STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 11, 2026 2:31 PM
v	No. 371448 St. Clair Circuit Court
WOODROW ANTHONY MILLER, Defendant-Appellant.	LC No. 23-002026-FH

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of possession with intent to deliver methamphetamine, MCL 333.7401(2)(b)(*i*), and maintaining a drug house, MCL 333.7405(1)(d). He was sentenced, as a fourth-offense habitual offender, MCL 769.12, to 260 months to 40 years' imprisonment for the possession conviction and 16 months to 15 years for maintaining a drug house. On appeal, he raises a double-jeopardy challenge and claims of evidentiary and instructional error. He also contends that he was deprived of the right to counsel at a critical stage of the proceeding and denied the effective assistance of counsel at trial. We affirm.

I. BACKGROUND

The convictions in this case arise from the execution of an arrest warrant and a subsequent search of defendant's residence—a detached garage at his mother's home in Port Huron—on September 11, 2023.

The St. Clair County Drug Task Force had investigated defendant for drug trafficking since late 2022. In 2023, he failed to appear for a scheduled proceeding in a separate case, St. Clair Circuit Court case no. 23-000763-FH. That case concerned a Drug Task Force raid at the same garage residence on March 29, 2023; defendant was tried and convicted of various offenses arising from that raid, and a panel of this Court later vacated those convictions and remanded for a new trial on right-to-counsel grounds. *People v Miller*, unpublished per curiam opinion of the Court of Appeals, issued July 18, 2025 (Docket No. 369089).

On September 11, 2023, Drug Task Force officers executed the bench warrant at defendant's home. After officers took defendant into custody inside the garage, they saw suspected methamphetamine and a narcotics pipe in plain view within defendant's reach. The officers conducted a protective sweep of the garage, secured the premises, and obtained a search warrant. The ensuing search recovered 5.28 grams of methamphetamine, digital scales, packaging material, and mail and a debit card bearing defendant's name. When asked about the drugs, defendant claimed that they had been left behind by the officers who conducted the March search.

Defendant was then charged with the offenses giving rise to this appeal. The felony information charged both offenses as having occurred in or around March 2023 through September 11, 2023, and the trial court later instructed the jury that defendant was charged with committing the instant offenses "on or around the period from March 2023 up to and through September 11, 2023."

Before trial, the prosecution filed a notice of its intent to introduce other-acts evidence from the March 29, 2023 events under MRE 404(b)—principally a recording of defendant's post-arrest statements describing his drug-dealing practices, along with photographs of packaging materials and scales recovered during the raid. The trial court admitted that evidence over defendant's objection. After the presentation of evidence and the parties' closing arguments, the jury convicted defendant as charged, and the trial court sentenced him as described above. This appeal followed.

II. DISCUSSION

A. THE MARCH 29 EVIDENCE, DOUBLE JEOPARDY, UNANIMITY, AND RELATED INEFFECTIVE ASSISTANCE

Defendant raises several interwoven claims of error. He contends that because the information charged a March-to-September date range, and because the trial court read that range to the jury and never expressly told the jury that it could not convict on the basis of the March 29, 2023 events, the jury may have convicted him based on conduct for which he was separately tried and convicted. From that premise he argues (1) that his convictions violate the Double Jeopardy Clause; (2) that trial counsel was constitutionally ineffective for failing to request a specific unanimity instruction, for mishandling the MRE 404(b) issue, and for failing to file a pretrial motion to constrain the date range in the information; and (3) that, under *People v Quinn*, 219 Mich App 571; 557 NW2d 151 (1996), double jeopardy now bars any retrial. The prosecution responds that the March 29 evidence was admitted only as other-acts evidence to prove intent, knowledge, and common plan or scheme; that the jury was properly instructed under MRE 404(b); and that the only theory of guilt actually submitted and supported by the proofs was confined to the events of September 11, 2023.

The central premise underlying defendant's claims is that the March 29 conduct functioned as an alternative theory of guilt. As explained below, the record does not support that premise. The March 29 evidence was properly admitted under MRE 404(b) and was cabined by a limiting instruction. Accordingly, defendant's double-jeopardy and derivative ineffective-assistance claims fail.

1. ADMISSION OF THE MARCH 29 EVIDENCE UNDER MRE 404(b)

Defendant contends that the trial court abused its discretion by admitting the March 29 evidence under MRE 404(b) because its prejudicial effect substantially outweighed its probative value.

We review preserved challenges to a trial court's decision to admit evidence for an abuse of discretion but review de novo "[p]reliminary questions of law, such as whether a rule of evidence or statute precludes the admission of particular evidence." *People v Bynum*, 496 Mich 610, 623; 852 NW2d 570 (2014). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010). Further, "it is an abuse of discretion to admit evidence that is inadmissible as a matter of law." *Bynum*, 496 Mich at 623. But "[a] decision on a close evidentiary question ordinarily cannot be an abuse of discretion." *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019).

"The general rule under MRE 404(b) is that evidence of other crimes, wrongs, or acts is inadmissible to prove a propensity to commit such acts." *People v Denson*, 500 Mich 385, 397; 902 NW2d 306 (2017). Other-acts evidence may, however, be admissible under MRE 404(b)(2) if it is material and offered for a nonpropensity purpose, "such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident."

MRE 404(b) is a rule of inclusion, not exclusion, "because it provides a nonexhaustive list of reasons to properly admit evidence that may nonetheless also give rise to an inference about the defendant's character." *People v Mardlin*, 487 Mich 609, 616; 790 NW2d 607 (2010). Our Supreme Court in *People v Sabin*, 463 Mich 43; 614 NW2d 888 (2000), articulated the following approach courts employ when evaluating other-acts evidence:

> First, the prosecutor must offer the other acts evidence under something other than a character to conduct or propensity theory. MRE 404(b). Second, the evidence must be relevant under MRE 402, as enforced through MRE 104(b), to an issue of fact of consequence at trial. Third, under MRE 403, a determination must be made whether the danger of undue prejudice [substantially] outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making decision of this kind under Rule 403. Finally, the trial court, upon request, may provide a limiting instruction under MRE 105. [*Sabin*, 463 Mich at 55-56 (quotation marks and citation omitted; alteration in original).]

The March 29 evidence was offered for proper purposes. Defendant's own statements about how he acquired, packaged, priced, and distributed methamphetamine were relevant to and probative of his intent to deliver the methamphetamine recovered on September 11, his knowledge of the substance in his possession on that date, and the existence of a common scheme or system for drug-dealing—each a permissible purpose expressly enumerated in MRE 404(b)(2). The evidence was probative for reasons beyond merely showing that defendant had dealt drugs before. His statements described the manner in which he acquired, packaged, priced, and distributed the same type of controlled substance from the same residence, thereby tending to show his knowledge of and intent concerning the methamphetamine and related items recovered there on September 11. The materiality of the evidence was heightened here because defendant's own theory placed intent and knowledge squarely in dispute: he claimed the methamphetamine found on September 11 was merely a remnant that police had failed to seize during the March raid, and that he was a user rather than a seller. Evidence of his recent drug-dealing practices at the same location was relevant to rebut that account. See *People v Crawford*, 458 Mich 376, 390; 582 NW2d 785 (1998).

Defendant has not established that the danger of unfair prejudice substantially outweighed the probative value of the March 29 evidence. All relevant evidence is prejudicial to some degree; MRE 403 guards only against the danger of *unfair* prejudice, i.e., the tendency to inject into the jury's deliberation considerations extraneous to the merits. *People v Cameron*, 291 Mich App 599, 611; 806 NW2d 371 (2011). Defendant's statements about his own dealing were highly probative of the contested elements. Moreover, evidence that the officers collected all of the illicit items found during the March 29 search had a tendency to make less likely defendant's assertion that the drugs and paraphernalia found on September 11 had been left behind by the officers conducting the March search.

Finally, the trial court instructed the jury that it could consider the other-acts evidence only for permissible purposes set forth in MRE 404(b)(2) and not to convict defendant "because you think he is guilty of other bad conduct." A limiting instruction serves to protect against the danger that a jury will misuse other-acts evidence, and jurors are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Defendant contends that the amount of other-acts evidence presented was so great—comprising, by his estimate, roughly half or more of the proofs at trial—that the March 29 case was, in effect, retried before the jury. As a result, he argues, the other acts functioned as propensity evidence and invited the jury to convict him for being a drug dealer rather than for the charged conduct.

Michigan law recognizes that other-acts evidence "carries with it a high risk of confusion and misuse," and that this risk creates a "heightened need for the careful application of the principles set forth in [MRE] 403." *Crawford*, 458 Mich at 398. Because MRE 403's balancing test accounts not only for the danger of unfair prejudice but also for the danger of "undue delay, waste of time, or needless presentation of cumulative evidence," a trial court confronted with a large body of other-acts evidence must remain attentive to the risk that limited-purpose evidence will, through sheer repetition and quantity, overwhelm its proper function. See MRE 403; *Crawford*, 458 Mich at 398.

We are not persuaded, however, that the admission of the other-acts evidence was outside the range of principled outcomes, even accepting for purposes of analysis that the other-acts evidence comprised half or more of the proofs. MRE 403 does not impose a quantitative limit on relevant evidence admitted for a proper purpose. Volume matters to the extent that it increases one of the specific dangers the rule identifies, and the two potentially implicated here—needless presentation of cumulative evidence and unfair prejudice arising from repetition—do not substantially outweigh the evidence's probative value.

The March 29 evidence was not needlessly cumulative because it went to a genuinely contested element for which it supplied the prosecutor's most direct proof. Intent to deliver was the central dispute at trial because the defense theory was that defendant was a mere user of methamphetamine, not a dealer. His own recorded statements describing how he priced, packaged, and distributed methamphetamine were the most direct evidence of his intent. Evidence that is the principal proof of a contested element is not "needless" merely because it is extensive. Here, the quantity of the other-acts evidence reflected the centrality of the disputed issue.

Nor did the volume of the March 29 evidence generate the sort of unfair prejudice MRE 403 seeks to prevent. Although repetition can amplify the danger of unfair prejudice, the nature and context of the evidence here did not create such a danger to a degree that substantially outweighed its probative value. The jury was charged with deciding a methamphetamine-dealing case; thus, evidence concerning defendant's dealing practices that directly connected those practices with the evidence recovered on September 11 did not inject a consideration extraneous to the merits or one calculated to arouse the jury's bias, sympathy, anger, or shock. The authorities on which defendant relies to argue that narcotics evidence "kindles the passions" of the jury are inapposite for precisely this reason: they concern the introduction of drug evidence in cases where narcotics issues were not otherwise relevant, whereas here the charged crimes are drug offenses and the other-acts evidence bore directly on disputed elements. Considering the record before us and the limiting instruction given to the jury, defendant has not established that the admission of the March 29 evidence constituted an abuse of discretion.

2. DOUBLE JEOPARDY

Defendant next submits that the charging period listed in the information and read to the jury permitted the jury to convict him based on the March 29 events for which he was separately tried and convicted, violating the constitutional protection against double jeopardy.

Defendant did not preserve his double-jeopardy challenge by raising it in the trial court, so our review is for plain error affecting substantial rights. *People v Meshell*, 265 Mich App 616, 628; 696 NW2d 754 (2005). To the extent that he raises a related claim of instructional error, we likewise review that unpreserved claim for plain error. *People v Czuprynski*, 325 Mich App 449, 466-467; 926 NW2d 282 (2018). "To avoid forfeiture under the plain error rule, 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" by affecting the outcome of the proceeding. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Even when those requirements are satisfied, "[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (quotation marks and citation omitted).

The Double Jeopardy Clauses of the United States and Michigan Constitutions protect against (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. US Const, Am V; Const 1963, art 1, § 15; *People v Wafer*, 509 Mich 31, 37-38; 983 NW2d 315 (2022). Only the successive-prosecution protections are implicated here. Whether two offenses are the "same offense" is generally governed by the same-elements test set forth in *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932). Under that test, two offenses are the "same offense" for double-jeopardy purposes if each requires proof of the same facts—that is, if neither contains an element the other lacks. *People v Nutt*, 469 Mich 565, 576; 677 NW2d 1 (2004).

As a threshold matter, the September 11 prosecution was not barred by double jeopardy merely because both prosecutions charged defendant with possession with intent to deliver methamphetamine and maintaining a drug house. With respect to the possession with intent to deliver, the prosecutions were premised on separate alleged possessions. The earlier prosecution arose out of narcotics recovered during the execution of a search warrant on March 29, 2023, while the latter prosecution arose out of separate narcotics recovered on September 11, 2023, when officers sought to arrest defendant on a bench warrant. The charge for maintaining a drug house requires somewhat different consideration because the statutory terms "keep or maintain" contemplate continuity. But defendant has not established on this record that the March 29 and September 11 prosecutions concerned the same unit of conduct for purposes of that offense. The earlier prosecution was based on the circumstances existing on March 29, while the present prosecution was tried on the theory that defendant maintained the premises for drug-related activity on September 11. We therefore reject defendant's contention that double jeopardy barred the September 11 prosecution.

Defendant additionally argues a narrower proposition: because the information set forth a March-to-September charging period and the court read that charging period in its preliminary instructions, the jury *may* have convicted him based on the March 29 conduct. This is, in substance, a claim of instructional error rather than a claim that the prosecution was entirely barred. As this Court has explained, "[w]hen the defendant stands convicted on one of two theories, one of which is permissible and one of which is not, the inability to say for sure on which the conviction rests demands reversal." *People v Urbanski*, 348 Mich App 90, 110; 17 NW3d 430 (2023) (citation omitted; alteration in original). That rule, however, applies only when the jury was actually presented with a legally invalid theory as a basis for conviction. It does not apply here, because the March 29 conduct was not submitted as a theory of guilt.

Jury instructions are reviewed as a whole rather than piecemeal; even imperfect instructions do not require reversal if they fairly present the issues and sufficiently protect the defendant's rights. *People v Kowalski*, 489 Mich 488, 501-502; 803 NW2d 200 (2011). Read as a whole, the instructions confined the jury to the September 11 conduct. The court's limiting instruction told the jury that it had "heard evidence that was introduced to show that the Defendant committed improper acts *for which he is not on trial*," identified the limited permissible uses of that evidence, and admonished the jury that it "must not convict the Defendant here because you think he is guilty of other bad conduct." (Emphasis added.) That instruction designated the events of March 29 as conduct "for which he is not on trial," and it expressly forbade conviction on the basis of that conduct. The general date range recited from the information did not transform properly admitted other-acts evidence into an alternative theory of guilt.

The surrounding record confirms that understanding. Both the prosecution and the defense argued to the jury that the trial concerned the events of September 11, 2023, not those of March 29. The prosecution argued that the March 29 evidence was offered to show "whether [defendant] knew what he did, whether he had the intent to do something, and the scheme that he has." And defense counsel expressly argued that defendant "is not on trial here for the events of March 29, 2023," and that the March 29 evidence was presented only to aid the jury in "attempting to arrive at a decision" regarding whether defendant committed the charged offenses on September 11. The record confirms that the prosecution argued only one theory of guilt—that defendant possessed with intent to deliver methamphetamine and maintained a drug house on September 11—and the March 29 evidence was offered only to support that theory. The facts here are therefore materially different from those in *Urbanski*, 348 Mich App at 94-95, where the prosecution affirmatively submitted two competing theories of guilt for a single charge.

Because the March 29 conduct was not submitted as a theory of guilt, the rule set forth in *Urbanski* does not apply. Defendant's reliance on *Quinn* is likewise misplaced. That case involved a single count submitted to the jury on two distinct factual bases as alternative grounds for conviction, leaving it uncertain which basis the jury actually found. *Quinn*, 219 Mich App at 574-577. Here, the March 29 conduct was presented as other-acts evidence, not an alternative basis for conviction, and the record does not leave us uncertain as to what conduct formed the basis of the jury verdict.

Even if we assumed some instructional imperfection in the interplay between the charged date range and the limiting instruction, defendant has not established entitlement to relief on that basis. We agree, and the prosecution concedes on appeal, that the date range charged in the information and later read to the jury could have been more precise. That imprecision notwithstanding, when the instructions are reviewed as a whole and in the context of the evidence presented at trial, defendant has not established an error affecting the outcome of the proceedings. The jury was presented with two discrete sets of events that could theoretically form the basis of the charges: the conduct on March 29 and the conduct on September 11. But the parties' arguments emphasized that the conduct at issue was that of September 11 and that the March 29 evidence was offered only to the extent that it was probative of whether defendant committed the charged offenses on September 11, and the court gave a limiting instruction. Though the limiting instruction did not specify the March 29 events as the conduct "for which [defendant] is not on trial," that is the logical inference supported by the evidence presented and the parties' arguments. On this record, defendant has not established a plain error affecting the outcome of the proceedings.

3. UNANIMITY AND RELATED INEFFECTIVE ASSISTANCE

Defendant next asserts that trial counsel was constitutionally ineffective for (1) failing to secure a 404(b) instruction that expressly forbade conviction based on the March 29 events; (2) failing to file a pretrial motion to narrow the date range in the information; and (3) failing to request a specific unanimity instruction requiring the jury to agree that each conviction rested on the September 11 events. He relatedly argues that a specific unanimity instruction was required under Michigan law, independent of any double-jeopardy concerns.

"Whether a defendant has received ineffective assistance of counsel is a mixed question of fact and constitutional law." *People v Yeager*, 511 Mich 478, 487; 999 NW2d 490 (2023). "A judge must first find the facts, then must decide whether those facts establish a violation of the defendant's constitutional right to the effective assistance of counsel." *Id*. (citation omitted). We review the trial court's factual findings for clear error and questions of law de novo. *Id*. Though defendant twice moved this Court to remand the matter for an evidentiary hearing on his ineffective-assistance claims, those motions were denied,[1] so our "review is limited to mistakes apparent from the record." *People v Miller*, 326 Mich App 719, 726; 929 NW2d 821 (2019).

Both the United States and Michigan Constitutions guarantee criminal defendants the right to the assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20. "This right guarantees the effective assistance of counsel." *Yeager*, 511 Mich at 488, citing *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984). A defendant asserting ineffective assistance "must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012). Counsel is not ineffective for declining to raise a meritless argument or to request an instruction that is not warranted. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Regarding counsel's failure to request a more specific 404(b) instruction, defendant has not established ineffective assistance. Assuming for the sake of argument that counsel's performance fell below an objective standard of reasonableness, defendant has not established a reasonable probability of a different outcome but for counsel's deficient performance. The jury was instructed that it had "heard evidence . . . that the Defendant committed improper acts for which he is not on trial" and that it "must not convict the Defendant here because you think he is guilty of other bad conduct." Viewed in the context of the evidence presented, the parties' arguments, and the other instructions, that instruction adequately conveyed that the March 29 conduct was not a basis for conviction. Even assuming that counsel should have requested more explicit language, defendant has not demonstrated a reasonable probability of a different outcome had counsel made such a request.

The ineffective-assistance claim predicated on counsel's failure to file a pretrial motion to narrow the date range in the information fails for the same reasons. Even assuming that counsel should have made such a motion, defendant has not established prejudice. Although the charging period set forth in the information and later read to the jury was imprecise, the record demonstrates that the jury was tasked with determining whether defendant committed the charged offenses on September 11, 2023, and the 404(b) instruction appropriately cabined the jury's consideration of the March 29 evidence. On this record, defendant has not established a reasonable probability that, had counsel filed a motion to narrow the date range in the information, a different outcome would have resulted.

Turning to defendant's unanimity claim, defendant has neither established that he was entitled to a specific unanimity instruction nor that counsel's performance was deficient in that regard. In most cases, a court can fulfill its duty to instruct the jury on the unanimity requirement by providing the general unanimity instruction, M Crim JI 3.11(3). *People v Chelmicki*, 305 Mich App 58, 67-68; 850 NW2d 612 (2014). "However, a specific unanimity instruction may be required in cases in which more than one act is presented as evidence of the actus reus of a single

[1] *People v Miller*, unpublished order of the Court of Appeals, entered August 21, 2025 (Docket No. 371448); *People v Miller*, unpublished order of the Court of Appeals, entered August 24, 2026 (Docket No. 371448).

criminal offense and each act is established through materially distinguishable evidence that would lead to juror confusion." *Id*. at 68 (quotation marks and citation omitted).

In this case, the prosecution did not present the March 29 conduct as an alternative factual basis for either conviction. The March 29 evidence was appropriately admitted under MRE 404(b), and the jury was instructed on the proper purposes for which it could consider that evidence. The instructions also forbade the jury from convicting defendant based on the March 29 conduct. Defendant was therefore not entitled to a specific unanimity instruction, and counsel is not ineffective for declining to request an instruction to which defendant was not entitled. See *Ericksen*, 288 Mich App at 201.

B. RIGHT-TO-COUNSEL "TAINT" CLAIM

Defendant next contends that his convictions in this case are tainted by a right-to-counsel violation that occurred in the March 2023 case. We review constitutional questions de novo and related factual findings for clear error. *People v Russell*, 471 Mich 182, 187; 684 NW2d 745 (2004).

"The right to the assistance of counsel at all critical stages of criminal proceedings for an accused facing incarceration is protected by the Sixth Amendment, applicable to the states through the Fourteenth Amendment." *People v King*, 512 Mich 1, 11; 999 NW2d 670 (2023). A plea hearing is one such critical stage. *Id*. The right to counsel cannot be waived absent a knowing, voluntary, and intelligent waiver. *Id*.

In the appeal arising out of defendant's earlier convictions for the events of March 29, defendant argued that he was denied the right to counsel at a critical stage of the proceeding when his counsel failed to appear for a plea hearing, which proceeded in counsel's absence. *Miller*, unpub op at 7-8. A panel of this Court agreed, concluding that "[d]efendant's right to counsel was violated because counsel was absent at a critical stage and the trial court did not obtain a valid waiver from defendant." *Id*. at 9. The panel therefore vacated those convictions and remanded for a new trial. *Id*. But the panel declined to vacate defendant's convictions in this case, holding:

> Defendant also argues that his convictions in a separate case, St. Clair Circuit Court case no. 23-002026-FH (Court of Appeals docket no. 371448), should be vacated as well because the charges were pending at the time of the plea hearing in this case. Defendant contends that his attorney was in a position to resolve both cases at the plea hearing, and that justice requires defendant be put back in the same position. We disagree.
>
> Defendant was charged with possession with intent to deliver methamphetamine and maintaining a drug house in case no. 23-002026-FH when methamphetamine was discovered in his residence while police were serving an arrest warrant for defendant's failure to appear at a previously scheduled plea hearing in this case. Defendant was convicted of both counts following a jury trial on March 30, 2024. The plea hearing for that case occurred on March 11, 2024. Defendant was represented by a public defender who was present at the plea hearing.

> Defendant's right to counsel was not violated at the plea hearing in case no. 23-002026-FH because defense counsel was present and participated in the hearing. While it is true that defense counsel could have negotiated a plea involving both of defendant's cases at the plea hearing in this case, that is not a reason to vacate defendant's convictions in case no. 23-002026-FH absent a constitutional violation in that case. Defendant is currently appealing his convictions in case no. 23-002026-FH, so another panel of this Court will decide if any errors occurred that warrant relief. [*Id*. at 9-10.]

Defendant now asks this Court to conclude that the instant convictions are tainted by the right-to-counsel violation in the earlier case. We decline to do so. Critically, no right-to-counsel violation occurred in *this* case. Counsel was present at and participated in the plea proceedings in this case, and defendant was represented by counsel throughout the trial that produced these convictions. The panel in Docket No. 369089 considered and rejected the same argument defendant renews here, reasoning that although counsel could have attempted to negotiate a global resolution, that possibility "is not a reason to vacate defendant's convictions in case no. 23-002026-FH absent a constitutional violation in that case." *Id*. at 10. Although that unpublished decision is not binding, see MCR 7.215(C)(1), we find its reasoning persuasive and reach the same conclusion.

C. SEPTEMBER 11 PROTECTIVE SWEEP AND SEARCH

Defendant next challenges the admission of the evidence recovered from the September 11 search on two related grounds. First, he argues that the officers' initial entry, protective sweep, and the ensuing search warrant violated the Fourth Amendment, and the trial court therefore erred by admitting the resulting evidence. Second, he submits that trial counsel was ineffective for failing to move to suppress that evidence. In support of both arguments, defendant contends that police were aware of the bench warrant for approximately two weeks and had conducted extended surveillance on the garage, yet officers deliberately waited until he was inside the garage to arrest him. He characterizes the officers' initial entry as a manufactured pretext, the protective sweep as unlawful, and the resulting warrant as tainted by the averring officer's reliance on the unlawful sweep.

We review defendant's unpreserved standalone Fourth Amendment claim for plain error affecting substantial rights. *Carines*, 460 Mich at 764. Because no evidentiary hearing was held on defendant's ineffective-assistance claim, our review of that issue is limited to errors apparent from the record. See *Miller*, 326 Mich App at 726.

"Both the United States Constitution and the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Pagano*, 507 Mich 26, 31-32; 967 NW2d 590 (2021); see also US Const, Am IV; Const 1963, art 1, § 11. "[T]he general rule is that officers must obtain a warrant for a search to be reasonable under the Fourth Amendment." *People v Hughes*, 506 Mich 512, 524-525; 958 NW2d 98 (2020) (quotation marks and citation omitted). A search warrant must be supported by probable cause, and probable cause exists where there is a "substantial basis" for inferring a "fair probability" that contraband or evidence of a crime will be found in the place to be searched. *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992) (citation omitted). If a warrant is issued in violation of the Fourth

Amendment, the resulting evidence must be suppressed. *People v Mahdi*, 317 Mich App 446, 457; 894 NW2d 732 (2016). Under the good-faith exception, however, evidence seized in objectively reasonable, good-faith reliance on a warrant need not be suppressed even if the warrant is later found defective. *People v Goldston*, 470 Mich 523, 530; 682 NW2d 479 (2004).

"[A]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Payton v New York*, 445 US 573, 589-590; 100 S Ct 1371; 63 L Ed 2d 639 (1980) (citation omitted; second alteration in original). Absent exigent circumstances, police must obtain an arrest warrant to enter a suspect's residence and arrest the suspect. *Id*. at 590. "For Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." *Id*. at 603.

The arrest on September 11 was effectuated pursuant to a warrant for defendant's arrest due to his failure to appear for a scheduled proceeding in case no. 23-000763-FH. Police knew—and defendant does not dispute—that he lived in the garage, and officers observed him there before effectuating the arrest. Defendant's theory that the officers deliberately waited until he was inside the garage to effectuate the arrest does not undermine the legality of the entry. To the extent that the officers were motivated by a desire to find evidence, their "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren v United States*, 517 US 806, 813; 116 S Ct 1769; 135 L Ed 2d 89 (1996). The arrest warrant gave the officers the authority to enter his residence if there was reason to believe that he was within the dwelling, and defendant does not dispute the legality of the arrest warrant nor that the officers reasonably believed he was in the residence. The decision to execute a valid warrant at defendant's known residence, at a time when he was inside, did not violate the Fourth Amendment.

Once lawfully inside the garage to make the arrest, the officers were entitled to conduct a protective sweep. "The Fourth Amendment permits a properly limited protective sweep in connection with an in-home arrest if the police reasonably believe that the area in question harbors an individual who poses a danger to them or to others." *People v Beuschlein*, 245 Mich App 744, 757; 630 NW2d 921 (2001). There are two types of protective sweeps:

> The first requires no probable cause or reasonable suspicion, and allows officers as a precautionary matter to look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. A more expansive sweep that goes beyond areas immediately adjacent to where the arrest took place requires more, i.e., that officers have some articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. [*People v Hughes*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 367172); slip op at 6 (quotation marks and citations omitted).]

Here, the officers knew defendant used the garage to store and sell narcotics and had observed a visitor enter and leave earlier in the day, supplying at least some articulable basis for concern that another person might be present in the dwelling. We need not decide, however, whether those circumstances justified any sweep beyond the areas immediately adjoining the place of arrest. Even assuming that a portion of the sweep exceeded the permissible scope, the search warrant affidavit referenced only the evidence observed in plain view near defendant at the time of his arrest. Defendant therefore cannot show that the magistrate's probable-cause determination was based on observations made during any arguably unlawful portion of the protective sweep. See *People v Lapworth*, 273 Mich App 424, 430; 730 NW2d 258 (2006) (holding that an item observed in plain view and properly seized may furnish probable cause to obtain a search warrant).

Because defendant has not established that the officers' lawful entry or the observations supporting the search warrant violated the Fourth Amendment, or that any arguably excessive protective sweep tainted the warrant, he has not demonstrated plain, outcome-determinative error. For the same reason, a motion to suppress would have been futile, and counsel was not ineffective for declining to file such a motion. See *People v Riley*, 468 Mich 135, 142; 659 NW2d 611 (2003).

D. INEFFECTIVE ASSISTANCE REGARDING THE MARCH 29 SEARCH WARRANT

Next, defendant submits that trial counsel was ineffective for failing to move to suppress the evidence obtained from the March 29 search on the basis that the affidavit supporting the March 29 search warrant failed to establish probable cause. This claim is reviewed for errors apparent on the record, *Miller*, 326 Mich App at 726, and requires defendant to show that the suppression motion would have succeeded. *Riley*, 468 Mich at 142.

In the appeal arising out of case no. 23-000763-FH, defendant challenged the validity of the March 29 warrant and argued that his trial counsel in that case was ineffective for failing to move to suppress the resulting evidence. The panel rejected those contentions, concluding that the affidavit "established the nexus between defendant, his residence, and the controlled substances he was selling" and that it "put forth facts tending to show a fair probability that controlled substances would be found in defendant's residence." *Miller*, unpub op at 5-6.

Although the panel's unpublished decision in Docket No. 369089 is not binding, see MCR 7.215(C)(1), we find its reasoning persuasive and reach the same conclusion. The March 29 affidavit recited information from confidential informants, controlled purchases, defendant's relevant criminal history, and the affiant's training and experience. That information collectively supplied a substantial basis to conclude that contraband would be found at the premises. See *Miller*, unpub op at 6. Accordingly, the affidavit furnished an adequate basis to support the magistrate's probable-cause finding, and defendant was not entitled to suppression. A motion to suppress on that basis would therefore have been futile, and counsel was not ineffective for declining to file it. *Riley*, 468 Mich at 142.

E. OFFICER TESTIMONY

Finally, defendant argues that certain unresponsive testimony offered by the officer in charge of the investigation in case no. 23-000763-FH, Detective Brandon Helmrich, was inadmissible hearsay and violated the Confrontation Clause, and he submits that counsel was ineffective for failing to object to and move to strike that testimony. We review those unpreserved evidentiary and constitutional claims for plain error affecting substantial rights, *Carines*, 460 Mich at 763, and the ineffective-assistance claim is reviewed on the existing record, *Miller*, 326 Mich App at 726.

At trial, defense counsel questioned Detective Helmrich about the surveillance conducted on defendant before the March 29 search. During that exchange, the detective testified as follows:

> *Q*. And during your surveillance, you saw certain activity taking place at the garage on Moak Street?
>
> *A*. Correct.
>
> *Q*. When one is dealing meth, is it commonplace for people to stop[,] to come and go from a residence like the garage?
>
> *A*. Yes.
>
> *Q*. And they don't stay long?
>
> *A*. Normally not, no.
>
> *Q*. Were you part of the surveillance of September 11th?
>
> *A*. No, I was not.
>
> * * *
>
> *Q*. See any stops and goes, comes and goes from the Moak Street garage address on March 29th, 2023 prior to the raid?
>
> *A*. On March 29th?
>
> *Q*. Or before that?
>
> *A*. Before that, yes.
>
> *Q*. Okay. How long before the raid were you observing this type of activity?
>
> *A*. I received information in regards to [defendant] December of 2022 that he was selling narcotics in St. Clair County.
>
> *Q*. And that's when you began to take up surveillance?
>
> *A*. Yes.

On appeal, defendant contends that the detective's testimony about receiving information regarding defendant selling narcotics in December 2022 was unresponsive to the question posed and implied to the jury that defendant was known to deal drugs. Moreover, he claims that the testimony constituted inadmissible hearsay and violated the Confrontation Clause by referencing out-of-court statements from an unidentified source who was not present to testify.

The fact that the challenged testimony was elicited during defense counsel's cross-examination is dispositive of defendant's evidentiary and confrontation challenges. Under the doctrine of invited error, "a party waives the right to seek appellate review when the party's own conduct directly causes the error." *People v McPherson*, 263 Mich App 124, 139; 687 NW2d 370 (2004). Because defendant here elicited the challenged testimony through his own cross-examination, "he has lost his right to assert th[ese] issue[s] on appeal." *Id*. And to the extent defendant characterizes the detective's testimony as unresponsive rather than invited, that framing does not assist him because "an unresponsive, volunteered answer to a proper question is not grounds for" relief—particularly where, as here, it was not elicited by the prosecutor. *People v Haywood*, 209 Mich App 217, 228-229; 530 NW2d 497 (1995).

Even if we consider the merits of the hearsay and confrontation claims, defendant is not entitled to relief. An out-of-court statement offered for a purpose other than to prove the truth of the matter asserted is, "by definition," not hearsay. *People v Musser*, 494 Mich 337, 350; 835 NW2d 319 (2013); MRE 801(c). More specifically, "a statement offered to show why police officers acted as they did is not hearsay." *People v Chambers*, 277 Mich App 1, 11; 742 NW2d 610 (2007). The detective's reference to information received in December 2022 explained when and why he began surveilling defendant; it was not offered to prove that defendant in fact sold narcotics. Because the statement was not admitted for its truth, it likewise did not implicate the Confrontation Clause. *Tennessee v Street*, 471 US 409, 413-414; 105 S Ct 2078; 85 L Ed 2d 425 (1985). It is true that this rationale has limits: testimony may not be used merely as a vehicle to place before the jury the substance of an otherwise inadmissible accusation against the defendant. See *People v Washington*, 514 Mich 583, 602; 22 NW3d 507 (2024); *People v Henry (After Remand)*, 305 Mich App 127, 153-154; 854 NW2d 114 (2014). Here, however, the challenged reference was brief, elicited during defense cross-examination, and not relied on by the prosecution as substantive proof that defendant was selling narcotics. Under those circumstances, defendant has not shown plain error requiring reversal.

Finally, even assuming error, defendant has not shown the prejudice that both plain-error and ineffective-assistance review require. Considering defendant's own recorded admissions that he sold and "traded" methamphetamine and the other properly admitted proofs, we are not persuaded that the detective's brief reference to information he received in December 2022 that defendant was selling narcotics affected the outcome sufficiently to satisfy plain-error review. See *Carines*, 460 Mich at 763. Nor are we persuaded that there is a reasonable probability of a different outcome had defense counsel objected and moved to strike the testimony. See *Trakhtenberg*, 493 Mich at 51. Accordingly, defendant's substantive evidentiary claims and the related ineffective-assistance claim fail.

Affirmed.

/s/ Mariam S. Bazzi
/s/ Sima G. Patel
/s/ Matthew S. Ackerman