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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 14, 2026 2:29 PM
v	No. 373053 Wayne Circuit Court
JOHN BRAIN GREEN-JOHNSON, Defendant-Appellant.	LC No. 23-002869-01-FC

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317; possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; and tampering with evidence, MCL 750.483a(6)(b). On appeal, defendant argues that his convictions should be vacated and he should be given a new trial because (1) both the delay between filing the charges and the events of May 2021 and the delay between the charges and arraignment violated defendant's due-process rights; (2) the trial court erred when it denied defendant's motion to suppress evidence; (3) the trial court abused its discretion when it denied defendant's motion for a mistrial after unresponsive prejudicial testimony from a police witness; and (4) the prosecution erroneously shifted the burden of proof to defendant in closing arguments, violating defendant's due process rights. We affirm.

I. BACKGROUND

On May 9, 2021, around 3:55 p.m. the Van Buren Police Department (VBPD) received an anonymous 911 call from a woman that indicated that defendant had killed a woman at an apartment in Belleville near a lake. Later that same day, Lieutenant Mark Buckberry of the VBPD received a 911 call from a woman named Miesha Stone. Stone provided similar information to the first 911 call but with more detail. Specifically, Stone informed the police that earlier that day she had been on FaceTime with defendant, and during that FaceTime defendant moved the camera so that she could see a woman that looked like she had been shot in the eye lying on a bed. Stone

also gave the police the exact address of where this crime occurred, 5208 Westlake, which was located in an apartment complex in Belleville.

Lieutenant Buckberry then instructed officers to go to 5208 Westlake for a welfare check. At approximately 5:45 p.m. the officers arrived at the apartment and entered using a maintenance key. The officers did not find any people; however, there was a box of bullets in the living room and three gun magazines on the kitchen counter. An officer, relying on the information from Stone about seeing a woman lying on a bed with a gunshot wound to the eye, also noticed that the bed only had a skewed blanket, so he lifted the blanket and found what he believed to be a blood-stained mattress. The officers secured the apartment and waited for a search warrant that was executed later that night.

Meanwhile, Lieutenant Buckberry continued to investigate defendant and located defendant's mother. The police spoke with defendant's mother, and she provided them with defendant's phone number, and told them about her storage unit. Defendant's mother led the police to the unit and provided consent to search it. When the police opened the unit, they saw a large plastic tote with some items on top of it. The police moved the items, opened the tote, and saw the victim inside the tote wrapped in a sheet that appeared to be stained with blood. The storage unit was secured, and a search warrant was procured. When executing the search warrant, the police found a bag with the victim's identification.

Early in the morning on May 11, 2021, the police located defendant, and they arrested him after he crashed his car, a black Dodge Durango, into a ditch heading south on Martinsville Road. Soon after, defendant was taken into federal custody for violating his parole on an unrelated federal charge. Detective Dale Harrison of the VBPD submitted a warrant to charge defendant, but the prosecutor returned it until there was more evidence.

In June 2021, charges had still not been filed against defendant, but Detective Harrison met defendant while he was in federal custody to collect defendant's DNA. While there, defendant provided Detective Harrison with several names of people he thought would have information. Detective Harrison took significant steps to identify, find, and contact these people but had no success. Meanwhile, Detective Harrison continued working to gather evidence to charge defendant. After numerous attempts Detective Harrison was finally able to interview Stone in December 2021. In January 2022, defendant was still in federal custody, but the prosecution filed charges against defendant for open murder, tampering with evidence, and felony-firearm.

In late December 2022 or early January 2023, Detective Harrison learned that defendant would be released on parole. In February 2023, defendant was released to state custody. Then, in March 2023, defendant was arraigned on the charges of open murder, tampering with evidence, and felony-firearm.

In August 2023, defendant motioned to suppress the evidence from the search of the apartment at 5208 Westlake, arguing that the entry into the apartment and the search of the bed was unreasonable. The trial court denied defendant's motion to suppress, finding that the searches were reasonable and proper under the exigent circumstances exception to the warrant requirement. At the same time, defendant also motioned to dismiss the charges against defendant for prejudicial delay. Specifically, defendant argued that the delay in filing charges and the delay between the

charges and arraignment both prejudiced defendant. The trial court denied defendant's motion to dismiss, finding that defendant had not demonstrated actual and substantial prejudice.

In August 2024, the jury found defendant guilty of second-degree murder, tampering with evidence, and felony-firearm. Defendant now appeals.

II. DUE PROCESS

Defendant first argues that the delay between filing the charges and the events of May 2021 and the delay between the charges and arraignment violated defendant's due-process rights. We disagree.

A. STANDARD OF REVIEW

"We review a trial court's decision on a motion to dismiss charges against a defendant for an abuse of discretion." *People v Nicholson*, 297 Mich App 191, 196; 822 NW2d 284 (2012). A trial court abuses its discretion only when "its decision falls outside the range of principled outcomes." *Id*. "A challenge to a prearrest delay implicates constitutional due process rights, which this Court reviews de novo." *People v Cain*, 238 Mich App 95, 108; 605 NW2d 28 (1999).

B. ANALYSIS

"[T]he Due Process Clause plays a limited role in preventing unjustified preindictment or prearrest delay." *People v White*, 208 Mich App 126, 134; 527 NW2d 34 (1994), citing *United States v Marion*, 404 US 307, 324-326; 92 S Ct 455; 30 L Ed 2d 468 (1971), and *United States v Lovasco*, 431 US 783, 789; 97 S Ct 2044; 52 L Ed 2d 752 (1977). "A prearrest delay that causes substantial prejudice to a defendant's right to a fair trial and that was used to gain tactical advantage violates the constitutional right to due process." *People v Woolfolk*, 304 Mich App 450, 454; 848 NW2d 169 (2014), aff'd in part 497 Mich 23 (2014).

There is no constitutional right to be arrested; therefore, the delay between when the crime was committed and filing charges is not a denial of due process unless there is record evidence of prejudice resulting from the delay. *People v Anderson*, 88 Mich App 513, 515; 276 NW2d 924 (1979). In addition, a defendant must demonstrate "actual and substantial prejudice to his right to a fair trial" to establish a due process violation because of preindictment delay. *People v Musser*, 259 Mich App 215, 220; 673 NW2d 800 (2003). Mere speculation is not evidence of actual and substantial prejudice. *Woolfolk*, 304 Mich App at 454. Substantial prejudice is when the delay affects defendant's opportunity to defend against the charges to the extent that it likely affected the outcome of the trial. *People v Patton*, 285 Mich App 229, 237; 775 NW2d 610 (2009). Notably, "[a] general claim that the memories of witnesses have suffered is insufficient to demonstrate actual and substantial prejudice, *Musser*, 259 Mich App at 220, "even if the delay was an especially long one," *Woolfolk*, 304 Mich App at 454.

To determine if defendant's due-process rights were violated, this Court must balance the actual prejudice against the prosecution's reasons for the delay; however, only when a defendant has demonstrated prejudice, is the prosecution charged with providing a reason for the delay. *Cain*, 238 Mich App at 108-109. Further, when considering the prosecution's explanation, this Court should consider whether the delay was deliberate and whether undue prejudice resulted. *People v*

Herndon, 246 Mich App 371, 390; 633 NW2d 376 (2001). "It is appropriate for a prosecuting attorney to wait for the collection of sufficient evidence before charging a suspect, even when that wait is extended by the disappearance of a key witness." *Woolfolk*, 304 Mich App at 456.

Defendant first argues that his due-process rights were violated when the prosecution waited eight months to file charges against and issue a warrant for defendant's arrest for the events of May 2021. As discussed, there is no constitutional right to be arrested; therefore, defendant must demonstrate that he was substantially prejudiced by the delay and that the delay was done to gain tactical advantage. *Id*. at 454. In the present case, defendant fails to provide any evidence of actual or substantial prejudice or that the delay was done to gain a tactical advantage. Instead, defendant only asserts that defendant could have been charged the first time he was arrested on May 11, 2021, that no investigation took place during the delay, and that the prosecution failed to provide a reason for the delay. These assertions are incorrect and not supported by the record.

Notably, at the motion hearings Detective Harrison testified that he requested that the prosecutor charge defendant in May 2021; however, the prosecutor returned the request until more evidence was gathered. Further, at the motion hearings, it was very clearly indicated that, from May 2021 until the charges were filed in January 2022, Detective Harrison was waiting for results from the lab processing the collected evidence, attempting to track down several people potentially involved in the present case, and most importantly trying to meet with and interview Stone—the only known person with first-hand knowledge of the victim's death. Further, contrary to defendant's assertion, the prosecution has no obligation to justify the delay until the defendant demonstrates actual and substantial prejudice. Defendant did not demonstrate prejudice in the trial court nor in this appeal; therefore, the prosecution need not provide a justification for the delay.

Nonetheless, it is clear that the prosecution was still investigating the events of May 2021 when defendant was formally charged in January 2022, and such an investigative delay does not deprive a defendant of due process. See *Lovasco*, 431 US at 796.

Defendant next argues that the delay between the issuance of the warrant and his arraignment violated his due-process rights. Defendant is correct that there was a long delay between the issuance of a warrant for his arrest and his arraignment. However, a "mere delay between the issuance of a complaint and an arrest and arraignment, absent actual and substantial prejudice, is not denial of due process." *Woolfolk*, 304 Mich App at 456. In the present case, defendant only provides the general assertion that "he was unable to locate and present all of the persons who attended the party at his home that night" and that during the delay he could have been preparing a defense, gathering evidence, and consulting with an attorney. Even if defendant's assertions may be true, defendant still has not demonstrated specific prejudice to defendant's defense. *Id*. at 456-457. Mere speculation is not evidence of actual and substantial prejudice. *Id*.

In the present case, defendant heavily relies on the fact that the eight people, i.e., Jacob Kinder, Chawncei, Matthew Walker, Marco Walker, Safari, Chris, JP, and Jessica Avela, that defendant indicated may have information of the events of May 9, 2021, could not be located but maybe could have been located if not for the delay. This assertion is not supported by the record.

At the motion hearing, Detective Harrison provided significant detail regarding his efforts to track down these eight people from the moment he was informed of their names, until the date

of the hearing. Detective Harrison explained that he traveled to different counties, spoke with some of the people's family members, and ran every possible combination of names for the partial names he received to try and find information that would help him locate the people. Detective Harrison also explained the numerous times he attempted to call the eight people, and how when he was able to actually get a hold of someone, they would not express any interest in helping with the case. Defendant provided the same eight names to his investigator, but the investigator similarly had no luck. Defendant has provided no evidence to indicate that he could have been more successful than Detective Harrison if not for the delay. Instead, defendant speculates that he could have probably tracked down these people and that these people would have helped defendant's case.

Accordingly, defendant's due-process rights were not violated by the delay in filing charges or the delay between the warrant and arraignment because defendant has not demonstrated actual and substantial prejudice.[1]

III. SEARCH

Defendant next argues that the trial court erred when it denied defendant's motion to suppress because the search of defendant's home was unreasonable. We disagree.

A. STANDARD OF REVIEW

We review de novo the trial court's ultimate decision on a motion to suppress on the basis of an alleged constitutional violation, *People v Gingrich*, 307 Mich App 656, 661; 862 NW2d 432 (2014), and its application of the underlying law, i.e., the Fourth Amendment of the United States Constitution and article 1, § 11 of the Michigan Constitution, *People v Hicks*, 514 Mich 879, 879; 9 NW3d 319 (2024). The trial court's factual findings at a suppression hearing are reviewed for clear error, "according deference to the trial court's determination." *Gingrich*, 307 Mich App at 661. "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citation omitted).

B. ANALYSIS

The United States and Michigan Constitution guarantee the right to be free from unreasonable searches. US Const, Am IV; Const 1963, art 1, § 11. In general, searches conducted without a warrant are "presumptively unreasonable and, therefore, unconstitutional." *People v Barbarich*, 291 Mich App 468, 472; 807 NW2d 56 (2011). However, one of the exceptions to the warrant requirement is the "exigent circumstance exception." *People v Henry (After Remand)*, 305 Mich App 127, 138; 854 NW2d 114 (2014) (quotation marks and citation omitted). See also *People v Blasius*, 435 Mich 573, 583; 459 NW2d 906 (1990). In other words, to justify a

[1] Defendant also argued that the delay "undermined the entire purpose of the IAD" (Interstate Agreement on Detainers). We decline to address this argument because defendant has failed to allege any facts that make the protections afforded by the IAD applicable.

warrantless entry into a home, the police need both probable cause and exigent circumstances. *People v Cartwright*, 454 Mich 550, 559; 563 NW2d 208 (1997).

"[A]n anonymous tip may support probable cause if the information is sufficiently corroborated by independent sources." *People v Levine*, 461 Mich 172, 184; 600 NW2d 622 (1999). Probable cause is defined as " 'a fair probability that contraband or evidence of a crime may be found in a particular place.' " *Id*. at 185, quoting *Illinois v Gates*, 462 US 213, 242; 103 S Ct 2317; 76 L Ed 2d 527 (1983), and citing *United States v Sokolow*, 490 US 1, 7; 109 S Ct 1581; 104 L Ed 2d 1 (1989).

"While the precise contours of the exigent circumstances exception remain hazy, such an exception clearly does exist." *Blasius*, 435 Mich at 583. Our Supreme Court has explained the exigent circumstances exception as follows:

> Pursuant to the exigent circumstances exception, we hold that the police may enter a dwelling without a warrant if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect. If the police discover evidence of a crime following the entry without a warrant, that evidence may be admissible. [*Cartwright*, 454 Mich at 559 (citations omitted).]

"[T]he ultimate determination whether a particular search is reasonable is fact-intensive and must be measured by examining the total circumstances of each case." *Barbarich*, 291 Mich App at 472. See also *People v Evans*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 371021); slip op at 4. "In the context of a removal or destruction of evidence case, the most objective and compelling justification would be an actual observation of removal or destruction of evidence or such an attempt." *Blasius*, 435 Mich at 594. "Absent such compelling facts, the police must present facts indicating more than a mere possibility that there is a risk of the immediate destruction or removal of evidence." *Id*. "The remedy for a violation is suppression of the unlawfully obtained evidence." *Cartwright*, 454 Mich at 558, citing *Weeks v United States*, 232 US 383, 34 S Ct 341; 58 L Ed 652 (1914).

In the present case, the police engaged in two warrantless searches: (1) the initial entry into the apartment; and (2) the search of the bed, i.e., lifting of the blanket to reveal the blood-stained mattress. We address the propriety of both.

1. ENTRY INTO APARTMENT

To determine whether the warrantless entry into the apartment was proper, we must determine whether the police had probable cause to believe that the apartment contained evidence of a suspected crime. *Blasius*, 435 Mich at 593-594. Defendant's brief does not contain any argument regarding whether the police had probable cause. Nonetheless, the two 911 calls and the accompanying police investigation provided "a fair probability that contraband or evidence of

a crime may be found in a particular place." *Levine*, 461 Mich at 185 (quotation marks and citation omitted).

Here, the anonymous 911 call provided significant detail regarding the fact that defendant had committed a crime, the approximate time of that crime, a description of where that crime had occurred, and how they came about that information. Specifically, this call provided that the caller's uncle received a call from defendant indicating that he had killed someone that morning, and the caller explained that the crime occurred in an apartment complex in Belleville near a lake.

Further, the anonymous 911 call was corroborated by Stone's subsequent and even more detailed 911 call. Stone provided additional details that corroborated the first call because she also indicated that defendant had committed a crime and then gave a specific address, 5208 Westlake, which was in an apartment complex in Belleville. Stone also provided very specific details about the crime that occurred, explaining that she had personal knowledge of the crime because she was on a video call with defendant when he went into the apartment bedroom, laid down on the bed, and moved the camera to show a woman who had been shot in the eye. Additionally, the police further corroborated some of the details of the calls before conducting the welfare check. Notably, the police discovered that the apartment was rented by defendant's sister, therefore confirming the connection to defendant as the possible suspect. Accordingly, the police had probable cause to enter the apartment.

Next, the police must establish the existence of an actual emergency "on the basis of specific and objective facts" indicating that immediate action was necessary to "prevent the imminent destruction of evidence." *Cartwright*, 454 Mich at 559. The record provides that there were specific and objective facts to indicate that there was an imminent risk of the evidence being removed or destroyed. Notably, the anonymous 911 call indicated that defendant had asked someone for help with moving the body. Further, the anonymous caller gave specific facts that defendant had called her uncle, and her uncle told her that he needed help moving the body. Also, considering Stone's subsequent 911 call corroborated several of the details from the anonymous call, it was reasonable for the police to rely on the additional information provided in the anonymous call because the tips bore a sufficient indicia of reliability. See *People v Faucett*, 442 Mich 153, 169; 499 NW2d 764 (1993). Therefore, the police were aware of the specific and objective fact that defendant was looking to move the body only a few hours earlier. Accordingly, there was a reasonable belief that there was an imminent risk of the evidence being removed or destroyed.

2. SEARCH OF BED

Next, we must determine whether the police had probable cause to believe that evidence of the crime would be found on the bed, and whether there was specific articulable facts that there was an imminent risk of the evidence being removed or destroyed.

First, the details of the two calls provided probable cause to believe that evidence of the crime would not only be found in the apartment but more specifically in the bedroom and on the bed because Stone provided very specific details that she saw the victim's body on the bed. Further, when the police properly entered the apartment, they saw a box of bullets and three gun magazines which corroborated Stone's description that a woman had been shot in the eye. In

addition, when an officer saw that the bed in the bedroom had only a skewed blanket, and no sheets or pillows, common sense along with the information that Stone had seen a woman lying on the bed with a gunshot wound, provided sufficient probable cause to believe that the bed contained evidence of the crime and that the evidence may be concealed under the blanket. Accordingly, the police had probable cause to lift the blanket.

Second, the police must establish that immediate action was necessary to prevent the imminent destruction of evidence. *Cartwright*, 454 Mich at 559. Although there were specific and objective facts to indicate that there was an imminent risk of the evidence being removed from the apartment or destroyed, there were not such facts that specifically extended to the bed itself. There was no apparent body under the blanket, and there was no indication that evidence on the bed was at an imminent risk of being removed or destroyed because no people were found in the apartment. Accordingly, the search of the bed was not proper under the exigent circumstances exception and no other warrant exception applies.

Nonetheless, the evidence from the apartment need not be suppressed because it would have been inevitably discovered when the subsequent warrant was executed. "The inevitable discovery doctrine, as applied by Michigan caselaw, permits the admission of evidence obtained in violation of the Fourth Amendment if it can be shown by a preponderance of the evidence that the items found would have ultimately been obtained in a constitutionally accepted manner." *People v Hyde*, 285 Mich App 428, 439-440; 775 NW2d 833 (2009). When engaging in the inevitable discovery analysis, three concerns arise:

> (1) whether the legal means are truly independent, (2) whether both the use of the legal means and the discovery by that means are truly inevitable, (3) and whether the application of the inevitable discovery doctrine provides an incentive for police misconduct or significantly weakens Fourth Amendment protections. [*Id*. at 440.]

As discussed, with the exception of the blood-stained mattress information, all the information contained in the search warrant was known to the police before entering the apartment, via the completely independent 911 calls and police investigation. Further, as discussed earlier, this information satisfied the probable cause standard. Accordingly, the subsequent warrant would have been based on truly independent information. In addition, the warrant was truly inevitable because it was in fact procured. Although the warrant could have been procured because of the blood-stained mattress, it is just as likely that it could have been procured because of the information from the 911 calls or because of the bullets and gun magazines found when the police entered the apartment. Lastly, this application of the inevitable discovery doctrine does not incentivize police misconduct or weaken Fourth Amendment protections because not only did the police have probable cause to search the apartment even before entering it, they also did get a search warrant and then conducted a more thorough search pursuant to that warrant. We are not allowing a warrantless search merely because probable cause existed; instead, it is apparent that although the officer should not have lifted the blanket, the police soon after obtained a warrant that was supported by probable cause (even with the improper evidence excised) and would have inevitably discovered the blood-stained mattress.

We also note that "[w]hen a search warrant is based partially on tainted evidence and partially on evidence arising from independent sources, if the lawfully obtained information

amounts to probable cause and would have justified the issuance of the warrant apart from the tainted information, the evidence seized pursuant to the warrant is admitted." *People v Melotik*, 221 Mich App 190, 201; 561 NW2d 453 (1997) (quotation marks and citations omitted). See also *People v Smith*, 191 Mich App 644, 648-650; 478 NW2d 741 (1991). Accordingly, although the search of the bed was not proper, the evidence from the apartment and the bed need not be suppressed.

IV. UNRESPONSIVE TESTIMONY

Defendant also argues that the trial court abused its discretion when it denied defendant's motion for a mistrial because the unresponsive testimony from a police witness prejudiced defendant and violated his right to a fair trial. We disagree.

A. STANDARD OF REVIEW

We review for abuse of discretion a trial court's decision on a motion for a mistrial. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). An abuse of discretion occurs when the trial court "chooses an outcome that is outside the range of reasonable and principled outcomes." *People v Waclawski*, 286 Mich App 634, 670; 780 NW2d 321 (2009).

B. ANALYSIS

A mistrial should only be granted for an "irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial and when the prejudicial effect of the error cannot be removed in any other way." *People v Lane*, 308 Mich App 38, 60; 862 NW2d 446 (2014) (quotation marks and citations omitted). When determining whether to grant a mistrial, the "trial court may consider, among other things, whether the prosecutor intentionally presented the information to the jury or emphasized the information." *Id*. (quotation marks and citation omitted).

A volunteered and unresponsive answer to a permissible question does not generally warrant a mistrial. *People v Barker*, 161 Mich App 296, 306; 409 NW2d 813 (1987); *People v Holly*, 129 Mich App 405, 415; 341 NW2d 823 (1983). "A witness cannot put error into a case by an unauthorized remark, neither called out by a question nor sanctioned by the jury; and if what he or she says or does improperly is likely to do much mischief, it is presumed that the judge will apply the proper corrective measures in his or her instructions if requested to do so." *Barker*, 161 Mich App at 306 (quotation marks and citation omitted). When a volunteered response is given by a police officer, this Court should more stringently scrutinize the remark and determine whether the testimony resulted in undue prejudice to the defendant. See *Holly*, 129 Mich App at 415. See also *People v Page*, 41 Mich App 99, 101-102; 199 NW2d 669 (1972).

However, improper testimony by a police officer does not automatically warrant a mistrial. See *Holly*, 129 Mich App at 415. Instead, "[w]hen a witness for any reason gives an irresponsive answer and which is not competent evidence, and the answer is suppressed at once, the case must be a very peculiar and very strong one which would justify reversal for such fault or mistake of the witness." *Page*, 41 Mich App at 10.

In the present case, when asked about what steps he took to investigate the name and address provided by the 911 callers, Lieutenant Buckberry testified that one of the steps he took

was to run the name through the police database. He then testified that he discovered the named individual was on probation. At that time, Lieutenant Buckberry had not stated that defendant was the named individual. Nonetheless, defendant immediately objected to the statement about an individual being on probation and the trial court instructed the jury to disregard the statement.

Although Lieutenant Buckberry's testimony ventured into a prohibited area by suggesting that defendant was on probation, the challenged statement was an isolated comment that did not clearly reference defendant, was not repeated, and was never explored further. The challenged testimony amounts to one brief statement, given by the first witness in an eight-day trial. As defendant being on probation was never mentioned again, this statement did not warrant a mistrial. There is also no indication that the prosecution intentionally elicited the testimony. In fact, in subsequent questioning the prosecution quickly moved on from topics that could potentially prejudice defendant, in order to avoid any additional potentially prejudicial testimony. Moreover, the trial court sustained defendant's objection and immediately instructed the jury to disregard the challenged statement, later explaining that it would not provide an additional curative instruction because it would draw attention to the statement again. These circumstances were not so peculiar or strong as to warrant a mistrial. See *id*.

V. PROSECUTION ERROR

Lastly, defendant argues that the prosecution erroneously shifted the burden of proof to defendant in closing arguments, violating defendant's due-process rights. We disagree.

A. ISSUE PRESERVATION AND STANDARD OF REVIEW

Defendant never objected to the prosecution's comment in closing argument. Accordingly, this issue is not preserved for appellate review. *People v Thurmond*, 348 Mich App 715, 735; 20 NW3d 311 (2023). We review unpreserved claims of prosecutorial error for plain error affecting substantial rights. *People v Evans*, 335 Mich App 76, 88; 966 NW2d 402 (2020). Unpreserved claims of prosecutorial error do not warrant relief "if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction." *People v Aikens*, ___ Mich App ___, ___; ___ NW2d ___ (2025) (Docket No. 368187); slip op at 3 (quotation marks and citation omitted), held in abeyance 26 NW3d 828 (Mich, 2025). "Curative instructions are sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements and jurors are presumed to follow their instructions." *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008) (citations omitted).

B. ANALYSIS

Prosecutors are generally "accorded great latitude regarding their arguments and conduct." *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (quotation marks and citations omitted). However, a "prosecutor may not imply in closing argument that the defendant must prove something or present a reasonable explanation for damaging evidence because such an argument tends to shift the burden of proof." *People v Fyda*, 288 Mich App 446, 463-464; 793

NW2d 712 (2010). For the same reason, a prosecutor may also not comment on the defendant's failure to present evidence. *Id*. at 464.

However, "[p]rosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial." *People v Brown*, 279 Mich App 116, 135; 755 NW2d 664 (2008). When determining if a prosecutor's statement at trial was an error, we must examine the record and evaluate the prosecutor's statement in context to determine whether defendant's substantial rights were affected. *People v Mann*, 288 Mich App 114, 119; 792 NW2d 53 (2010). "[A] prosecutor's argument that inculpatory evidence is undisputed does not constitute improper comment." *Fyda*, 288 Mich App at 464. In addition, "[a] prosecutor may also argue that the evidence was uncontradicted even if the defendant is the only person who could have contradicted the evidence." *Id*.

Defendant argues that the prosecution's statement, "Never once did you hear the defendant say, no, I didn't do it, I didn't use that gun," improperly shifted the burden of proof onto defendant. This is incorrect.

Although it is an error for the prosecution to reference or comment on defendant's failure to testify or present evidence, the challenged statement does neither of those things. Reading the statement in context, it is clear that the prosecution is referring to the numerous text messages from defendant that were admitted into evidence. As discussed, a prosecutor may comment on inculpatory and uncontradicted evidence. Defendant's text messages were very incriminating, and the prosecution was accurate when it stated that defendant never once in the numerous text messages denied his involvement. Contrary to defendant's assertion, the prosecution's statement had nothing to do with defendant's decision not to testify or defendant's failure to present contradictory evidence; instead, the prosecution was properly commenting on the summation of the numerous text messages from defendant that were in evidence.

Notably, even if this statement prejudiced defendant, any potential prejudicial effect was presumptively cured by the subsequent jury instructions that the prosecution had the burden of proof to establish each element beyond a reasonable doubt, that defendant had no obligation to prove his innocence or testify, and that the lawyers' statements were not evidence. *Unger*, 278 Mich App at 235. It is presumed that the jury followed these instructions. *Fyda*, 288 Mich App at 465.

Affirmed.

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado