is circumstantial). Motive is the inducement for doing an act. *People v Sabin (After Remand*), 463 Mich 43, 68; 614 NW2d 888 (2000). Domestic discord may be probative of a motive and, thus, premeditation. *People v Bauder*, 269 Mich App 174, 188-189; 712 NW2d 506 (2005). Here, evidence was presented that the victim was staying with defendant in Bloomfield Township and that their relationship was sexual but that the victim often traveled across the state to visit her young child at the home of either James or her parents. Defendant was upset about the victim maintaining a relationship with James. The victim was killed within days after spending four to six days at James's home. At that time, the victim was trying to make changes in her life. According to the victim's mother, the victim was getting help with her alcoholism. She had also recently attended some career testing, and there was a possibility that she could move back to the west side of the state. She had intended on spending Mother's Day at her parents' home and visiting her son. Instead, she went with defendant to the cabin in northern Michigan and consumed alcohol. Her level of intoxication at the time of the autopsy was .24 percent, three times greater than what is considered legal intoxication for driving. Defendant admitted to a state trooper that he and the victim were drinking on the night of May 8.

The secluded nature of the cabin where defendant took the victim before she was killed is also evidence of premeditation because it indicates a plan to take the victim to a location where others could not see what was taking place. See *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). Even if defendant had not planned to kill the victim before they arrived at the cabin, his actions after their arrival supports a finding of premeditation. Evidence that a victim sustained multiple violent blows may support an inference of premeditation and deliberation because the time required to inflict the blows affords the assailant sufficient time to take a second look at his actions. *Unger*, 278 Mich App at 231. Here, three blunt-force injuries were discovered during the autopsy of the torso. According to the forensic pathologist, those injuries occurred before death but did not cause the victim's death. A bruise in the middle of the back was consistent with being struck by some type of elongated hard object, such as the branch that was found by a downed tree in the area of the cabin. None of the bruises would have left the blood or tissue that was found on that branch, thereby supporting an inference that the branch was used to strike the victim elsewhere, such as on the head. The procurement of a weapon to effectuate a crime, in this case the procurement of the tree branch, indicates premeditation. See *People v Lewis*, 95 Mich App 513, 515; 291 NW2d 100 (1980). The evidence as a whole supported an inference that defendant had sufficient time to take a second look before killing the victim.

The evidence of defendant's conduct to conceal the murder also supports an inference of premeditation. See *Gonzalez*, 468 Mich at 641. Defendant dismembered the victim and concealed her body. Moreover, defendant's conduct went beyond concealing and dismembering the victim. Viewed in a light most favorable to the prosecution, the evidence supports an inference that defendant had a false story prepared for the victim's parents to explain why he did not drive the victim to their home for Mother's Day weekend. Defendant's story, if believed, would tend to lead any investigation of the victim's disappearance away from defendant. According to the victim's mother, defendant initially said that, following a fight, he dropped the victim off at a closed liquor store, where she left in a truck with two other men. There was evidence that defendant modified his conduct and his explanation of what occurred as the investigation into the victim's disappearance continued and the police began focusing on him as a suspect. While defendant characterizes his conduct as a panicked response, the credibility of this explanation was for the jury to determine. See *People v Railer*, 288 Mich App 213, 219; 792 NW2d 776 (2010). Furthermore, defendant's characterization is a view of the evidence in a light most favorable to himself, not the prosecution. See *Robinson*, 475 Mich at 5.

Accordingly, viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational jury to find beyond a reasonable doubt that defendant's killing of the victim was premeditated.

## IV. PRIVILEGED RECORDS

Lastly, defendant argues that the trial court erred by refusing to disclose information from certain privileged records requested by defendant before trial. Defendant argues that the victim's statements in those records would have been relevant and admissible at trial to rebut the prosecution's evidence regarding a motive for murder and to explain the blood that was found on various items. Defendant claims that the lack of disclosure amounts to constitutional error because the undisclosed evidence was reasonably necessary to his defense. We disagree.

A trial court has discretion when ruling on evidentiary matters, including whether to grant discovery, and we will not disturb the trial court's decision absent an abuse of that discretion. See *People v Stanaway*, 446 Mich 643, 680; 521 NW2d 557 (1994); *Unger*, 278 Mich App at 216. "An abuse of discretion occurs when the court chooses an outcome outside the range of reasonable and principled outcomes." *Unger*, 278 Mich App at 217.

Whether rooted in the Due Process Clause of the Fourteenth Amendment or rights under the Sixth Amendment, a defendant's right to present evidence in his defense is not absolute. *Id.* at 249-250. "There is no general constitutional right to discovery in a criminal case." *People v Elston*, 462 Mich 751, 765; 614 NW2d 595 (2000); see also *Weatherford v Bursey*, 429 US 545, 559; 97 S Ct 837; 51 L Ed 2d 30 (1977).

In *Stanaway*, our Supreme Court addressed the discovery of privileged records in criminal cases. See *Stanaway*, 446 Mich at 649-650, 678-679. The Court held as follows:

> We hold that where a defendant can establish a reasonable probability that the privileged records are likely to contain material information necessary to his defense, an in camera review of those records must be conducted to ascertain

> whether they contain evidence that is reasonably necessary, and therefore essential, to the defense. Only when the trial court finds such evidence, should it be provided to the defendant. [*Id.* at 649-650.]

The *Stanaway* Court relied on the United States Supreme Court's decision in *Pennsylvania v Ritchie*, 480 US 39; 107 S Ct 989; 94 L Ed 2d 40 (1987), where the Court held that a "defendant's due process interests in seeking favorable [privileged] evidence would be satisfied by in camera review." *Id.* at 664-665. After *Stanaway*, MCR 6.201(C) was amended in response to the *Stanaway* Court's holding. See *People v Fink*, 456 Mich 449, 455 n 7; 574 NW2d 28 (1998). MCR 6.201(C)(2)(b) provides:

> *If the court is satisfied, following an in camera inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel.* If the privilege is absolute and the privilege holder refuses to waive the privilege to permit disclosure, the trial court shall suppress or strike the privilege holder's testimony. [Emphasis added.]

Later, in *Fink*, the Michigan Supreme Court addressed a trial court's decision to exclude confidential evidence requested by a defendant following an in camera review. See *Fink*, 456 Mich at 458-460. The *Fink* Court reaffirmed both the holding of *Stanaway* and MCR 6.201(C)(2)(b), stating that "evidence protected by privilege should be provided to defense counsel only if the court finds that the evidence is essential to the defense." *Id.* at 455. The Court emphasized that suppressed evidence should be viewed collectively in determining its materiality. *Id.* at 459. It stated that evidence is material if there is a reasonable probability that the result of the trial would have been different if the evidence had been disclosed. *Id.* at 454. "A reasonable probability of a different result exists where suppression of the evidence undermines confidence in the outcome of the trial." *Id.*

Here, defendant moved for the disclosure of certain records that, according to defendant's motion, contained the victim's communications that were privileged under state law, specifically, part 61 of the Public Health Code, MCL 333.6101 *et seq.*[3] The record in this case indicates that

[3] We find it unnecessary to consider defendant's claim that his motion was governed by disclosure standards under federal law and not part 61 of the Public Health Code. This issue is waived in light of defense counsel's concession below that MCL 333.6113 applied. See *People v Milstead*, 250 Mich App 391, 402 n 6; 648 NW2d 648 (2002) (a defendant should not be allowed to assign error on appeal to something that his own counsel deemed proper). In any event, the good-cause standard under federal law that applies to the disclosure of records from alcohol and drug abuse programs receiving federal assistance do not preempt more restrictive state law. See 42 CFR 2.20; 42 USC 290dd-2(b)(2)(C); see also *Carr v Allegheny Health, Ed & Research Foundation*, 933 F Supp 485, 487 n 2 (WD Pa, 1996) (discussing the enactment of 42 USC 2900dd-2 to combine former 42 USC 2900e-3 and 42 USC 290dd-3). In addition, applicable federal regulations do not require disclosure under any circumstance but only establish circumstances under which disclosure is permitted. 42 CFR 2.3(b)(1).

the trial court considered several potentially applicable state statutory privileges when addressing defendant's motion and considered defendant's motion within the framework of MCR 6.201(C). Because there is no challenge to the trial court's decision to grant the in camera review but only the result reached by the trial court, we shall assume for purposes of our review that the in camera review was proper. After defendant filed his claim of appeal, this Court ordered that the confidential records be disclosed under seal and the parties to file supplemental briefs regarding the records.[4] With the benefit of those records and the prosecutor's arguments at trial, defendant now argues that the records contained statements by the victim that would have been admissible under MRE 803(3) to rebut the prosecutor's theory regarding motive and MRE 803(4) to explain the presence of blood on various items.

Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Hearsay is not admissible except as provided by the rules of evidence. MRE 802. "MRE 803(3) provides an exception to the exclusion of hearsay evidence for statements concerning a declarant's '"[t]hen existing mental, emotional, or physical condition.'" *People v Moorer*, 262 Mich App 64, 68; 683 NW2d 736 (2004). MRE 803(4) provides an exception for "a statement made for the purposes of medical treatment or medical diagnosis in connection with treatment." *People v Geno*, 261 Mich App 624, 633; 683 NW2d 687 (2004). Even if a hearsay exception applies to a particular statement, the evidence must still be relevant to be admissible. MRE 401; MRE 402.

Here, defendant has not established that a hearsay exception in MRE 803(3) or MRE 803(4) applies to each of the statements he seeks to use and that each statement is relevant. The evidence that defendant would use regarding the victim's state of mind (plan) to contest the prosecution's evidence of defendant's motive shows the victim's state of mind (plan) months before her death. The privileged records contain evidence of the victim's state of mind (plan) closer to the date of her death that supports the prosecution's theory of motive. Defendant's argument regarding the evidence concerning the blood is essentially a restatement of the propensity purpose of the evidence, which the trial court properly rejected when ruling on defendant's request for an in camera review of the records. See MRE 404(a); *People v Harris*, 458 Mich 310, 315-320; 583 NW2d 680 (1998). Considering defendant's proposed use of the suppressed evidence in light of the sealed records and the evidence actually introduced at trial, defendant has not established that any of the suppressed evidence was necessary and admissible. Although the trial court conducted an in camera review, it did not abuse its discretion in finding no evidence necessary to the defense beyond the limited information disclosed at trial. We cannot conclude that the suppression of the evidence undermined the confidence in the outcome of defendant's trial, i.e., that there is a reasonable probability that the result of the trial would have been different had the evidence been disclosed. See *Fink*, 456 Mich at 454. Accordingly, it is unnecessary to consider whether any of the information was subject to an absolute privilege.

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[4] *People v DeJonge*, unpublished order of the Court of Appeals, entered August 4, 2010 (Docket No. 295168); *People v DeJonge*, unpublished order of the Court of Appeals, entered September 15, 2010 (Docket No. 295168).

Defendant's failure to establish that the records contain evidence necessary to his defense precludes any relief. See MCR 6.201(C)(2)(b).

Affirmed.

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Michael J. Kelly