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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 08, 2026 11:25 AM
v	No. 372309 Oakland Circuit Court
MORY CISSE, Defendant-Appellant.	LC No. 2024-288111-FH

Before: M. J. KELLY, P.J., and O'BRIEN and LIEVENSE, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1), and second-offense domestic violence, MCL 750.81(3), for which he was sentenced to serve 185 days in jail and two years' probation. We affirm.

I. FACTUAL BACKGROUND

Defendant's convictions arise from an incident of domestic violence between himself and the victim, his then-girlfriend, at the victim's apartment. The victim was eight-months pregnant with defendant's child at the time of the assault. On the night in question, defendant choked the victim during a physical altercation at the apartment. The victim went into the bathroom and called 911 multiple times. Bloomfield Township Police Officers Sean Manor and Thomas Box responded to the scene.

After knocking on the apartment door, Officer Box's body camera footage showed the victim opening the door and leaving the apartment, closing the door behind her, signaling to the officers to be quiet with her fingers, and whispering that defendant was inside the apartment. Eventually, as Officer Box attempted to communicate with defendant by knocking on the door, Officer Manor spoke with the victim. He observed red marks on her neck consistent with being choked. The victim reported she attempted to leave during an argument with defendant, at which point he pushed and choked her. Officer Manor described the victim's demeanor as "very scared, very soft-spoken, very nervous." According to Officer Manor, the victim disclosed she was extremely scared of defendant, and "was almost hesitant to answer some questions because she

was so fearful." For the next two hours, officers attempted to speak with defendant through the apartment door, but he never responded.

At some point, because officers learned that defendant had previously made threats against the victim and her family, and that he may be armed, they decided to enter the apartment and arrest defendant. The victim consented to the officers entering the apartment and provided them with her key. Officer Box worked with a K9 unit, Havoc, who was brought to the apartment door, and officers began the process of breaching the apartment. At 9:12 p.m., Officer Box knocked on the apartment door and shouted: "Bloomfield Township PD. Come out with your hands up, or I will send my dog, and you will be bit." Officer Box repeated this warning two more times and announced the third time was defendant's final warning. At that point, officers attempted to unlock the door with the victim's key but felt resistance from the other side. After attempting to kick the door, officers were able to unlock it with the key and enter. Officers followed Havoc to a bathroom at the end of the hallway where a shadow was observed moving underneath the bathroom doorway. Officer Box again shouted for defendant to come out with his hands up, and Lieutenant Michael Buczek, the supervising officer, shouted that defendant was "making this a lot harder on yourself, just step out, this is super easy man. Come on out, we're not leaving." Eventually, officers broke down the bathroom door. Havoc bit down on defendant's leg, bringing him to the ground. He was placed in handcuffs and arrested.

Defendant was charged with the offenses given above. Before trial, the prosecution filed a notice of intent to introduce other-acts evidence under MCL 768.27b (admission of evidence of other acts of domestic violence). Specifically, the prosecution sought to introduce evidence of a July 2023 incident between defendant and the victim in which the victim called 911 to the apartment because defendant choked her. Defendant had pleaded guilty to aggravated domestic violence, MCL 750.81a(2) after being charged with that offense. The trial court granted the motion and admitted the other-acts evidence.

At trial, the victim's testimony differed substantially from what she had told the police at the scene and her prior written statement. For example, she testified that she had "shoved" defendant first "out of anger," which resulted in defendant choking her with his forearm, and she had not told the officers the "shove" detail at the scene or included it in her written statement, though she claimed she had mentioned it.

Relevant to this appeal, Officer Box testified that when he responded to the call the emergency dispatcher informed him that the Law Enforcement Information Network (LEIN) contained information that defendant had a history of domestic violence and multiple registered firearms, information he was aware of during the interactions with defendant. Officer Box also testified that the police had probable cause to arrest defendant based on the victim's statements and their observations. Cheryl Beauford, the victim's mother, also testified that the victim had called her on the night of the July 2023 domestic incident to state that defendant had choked her. Beauford testified further that she called 911 to report that defendant had choked the victim.

Defendant testified that on the night in question, among other things, the victim attacked him and he only blocked her from hitting him. He testified that he also resided in the apartment, and he stated that the officers were very forceful and aggressive. Defendant testified further that

he hid in the bathroom because he was afraid. He denied choking the victim in July 2023 but acknowledged he pleaded guilty to the offense.

Defendant moved for a directed verdict on the resisting or obstructing charge, arguing the officers' unlawfully entered the apartment without a warrant, which the trial court denied. Defendant also requested that the trial court instruct the jury on the defense of duress related to his resisting arrest charge, which the trial court also denied. During closing argument, the prosecutor made numerous references to the July 2023 incident. The jury convicted defendant of both charges, and this appeal followed.

II. WARRANTLESS ENTRY

Defendant argues the trial court erred by denying his motion for a directed verdict on his charge of resisting or obstructing a police officer in violation of MCL 750.81d because officers did not have valid consent to enter the apartment in the first place, and the officers' warrantless entry violated his constitutional rights, meaning the charge should have been dismissed. We disagree.

"When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Quinn*, 305 Mich App 484, 491; 853 NW2d 383 (2014) (quotation marks and citation omitted). However, "we only consider the evidence presented by the prosecution up to the time the motion was made." *People v Powell*, 278 Mich App 318, 320 n 1; 750 NW2d 607 (2008).

To establish the elements of resisting or obstructing a police officer under MCL 750.81d(1), the prosecution must prove beyond a reasonable doubt that "(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties." *Quinn*, 305 Mich App at 491(quotation marks and citation omitted). "In addition, 'the prosecution must establish that the officers' actions were lawful.' " *People v Vandenberg*, 307 Mich App 57, 68; 589 NW2d 229 (2014), quoting *People v Moreno*, 491 Mich 38, 51-52; 814 NW2d 624 (2012). As to lawfulness when a conviction under MCL 750.81d(1) is involved, the jury acts as the fact-finder but the "court remains the ultimate arbiter of whether, under a particular set of facts, police actions were lawful." *People v Prude*, 513 Mich 377, 386; 15 NW3d 249 (2024).

Defendant does not dispute that the officers had reasonable cause to believe he had committed domestic violence in violation of MCL 750.81, and he acknowledges MCL 764.15a allows a warrantless arrest. Indeed, MCL 764.15a authorizes a warrantless arrest where an officer "has reasonable cause to believe" that a violation of MCL 750.81 has occurred, and that the offender had a domestic relationship with the victim. But defendant contends that the officers' warrantless entry to the apartment violated the Fourth Amendment because they did not have valid consent, nor did exigent circumstances exist to justify the entry. Because the entry was unlawful, defendant argues the officers' resulting commands were not lawful orders under MCL 750.81d.

"The Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects." *People v Goforth*, 222 Mich App 306, 311; 564 NW2d 526 (1997), quoting *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990). See also US Const, Am IV; Const 1963, art 1, § 11. "The prohibition does not apply, however, to situations in which voluntary consent has been obtained, either from the individual whose property is searched or from a third party who possesses common authority over the premises." *Goforth*, 222 Mich App at 311 (quotation marks and citation omitted).

Here, the victim consented to the officers entering the apartment and provided them with her key. Defendant raises several arguments regarding the validity of the victim's consent to have her apartment searched by the police officers. However, these arguments are misplaced as the evidence indicates that the victim voluntarily and without coercion gave the officers the key to her apartment for purposes of effectuating an arrest. "The consent exception to the warrant requirement allows a search and seizure when consent is unequivocal, specific, and freely and intelligently given." *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001) (quotation marks and citation omitted). Both Officer Box and Officer Manor testified that the victim voluntarily gave them a key to facilitate their entry into the apartment, and no other facts have been identified to contradict their testimony. See *People v Mahdi*, 317 Mich App 446, 461; 894 NW2d 732 (2016) ("Whether consent to search is freely and voluntarily given presents a question of fact that must be determined on the basis of the totality of the circumstances.").

Defendant argues that under *Georgia v Randolph*, 547 US 103; 126 S Ct 1515; 164 L Ed 2d 208 (2006), his explicit refusal as a coresident of the apartment to allow the police entry negated the victim's consent. In *Randolph*, the Supreme Court held that under the circumstances of that case, "a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him." *Id*. at 106. However, this Court, analyzing *Randolph*, explained that "[w]hile a co-occupant may invalidate another co-occupant's consent in cases where the police are entering to search for evidence, a co-occupant's withdrawal of his consent to the presence of the police does not preclude officers from continuing to investigate cases of potential domestic violence." *City of Westland v Kodlowski*, 298 Mich App 647, 667-668; 828 NW2d 67 (2012), rev'd in part and vacated in part on other grounds by 495 Mich 871 (2013). As recognized in *Kodlowski*, "[t]he United States Supreme Court emphasized that its holding in *Randolph* concerning the powers of a co-occupant to invalidate the consent of another occupant has no bearing on the capacity of the police to protect domestic victims." *Id*. at 668, citing *Randolph*, 547 US at 118. Thus, *Kodlowski* held that a defendant's withdrawal of consent "was irrelevant to the Fourth Amendment analysis" when police officers respond to a domestic dispute because, in those circumstances, the officers are obligated to investigate potential domestic violence and are not actively searching for evidence. *Kodlowski*, 298 Mich App at 669.

Kodlowski applies here. The victim called 911 multiple times, officers were responding to an incident of domestic violence, and the emergency dispatcher relayed to them that defendant had multiple firearms registered to him and a history of domestic violence. When they arrived, the victim left the apartment to speak with the officers outside and had a red mark on her neck, which she explained was from defendant pushing and choking her when she attempted to leave the apartment. According to Officer Manor, the victim was extremely afraid of defendant and hesitant to answer questions. The victim asked officers not to tell defendant she called 911.

The body camera footage that the court admitted and played for the jury showed that Lieutenant Buczek did not want to enter the apartment under the circumstances. In the footage, Lieutenant Buczek stated if the victim was leaving the area, officers would not enter the apartment because defendant was potentially armed. Officer Box expressed reservations about leaving the victim, noting her frightened behavior and how defendant locked the door once she left. Officer Box testified he was concerned about the victim's safety and did not want her to return to the apartment without knowing whether any danger had subsided. As a result, officers remained at the scene, attempting to contact defendant, but he never responded or left the apartment. Moreover, the victim never left the area, instead waiting to return to the apartment. Eventually, officers learned defendant had previously made threats against the victim. Officer Box testified that, after learning this, the officers made the decision to enter the apartment because he believed defendant posed an active threat.

Considering these facts in a light most favorable to the prosecution, defendant's lack of consent did not render the officers' presence or entry unlawful based on the victim's consent. *Kodlowski*, 298 Mich App at 669. The trial court properly denied defendant's motion for a directed verdict because a rational trier of fact could have found that this element of resisting and obstructing a police officer—whether the police action was lawful—was met beyond a reasonable doubt. *Quinn*, 305 Mich App at 491.

Because we find that the consent exception applies, we need not address whether there were exigent circumstances to authorize the entry.

III. OTHER-ACTS EVIDENCE

Defendant argues that the trial court abused its discretion by admitting evidence of the July 2023 domestic violence incident under MCL 768.27b because it was more prejudicial than probative under MRE 403 and by denying his motion for a mistrial on that basis. Further, he claims this evidence violated his right to due process and a fair trial because it eroded his right to be presumed innocent. We disagree.

A. STANDARD OF REVIEW

We review a trial court's decision to admit or deny for an abuse of discretion. *People v Smith*, 336 Mich App 79, 105; 969 NW2d 548 (2021). We also review a trial court's decision to deny a motion for mistrial for an abuse of discretion. *People v Caddell*, 332 Mich App 27, 37; 955 NW2d 488 (2020). "An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes." *Id*. (quotation marks and citation omitted). When the decision to admit or exclude evidence involves a preliminary question of law, such as whether the evidence falls within the ambit of a statute, the question is reviewed de novo. *People v Propp*, 508 Mich 374, 383; 976 NW2d 1 (2021).

"When a party raises a separate argument on appeal than the party raised before the trial court, the party must satisfy the standard for plain-error review." *People v Swenor*, 336 Mich App 550, 562; 971 NW2d 33 (2021). Although defendant objected to the admission of any evidence related to the 2023 incident of domestic violence at trial, he raises his constitutional challenges to the admission of evidence for the first time on appeal. As such, these arguments are unpreserved,

and we review them for plain error. To establish plain error, "three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

"The United States Constitution and the Michigan Constitution each guarantee that a criminal defendant receives due process of law." *People v Horton*, 341 Mich App 397, 401; 989 NW2d 885 (2022), citing US Const, Am XIV; Const 1963, art 1, § 17. "Implicit in this guarantee is that each criminal defendant enjoys the right to a fair trial, and essential to a fair trial is the defendant's right to be presumed innocent." *Horton*, 341 Mich App at 401. "[A]n important element of a fair trial is that a jury consider only relevant and competent evidence bearing on the issue of guilt or innocence . . . . " *People v Hana*, 447 Mich 325, 350; 524 NW2d 682 (1994), amended 447 Mich 1203 (1994) (quotation marks and citation omitted). However, as our Supreme Court has explained, a defendant is only "entitled to a fair trial but not a perfect one for there are no perfect trials." *People v Miller*, 482 Mich 540, 559; 759 NW2d 850 (2008) (quotation marks and citation omitted).

The admission of other-acts evidence is generally governed by MRE 404(b), which states "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." See MRE 404(b)(1). The reason for this general prohibition on propensity evidence is "propensity evidence might weigh too much with the jury and . . . so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge." *People v Watkins*, 491 Mich 450, 468-469; 818 NW2d 296 (2012) (quotation marks and citation omitted).

However, our Supreme Court "has acknowledged that MCL 768.27b in certain instances expands the admissibility of domestic-violence other-acts evidence beyond the scope permitted by MRE 404(b)(1)[.]" *Propp*, 508 Mich at 384 (quotation marks and citation omitted). In relevant part, MCL 768.27b states:[1]

> (1) [I]n a criminal action in which the defendant is accused of an offense involving domestic violence or sexual assault, evidence of the defendant's commission of other acts of domestic violence or sexual assault is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.

Accordingly, "MCL 768.27b clearly indicates that trial courts have discretion to admit relevant evidence of other domestic assaults to prove any issue, even the character of the accused, if the evidence meets the standard of MRE 403." *People v Cameron*, 291 Mich App 599, 608; 806 NW2d 371 (2011) (quotation marks and citation omitted).

[1] MCL 768.27b was amended by 2024 PA 184, effective April 2, 2025. We rely on the statute as written at the time of defendant's trial. See MCL 768.27b, as amended by 2018 PA 372.

B. RELEVANCY

Defendant concedes his charges in this case stem from domestic violence, triggering MCL 768.27b, but argues the evidence relating to his July 2023 act of domestic violence should have been excluded under MRE 403. Defendant specifically challenges: (1) Officer Box's testimony regarding the LEIN information revealing defendant's registered firearms and history of domestic violence; (2) Beauford's testimony about statements made by the victim during the July 2023 incident; and (3) the victim's testimony about the incident that led to defendant's plea to aggravated domestic violence stemming from the July 2023 incident.

Before addressing defendant's MRE 403 argument, we address defendant's cursory argument that this evidence was irrelevant to the underlying events in this case. MCL 768.27b(1) makes relevant evidence under MRE 401 and MRE 402 admissible. See *Propp*, 508 Mich at 386 n 4 (explaining that "relevant," as used in MCL 768.27b(1), "can only be taken as referring to MRE 401 and MRE 402 . . . ."). Beyond implying this evidence is irrelevant solely because it did not occur in 2024, defendant offers no supporting argument that it is irrelevant, nor does he cite either court rule or other authority. We hold this evidence was relevant. "Relevant evidence is '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.' " *People v Sharpe*, 502 Mich 313, 331; 918 NW2d 504 (2018), quoting MRE 401. Propensity evidence is "logically relevant" because "[a] person who has committed an offense may be more likely to commit that or another offense than a person who has not committed that or any other offense." *People v Berklund*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367568); slip op at 7 (quotation marks and citation omitted). A defendant's history of domestic violence "tend[s] to shed light on the likelihood that a given crime was committed." *Id*. at ___ ; slip op at 8 (quotation marks and citation omitted);

In both the 2023 and 2024 incidents, defendant choked his pregnant girlfriend during an argument, leaving visible marks in the area of her neck and face, after which the victim called 911 for assistance. Given the similarity between the incidents, the other-acts evidence was probative of defendant's propensity to choke his partner, especially considering the victim downplayed or denied defendant's 2024 conduct at trial. Similarly, Beauford's testimony was probative evidence that the victim's initial statements to police regarding defendant's 2024 conduct were truthful.

The firearms testimony, meanwhile, was relevant to show what the officers knew when they entered the apartment to arrest defendant, and why officers were concerned about the victim's safety. Overall, the other-acts evidence provided the jury with a more complete picture of defendant's history, consistent with the legislative policy underlying MCL 768.27b. See *Cameron*, 291 Mich App at 610.

C. ADMISSIBILITY

Turning to defendant's argument that the evidence was inadmissible under MRE 403, that rule provides that "a court may exclude relevant evidence if the danger of unfair prejudice, among other considerations, outweighs the evidence's probative value." *Watkins*, 491 Mich at 456. See MRE 403. This Court "must make two distinct inquiries under the balancing test of MRE 403." *Cameron*, 291 Mich App at 611. "First, this Court must decide whether introduction of

[defendant]'s prior-bad-acts evidence at trial was unfairly prejudicial." *Id*. "Evidence is unfairly prejudicial if it has a tendency 'to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger or shock.' " *Berklund*, ___ Mich App at ___; slip op at 9 (citation omitted). Additional concerns include "the danger of . . . confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Watkins*, 491 Mich at 489 (quotation marks and citation omitted). After making this determination, "this Court must apply the balancing test and weigh the probativeness or relevance of the evidence against the unfair prejudice." *Cameron*, 291 Mich App at 611 (quotation marks and citation omitted). Upon completion of MRE 403's balancing test, "this Court can determine whether the trial court abused its discretion in allowing [defendant]'s prior bad acts into evidence." *Cameron*, 291 Mich App at 611.

Here, defendant has failed to show admitting the evidence concerning his 2023 domestic violence conviction was unfairly prejudicial. The crux of defendant's argument is that this evidence was severely prejudicial because it showed his propensity to commit domestic violence. However, "[p]ropensity evidence is prejudicial by nature . . . . " *Watkins*, 491 Mich at 486. This Court has explained that "when applying MRE 403 to evidence admissible under MCL 768.27b, courts should weigh the propensity inference in favor of the evidence's probative value rather than its prejudicial effect." *Berklund*, ___ Mich App at ___; slip op at 10. Accordingly, the fact that the evidence was prejudicial does not render it unfairly prejudicial.

The record does not reflect that the trial court's decision to allow evidence of defendant's 2023 domestic violence was unfairly prejudicial to him at trial. *Cameron*, 291 Mich App at 611-612. As such, the trial court did not abuse its discretion because any potential unfair prejudice in admitting this evidence was substantially outweighed by the evidence's probative value. See *Meissner*, 294 Mich App at 452. This conclusion is bolstered by the trial court's instruction to the jury on the proper use of the other-acts evidence, which defendant ignores. See *Berklund*, ___ Mich App at ___; slip op at 11. Although defendant relies on *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998), for the proposition that the instruction given was insufficient to prevent unfair prejudice, that reliance is misplaced because the evidence was admitted for a proper purpose under MCL 768.27b. *People v Railer*, 288 Mich App 213, 219-220; 792 NW2d 776 (2010).

For these same reasons, defendant's argument that the admission of this propensity evidence violated his right to be presumed innocent in violation of due process also fails. This Court has previously explained that the Legislature's adoption of MCL 768.27b "did not change the burden of proof necessary to establish the crime, ease the presumption of innocence, or downgrade the type of evidence necessary to support a conviction." *People v Schultz*, 278 Mich App 776, 778; 754 NW2d 925 (2008). MCL 768.27b "affects only the admissibility of a type of evidence," *id*. at 779, and the procedural safeguards of MRE 401 and MRE 403 provide sufficient protection to ensure a defendant receives due process and a fair trial. As explained above, those safeguards were properly utilized in this case.

Defendant also raises a cursory argument that Beauford's testimony about the victim stating to her that defendant choked her during the 2023 incident is "uncorroborated hearsay." However, defendant simply states Beauford's testimony is hearsay without offering any argument

or citing any authority for why it is inadmissible. "The failure to brief the merits of an allegation of error constitutes an abandonment of the issue." *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004) (citations omitted). As such, defendant has abandoned this claim.

D. DENIAL OF A MISTRIAL

Finally, with regard to the other-acts evidence, defendant asserts that the trial court abused its discretion in denying his motion for a mistrial.

Defendant's argument is simply that the combination of perceived errors admitting evidence under MCL 768.27b warranted a mistrial. "It is true that the cumulative effect of several errors can constitute sufficient prejudice to warrant reversal where the prejudice of any one error would not." *People v LeBlanc*, 465 Mich 575, 591; 640 NW2d 246 (2002). However, as discussed, defendant has not established error or prejudice. As such, defendant was not entitled to a mistrial. See *People v Dobek*, 274 Mich App 58, 106; 732 NW2d 546 (2007) ("Absent the establishment of errors, there can be no cumulative effect of errors meriting reversal.").

IV. PROSECUTORIAL ERROR

Defendant argues he was denied due process and a fair trial because of prosecutorial misconduct[2] or error when the prosecutor misused other-acts evidence admitted under MCL 768.27b for improper propensity purposes in the prosecutor's opening statement and closing argument. He also argues that the prosecutor failed to disclose that the victim previously reported she had initiated the physical altercation, which he believes was material and exculpatory evidence. He argues further that the trial court did not properly instruct the jury about the other-acts evidence. We disagree.

"The test for prosecutorial error is whether the defendant was denied a fair trial." *People v Thurmond*, 348 Mich App 715, 735; 20 NW3d 311 (2023). This Court reviews claims of prosecutorial error on a case-by-case basis, and "must examine the entire record and evaluate a prosecutor's remarks in context." *Dobek*, 274 Mich App at 64. "A prosecutor's comments are to be evaluated in light of defense arguments and the relationship the comments bear to the evidence admitted at trial." *Id*. Because defendant did not object to the prosecutor's statements he now challenges on appeal, his claims of error are subject to plain error review. *Thurmond*, 348 Mich App at 735.

This Court "reviews due process claims, such as allegations of a *Brady* violation, de novo." *People v Dimambro*, 318 Mich App 204, 212; 897 NW2d 233 (2016) (quotation marks and citation omitted). However, defendant failed to preserve his claim that the prosecution improperly suppressed evidence by moving in the trial court for a new trial or for relief from judgment. *People*

[2] This Court noted in *People v Cooper*, 309 Mich App 74, 87-88; 867 NW2d 452 (2015), that the phrase "prosecutorial misconduct" serves as a term of art often used to describe any error committed by the prosecution, even though claims of inadvertent error by the prosecution are "better and more fairly presented as claims of 'prosecutorial error,' with only the most extreme cases arising to the level of 'prosecutorial misconduct.' "

v Burger, 331 Mich App 504, 516; 953 NW2d 424 (2020). Such unpreserved claims are reviewed for plain error affecting defendant's substantial rights. *Id*.

A. IMPROPER STATEMENTS

Defendant claims the prosecutor made multiple improper remarks during opening and closing arguments. "A prosecutor can deny a defendant his or her right to a fair trial by making improper remarks that so infect the trial with unfairness as to make the resulting conviction a denial of due process." *People v Lane*, 308 Mich App 38, 62; 862 NW2d 446 (2014) (quotation mark citations omitted). However, "not every trial error is constitutional in nature," and "[m]erely framing an issue as constitutional does not make it so." *People v Blackmon*, 280 Mich App 253, 261; 761 NW2d 172 (2008). "[I]n order for prosecutorial misconduct to be constitutional error, the misconduct must have so infected the trial with unfairness as to make the conviction a deprivation of liberty without due process of law." *Id*. at 269 (emphasis omitted).

Prejudicial comments by a prosecution may result in a denial of due process. *Lane*, 308 Mich App at 62. "A prosecutor may not appeal to the jury to sympathize with the victim. Nor may a prosecutor urge the jury to convict as part of its civic duty or on the basis of its prejudices." *People v Unger*, 278 Mich App 210, 237; 749 NW2d 272 (2008). However, although a "prosecutor may not make a factual statement to the jury that is not supported by the evidence," he or she "is free to argue the evidence and all reasonable inferences arising from it as they relate to his or her theory of the case." *Dobek*, 274 Mich App at 66 (citations omitted).

Defendant argues the prosecutor's statements relating to his July 2023 act of domestic violence amounted to impermissible propensity arguments and character assassination. Yet defendant acknowledges MCL 768.27b granted the prosecution's pretrial motion to admit evidence of his domestic violence conviction and related conduct to "show a defendant's character or propensity to commit the same act." *Railer*, 288 Mich App at 219-220. Given that the trial court had granted the prosecution's pretrial motion and admitted the evidence, the prosecution was permitted to discuss the evidence during its opening statement and argue about the evidence during its closing argument.

Defendant's challenge is "essentially an evidentiary issue framed as prosecutorial misconduct." *Dobek*, 274 Mich App at 70. "A prosecutor's good-faith effort to admit evidence does not constitute misconduct." *Id*., citing *People v Noble*, 238 Mich App 647; 608 NW2d 123 (1999). Considering defendant acknowledges MCL 768.27b applies to his prior domestic violence conviction, it follows that the prosecutor's efforts to admit and rely on this evidence under MCL 768.27b were in good faith. And because this evidence was admitted, the prosecutor was "free to argue the evidence and all reasonable inferences from the evidence" when arguing the case. *Dobek*, 274 Mich App at 66.

Moreover, the trial court properly instructed the jury that the lawyers' statements and arguments were not evidence, and how to consider the past domestic-violence evidence. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Zitka*, 335 Mich App 324, 348; 966 NW2d 786 (2020) (quotation marks and citation omitted). To warrant reversal for prosecutorial error, a defendant must show the curative instruction was inadequate to cure any defect. See *People v Ackerman*, 257 Mich App 434, 449;

669 NW2d 818 (2003). According to defendant, the instructions issued by the trial court were insufficient to cure the prejudice of the propensity evidence. This argument similarly fails because the propensity evidence was properly admitted and was not unfairly prejudicial.

Briefly, defendant also argues that the prosecutor improperly attacked his credibility by arguing that he was not a believable witness because his past domestic violence conviction rendered him inherently untruthful about everything. But at trial, defendant denied committing the July 2023 act of domestic violence despite pleading guilty to it, and so the prosecution was permitted to point out defendant's inconsistent statements to argue that he was not a credible witness. A prosecutor is permitted to argue from the facts that defendant is unworthy of belief. See *Dobek*, 274 Mich App at 67.

In sum, defendant failed to establish the prosecutor's arguments were plain error. *Thurmond*, 348 Mich App at 735. And having found no error, his due-process argument must fail under plain-error review. *Blackmon*, 280 Mich App at 269-270. Accordingly, because defendant has failed to establish plain error affecting his substantial rights, he is not entitled to reversal.

B. *BRADY* VIOLATION

Defendant's second prosecutorial-misconduct claim is that the prosecutor violated *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), by failing to disclose the victim's "alleged prior statement to police that she initiated the physical altercation," which he argues was material to his defense claim. According to the United States Supreme Court, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id*. at 87. To establish a *Brady* violation, a defendant must show: "(1) the prosecution has suppressed evidence; (2) that is favorable to the accused; and (3) viewed in its totality, is material." *People v Van Net*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 374944); slip op at 8 (quotation marks and citation omitted). "Evidence is favorable to the defense when it is either exculpatory or impeaching." *Id*. "To establish materiality, a defendant must show that there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id*. (quotation marks and citation omitted).

Here, defendant's *Brady* claim fails because he has failed to show that the prosecution suppressed evidence. Defendant's claim hinges on an alleged "discrepancy" between the victim's testimony at trial—that she initiated a physical altercation on the night in question and that she told the officers that fact previously—and the materials the prosecution produced in discovery, which included recordings, reports, and one written statement by the victim that did not include that information.[3] The first mention in the record that the victim initiated the physical altercation

[3] Defendant attached to his brief on appeal two police reports from January 2024 written by Officer Box and Officer Manor, respectively, to support his *Brady* claim. These reports were not admitted at trial and, therefore, are not part of the lower-court record. "[T]o consider evidence presented

occurred at trial, when the victim testified that she shoved defendant first and said she disclosed this to officers. According to defendant, because this disclosure was not included in the police reports or other information he received as part of discovery, this "discrepancy constitutes suppression of potentially favorable and material evidence."

However, defendant has not established the victim's disclosure occurred such that any information was suppressed. Defendant does not claim the disclosure appears in any body camera or other recording, such as the 911 calls, from the night of the incident. Officer Manor testified that the victim never mentioned anything about assaulting defendant during her 2024 written statement. While the victim testified that she told the officers this when she went to the police station the day after the incident to make a written statement, the victim's January 2024 written statement included no mention that she initiated any physical contact with defendant.

Even if the victim did tell officers she initiated the physical altercation, however, it is unclear how the prosecution "suppressed" the evidence, or how any suppression was "material" to defendant's defense when defendant was already aware of the evidence. Defendant was present when the 2024 domestic violence incident occurred, his attorney was able to elicit favorable evidence from the victim on this point, and defendant also testified that the victim initiated the physical altercation to support his defense. Defendant cannot demonstrate that any evidence was suppressed because the evidence in question (i.e., the victim's favorable testimony) was within his control. See *People v Chennault*, 495 Mich 142, 150; 845 NW2d 731 (2014) (holding that, in the context of a *Brady* claim, "the government is held responsible for evidence within its control . . . .") (citation omitted). In this context, defendant's *Brady* claim fails.

V. DURESS INSTRUCTION

Defendant argues the trial court's decision not to instruct the jury on the defense of duress with respect to the assaulting, resisting, or obstructing a police officer charge infringed on his constitutional right to present a defense and denied him a fair trial. Further, he argues the trial court violated his constitutional right against self-incrimination by tying the instruction to his testimony. We disagree.

This Court reviews "de novo the question whether a defendant was denied the constitutional right to present a defense." *Unger*, 278 Mich App at 247. While this Court reviews jury instruction issues involving questions of law de novo, "a trial court's determination whether a jury instruction is applicable to the facts of the case is reviewed for an abuse of discretion." *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006) (quotation marks and citation omitted). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *Unger*, 278 Mich App at 217. Because defendant did not

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on appeal that the parties failed to present to the trial court would be an impermissible expansion of the lower-court record." *People v Morrison*, 328 Mich App 647, 655; 939 NW2d 728 (2019) (citations omitted). For that reason, we will not consider these reports, however, because the prosecution does not contest that the reports did not include a statement that the victim initiated the physical altercation, we will assume that is true for purposes of our *Brady* analysis.

raise his constitutional claims in the trial court, they are unpreserved for appellate review. This Court reviews unpreserved constitutional claims for plain error affecting substantial rights. *People v Anderson*, 341 Mich App 272, 279; 989 NW2d 832 (2022).

A defendant has a constitutional right to present a complete defense. See *People v Parrott*, 335 Mich App 648, 658; 968 NW2d 548 (2021). See also US Const, Am VI; Const 1963, art 1, § 20. As such, "[a] criminal defendant is entitled to have a properly instructed jury consider the evidence against him." *People v Armstrong*, 305 Mich App 230, 239; 851 NW2d 856 (2014) (quotation marks and citation omitted). "The jury instructions must include all elements of the crime charged, and must not exclude from jury consideration material issues, defenses or theories if there is evidence to support them." *Id*. at 240 (quotation marks and citation omitted). "However, a defendant's right to present a complete defense is not unlimited and is subject to reasonable restrictions." *Parrott*, 335 Mich App at 658 (quotation marks and citation omitted).

"Duress is a common-law affirmative defense." *People v Lemons*, 454 Mich 234, 245; 562 NW2d 447 (1997). "It does not negate any offense element but, rather, excuses the offense." *People v Gafken*, 510 Mich 503, 511; 990 NW2d 826 (2022). "The defense of duress involves a situation in which the defendant acted under threat of death or serious bodily harm." *People v Dupree*, 284 Mich 89, 100; 771 NW2d 470 (2009). "In such cases, the defense 'excuses the defendant from criminal responsibility for an otherwise criminal act because the defendant was compelled to commit the act . . . . ' " *Id*. (citation omitted). "It is sometimes characterized as a choice of evils and is applicable to situations in which it is preferable, as a matter of social policy, to permit a person to commit a crime in order to avoid a greater harm." *Id*.

To properly raise a duress defense, "the defendant has the burden of producing some evidence from which the jury can conclude that the essential elements of duress are present." *Lemons*, 454 Mich at 246 (quotation marks and citation omitted). "If a defendant raises a defense but fails to present evidence from which a reasonable jury could conclude that the elements of the defense have been met, then the defendant is not entitled to the defense instruction and the jury is precluded from considering the defense." *People v Kolanek*, 491 Mich 382, 411; 817 NW2d 528 (2012) (citations omitted). To establish duress, the defendant must introduce evidence from which the jury could conclude:

> (A) The threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm;
>
> (B) The conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant;
>
> (C) The fear or duress was operating upon the mind of the defendant at the time of the alleged act; and
>
> (D) The defendant committed the act to avoid the threatened harm. [*Id*. at 247 (quotation marks and citation omitted).]

"Further, the threatening conduct or compulsive act must be present, imminent, and impending." *People v Chapo*, 283 Mich App 360, 371; 770 NW2d 68 (2009). "It must arise without the

negligence or fault of the person claiming the defense." *Id*. at 371-372. The threat of future injury is not enough. *Lemons*, 454 Mich at 247.

The evidence presented at defendant's trial did not support a duress defense because a reasonable person would not have feared death or serious bodily harm from the officers' conduct. Officer Box testified that he attempted to deescalate the situation multiple times, over the course of two hours, and that entering with the canine unit, Havoc, was the officers' last resort to get defendant out of the apartment. Before entering, Officer Box gave three loud and clear warnings to defendant. Each warning informed defendant that the officers were with the Bloomfield Township Police Department and that he should exit the apartment, or else he would be bit. Officer Box gave the third warning before he and the other officers entered the apartment with Havoc. Once inside, Officer Box continued to announce their presence and give defendant an opportunity to come out of the bathroom, before Lieutenant Buczek instructed defendant he was "making this a lot harder" on himself, and to "just step out" of the bathroom because the officers weren't leaving. Officers waited a few moments longer before ultimately entering the bathroom with the canine, at which point defendant was bitten by Havoc.

At trial, defendant agreed that he did not comply with Officer Box's three announcements outside the apartment or the announcements once officers entered the apartment, and Officer Box testified he would not have deployed the canine unit if defendant had complied at any point. Moreover, as the trial court acknowledged, defendant had the opportunity to exit the apartment even before the canine unit arrived on the scene. It was only after the officers gave him multiple warnings and ample opportunity to comply with their commands that the dog became involved. As such, defendant did not make a threshold showing that he faced threatening conduct that was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm based on his refusal to comply with a lawful order to support a duress instruction. *Chapo*, 283 Mich App at 372.

Briefly, defendant also claims the trial court violated his right against self-incrimination when it refused to instruct the jury on duress if defendant did not testify. A defendant has a constitutional right against compelled self-incrimination. *People v Fields*, 450 Mich 94, 108; 538 NW2d 356 (1995). See US Const, Am V; Const 1963, art 1, § 15. This Court has recognized "two interrelated requirements for a Fifth Amendment violation: compulsion, i.e., evidence that a person is unable to remain silent unless he chooses to speak in the unfettered exercise of his own will, [and] that is grounded on a penalty exacted for a refusal to testify." *In re Blakeman*, 326 Mich App 318, 333-334; 926 NW2d 326 (2018) (quotation marks and citation omitted).

The record does not support defendant's claim that he was compelled to testify at the trial. While the trial court asked how defendant was going to prove his fear as required for a duress defense if he did not testify, it did not condition the duress instruction on his testimony. Instead, the trial court denied the duress instruction because defendant's situation arose from defendant's actions. Defendant asked if the trial court would reconsider the instruction if he testified, but the trial court reiterated it would not, explaining that a duress instruction was not warranted. Defendant then decided to testify, and he affirmed under oath that he was choosing to do so freely and voluntarily. As such, defendant's argument fails because the trial court did not condition a duress instruction on defendant's testimony. *In re Blakeman*, 326 Mich App at 333-334. Because no plain error occurred, defendant is not entitled to reversal of his conviction.

VI. JUROR BIAS

Finally, defendant argues the trial court abused its discretion by retaining a biased juror, violating defendant's Sixth Amendment right to be tried by an impartial jury. We disagree.

"The general rule is that the defendant must exhaust his peremptory challenges to preserve a jury selection question." *People v Jendrzejewski*, 455 Mich 495, 514 n 19; 566 NW2d 530 (1997). Alternatively, "when a party refuses to express satisfaction with the jury empaneled, the issue is preserved for appeal." *Id*. (quotation marks and citation omitted). Because defendant had one peremptory challenge remaining and expressed satisfaction with the jury selection, this issue is unpreserved. See *id*. We review unpreserved constitutional claims for plain error affecting substantial rights. *Anderson*, 341 Mich App at 279.

A defendant has the constitutional right to be tried by a fair and impartial jury. *Miller*, 482 Mich at 547. See US Const, Am VI; Const 1963, art 1, § 20. "A trial court ensures that a jury is impartial by conducting voir dire and removing biased jurors before impaneling the jury[.]" *People v Haynes*, 338 Mich App 392, 411; 980 NW2d 66 (2021). Jurors are presumed to be impartial until the contrary is shown. *Miller*, 482 Mich at 550. The defendant "has the burden to show that a particular juror was not impartial or, at the very least, that the juror's impartiality was in reasonable doubt." *Haynes*, 338 Mich App at 411.

Defendant argues the trial court abused its discretion by denying his request to dismiss "Juror No. 38" for cause after she revealed she was a victim of domestic violence and was unsure if she could be impartial if defendant's case was similar to her circumstances. But defendant's argument is meritless. To determine "whether an error in refusing a challenge for cause merits reversal," it must be shown that: "(1) the court improperly denied a challenge for cause, (2) *the aggrieved party exhausted all peremptory challenges*, (3) the party demonstrated the desire to excuse another subsequently summoned juror, and (4) the juror whom the party wished later to excuse was objectionable." *People v Legrone*, 205 Mich App 77, 81; 517 NW2d 270 (1994), quoting *Poet v Traverse City Osteopathic Hosp*, 433 Mich 228, 241; 445 NW2d 115 (1989) (emphasis added). After the trial court noted defendant had one peremptory challenge remaining, he expressed satisfaction with the jury and declined to use his last peremptory challenge. As such, defendant has failed to show that reversal was required in this case, *Legrone*, 205 Mich App at 82, and has failed to show plain error affecting his substantive rights on this issue.

Affirmed.

/s/ Michael J. Kelly
/s/ Colleen A. O'Brien
/s/ Andrew J. Lievense