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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 23, 2026 11:34 AM
v	No. 373732 Monroe Circuit Court
KIM LYNN FITCH, JR., Defendant-Appellant.	LC No. 23-247359-FC

Before: GADOLA, C.J., and O'BRIEN and MARIANI, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of involuntary manslaughter, MCL 750.321,[1] first-degree fleeing and eluding a police officer resulting in death of another individual (fleeing and eluding), MCL 750.479a(1) and (5), and reckless driving causing death (reckless driving), MCL 257.626(4). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to terms of 13 to 30 years' imprisonment for involuntary manslaughter and for reckless driving, and 17 to 30 years' imprisonment for fleeing and eluding, all to be served concurrently. We affirm.

I. BACKGROUND

Defendant's convictions arose from his flight from police in Ohio, which led to a lengthy pursuit through northern Ohio and southeast Michigan, and ultimately a crash that resulted in the death of defendant's passenger, Lesley Rosales. At approximately 9:00 p.m. on January 6, 2023, Ohio officers initiated a routine traffic stop on defendant, whom the officers subsequently determined had outstanding felony warrants. Defendant initially stopped for the officers, but as soon as they approached his car on foot, he sped off.

[1] Defendant was charged with second-degree murder, MCL 750.317, but was convicted of the lesser offense of involuntary manslaughter.

The Ohio officers pursued defendant into Monroe County, Michigan, where numerous other officers from multiple jurisdictions in Michigan became involved.[2] The officers successfully deployed stop sticks on three separate occasions, which punctured (and eventually deflated) three of defendant's tires. Defendant nonetheless continued to flee from the police, even after two of his tires came off and he was driving on the rims. According to the officers involved, defendant drove very erratically throughout the pursuit; he disobeyed all traffic signs and signals he came across, consistently drove between 70 and 100 miles per hour (mph) in areas with posted speed limits of 55 mph or lower, drove in and out of oncoming traffic, and ran other vehicles off the road. At no point during the pursuit did defendant attempt to stop his car.

The pursuit came to an end 53 minutes after it began. According to the two officers leading the pursuit, they slowed down to safely negotiate a sharp turn, but defendant—who, by that point, had only one functional tire and was driving 50 mph in a 30-mph speed zone—did not. As a result, defendant lost control of his car, went off the roadway, and crashed into a lamppost. Officers then immediately approached defendant's car, which was on fire, and ordered defendant to get out. Defendant, however, was injured and stuck between his seat and the dashboard. The officers ultimately broke the driver-side window, unlocked the door, and pulled defendant out. A few officers then looked inside the car again to see if there were any other individuals, but they only saw dust and debris from the airbags, smoke from the fire, and numerous bags and other small items that had been thrown from the backseat of the car to the front by the impact.

Several minutes after defendant was pulled out of the car, he informed nearby officers that Rosales was still in the car on the passenger side. A few officers and other responding personnel then immediately returned to the car and eventually found Rosales wedged under the glove compartment and covered by several small items that had gotten thrown to the front of the car. According to a responding senior paramedic, Rosales had taken a few "agonal," or "last," breaths as she was pulled from the car, and she had "no pulse" or "mechanical movement of the heart" by the time that he began assisting her. He and another paramedic performed CPR on Rosales as they drove her to the hospital, but she never regained a heartbeat and "never had any other signs of life."

At trial, the prosecution presented testimony from numerous witnesses, most of whom were officers involved in the pursuit or in the crash investigation. Additionally, the prosecution presented the testimony of two expert witnesses: a forensic toxicologist, who testified about the substances found in Rosales's system at the time of her death,[3] and a forensic pathologist, who testified about his role in Rosales's autopsy and about the manner and cause of Rosales's death. According to the forensic pathologist, Rosales sustained several fatal blunt force injuries, all of which were consistent with a car crash and had ultimately caused her death. The prosecution also presented a significant amount of documentary, video, and audio evidence, which included video

[2] The Ohio officers ended their pursuit after Michigan officers became involved.

[3] The forensic toxicologist testified that trace amounts of amphetamines, methamphetamines, and alcohol were found in Rosales's system, but none of those amounts were significant and were certainly not high enough to be fatal.

and audio footage from several officers' body-worn cameras (BWCs), an audio recording of the 911 dispatch call regarding the pursuit, and Rosales's autopsy report.

Defendant voluntarily represented himself throughout the proceedings. At trial, defendant focused his efforts on presenting the core theory of his defense: that the officer leading the pursuit, rather than defendant, had caused the crash that resulted in Rosales's death by performing a precision immobilization technique (PIT) maneuver on his car. Defendant spent the bulk of cross-examination and closing argument impugning the credibility of the officers and attempting to establish that many of them had violated internal policies by failing to activate their BWCs prior to the crash, by failing to attach documentary evidence to their reports in a timely manner, or by intentionally altering or destroying video and photo evidence. According to defendant, the police had intentionally mishandled evidence in an effort to cover up the fact that the officer leading the pursuit, rather than defendant, had caused the crash.

Defendant was convicted and sentenced as described above. This appeal followed.[4]

II. SUPPRESSED OR UNPRESERVED EVIDENCE

We start with defendant's argument in his Standard 4 brief[5] that several officers involved in the case failed to preserve or intentionally destroyed evidence, which violated his due-process rights and deprived him of his right to present a defense pursuant to *Arizona v Youngblood*, 488 US 51; 109 S Ct 333; 102 L Ed 2d 281 (1988), and *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963). We review "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).

Under the Due Process Clause of the Fourteenth Amendment, US Const, Am XIV, criminal defendants must be afforded "a meaningful opportunity to present a complete defense." *California v Trombetta*, 467 US 479, 485; 104 S Ct 2528; 81 L Ed 2d 413 (1984). A defendant's due-process rights are violated if the government suppresses material exculpatory evidence, regardless of whether the government was acting in good or bad faith. *Brady*, 373 US at 87. But "the Due Process Clause requires a different result" when the issue is "the failure of the State to preserve evidentiary material of which no more can be said than that it could have been" exculpatory. *Youngblood*, 488 US at 57. In either circumstance, the burden is on the defendant to demonstrate

[4] Shortly after defendant filed his brief on appeal with this Court, he also filed, *in propria persona*, a motion to remand to the trial court to expand the record with the crash data retrieved from his car's crash data recorder (CDR), discussed more fully below. This Court denied without prejudice defendant's motion "for failure to persuade the Court of the necessity of remand at th[at] time." *People v Fitch, Jr*, unpublished order of the Court of Appeals, entered April 17, 2026 (Docket No. 373732). Upon plenary review, we continue to see no need for a remand to properly dispose of the claim.

[5] In addition to filing an appellate brief with the assistance of counsel, defendant filed a supplemental Standard 4 brief pursuant to Michigan Supreme Court Administrative Order No. 2004-6, 471 Mich c, cii (2004).

a due-process violation warranting reversal. See *People v Burger*, 331 Mich App 504, 517; 953 NW2d 424 (2020); *People v Dickinson*, 321 Mich App 1, 16; 909 NW2d 24 (2017). "To establish a *Brady* violation, a defendant must establish that (1) the prosecution has suppressed evidence; (2) that is favorable to the accused; and (3) that is material." *Burger*, 331 Mich App at 517 (quotation marks and citation omitted). To establish a *Youngblood* violation for failure to preserve evidence, a defendant must establish that (1) "the missing evidence was exculpatory," or (2) "[w]hen the evidence is only potentially useful," that "law enforcement personnel acted in bad faith." *Dickinson*, 321 Mich App at 16 (quotation marks and citations omitted).

Here, defendant has not satisfied his burden of demonstrating that a due-process violation occurred under either *Brady* or *Youngblood*. The gravamen of defendant's claim is that several officers did not activate their BWCs at all or soon enough during the pursuit and therefore did not capture video or audio evidence of the crash. Relatedly, defendant also claims that none of the officers provided dashcam footage of the pursuit or crash, and that several officers altered or destroyed video and photo evidence after the crash. We note at the outset that defendant extensively litigated these issues below and the record reflects that much of the evidence in question, such as the dashcam footage and several of the officers' BWC footage, never existed and was thus never in the government's possession. See, e.g., *Champ v Zavaras*, 431 Fed Appx 641, 648 n 5 (CA 10, 2011) ("[T]he State cannot be said to have a duty to preserve evidence that is only potentially exculpatory within the meaning of *Youngblood*, where there is no showing that the State ever possessed the evidence.") (emphasis omitted).

In any event, while the record indicates that some evidence was not successfully preserved, defendant has not shown that any of the evidence he challenges would have been exculpatory or otherwise favorable to him, nor has he shown any bad faith on behalf of the police or prosecution with respect to it. See *Burger*, 331 Mich App at 517; *Dickinson*, 321 Mich App at 16. For instance, testimony showed that the BWC footage for two officers was missing because the footage got corrupted when police-department personnel attempted to move it from one digital storage system to another. The two officers also testified that, regardless, they did not witness the crash when it occurred due to their positioning during the pursuit. Similarly, the investigating detective assigned to the case testified that his camera's SD card was corrupted while he was uploading photos to his computer, and that despite his technology-related training, he was unable to recover them. Defendant has identified—and we see—nothing in this testimony, or in the record in general, that would demonstrate bad faith in the handling of the evidence at issue by the police or prosecution, or that would suggest any of the evidence would have been favorable to defendant. Accordingly, defendant has not shown he is entitled to relief on the basis of this claim.

III. ADMISSIBILITY OF CRASH-DATA EVIDENCE

Next, defendant argues in his Standard 4 brief that the trial court abused its discretion by excluding as evidence a report containing crash data collected from the crash data recorder (CDR) in defendant's car. We review a trial court's evidentiary rulings for an abuse of discretion. *People v Wisniewski*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 361978); slip op at 7. Such rulings will not be disturbed unless the court's decision falls outside the range of principled outcomes, which necessarily occurs when the court makes an error of law. *Id*. at ___; slip op at 7. "Preliminary questions of law, including whether a rule of evidence precludes the admission of evidence, are reviewed de novo." *People v Burns*, 494 Mich 104, 110; 832 NW2d 738 (2013). A

preserved, nonconstitutional error in the admission or exclusion of evidence does not warrant reversal "unless after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999) (quotation marks omitted).

"Generally, expert testimony is not admissible unless the trial court first determines that the expert's theories, methodology, and underlying data are reliable under MRE 702, which in turn, incorporates the standards of reliability that the United States Supreme Court established in *Daubert v Merrell Dow Pharm, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993)." *People v Spaulding*, 332 Mich App 638, 658; 957 NW2d 843 (2020). "The trial court has an obligation under MRE 702 to ensure that any expert testimony admitted at trial is reliable," and although "the exercise of the gatekeeper function is within a court's discretion, the court may neither abandon this obligation nor perform the function inadequately." *People v Dobek*, 274 Mich App 58, 94; 732 NW2d 546 (2007) (quotation marks and citations omitted). The burden is on the proponent of the expert to "demonstrate to the court that it is more likely than not" that (1) "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue"; (2) "the testimony is based on sufficient facts or data"; (3) "the testimony is the product of reliable principles and methods"; and (4) "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." MRE 702.

At trial, the prosecution asked the officer in charge if he was "able to calculate a speed estimate for this collision." The officer provided a non-responsive answer and, in the process, indicated that he had retrieved crash data from the CDR in defendant's car during his investigation. At that point, and at the court's direction, the prosecution redirected the officer to any manual calculations he may have done based on the evidence at the crash site, as the prosecution had previously indicated at pretrial hearings that it did not intend to introduce the crash data as part of its case-in-chief and had not listed an expert on its witness list who could testify about the data. Then, during cross-examination of the officer in charge, defendant attempted to introduce as evidence a report containing the crash data ("CDR report"), to which the prosecution objected.

After much discussion with the parties outside the jury's presence, the trial court concluded that the crash data in the report was not admissible. The court determined that the crash data had no indicia of reliability, especially given that defendant was driving without tires immediately before the crash, and thus the data would require testimony from an expert witness properly qualified under MRE 702 to be admitted. The court also found that the officer in charge had not been qualified as an expert who could opine on the accuracy of, or otherwise analyze, the data, nor could the officer serve as such an expert because he did not have the qualifications to do so. The court further noted that defendant did not have his own expert who could testify about the data.

We see no error in the trial court's conclusion. Consistent with the court's finding that there was nothing demonstrating the reliability of the crash data, the CDR report simply contained raw data retrieved from the CDR in defendant's car without any further explanation. Additionally, defendant attempted to introduce the crash data only through the officer in charge, but the officer made clear in his testimony that (1) all he had done with respect to the crash data was retrieve it from the CDR in defendant's car using software he had been trained on, and (2) although he had taken some classes on accident reconstruction and investigation, those classes were related to the "technician training," which was "different from the analyst training" that covered how to analyze

crash data retrieved from a CDR. Given the insufficient showing of the crash data's reliability and given that the officer in charge did not have the specialized knowledge necessary to interpret or verify the accuracy of that data, we see no abuse of discretion in the trial court's decision not to qualify the officer as an expert witness or admit the crash data as evidence. See *Spaulding*, 332 Mich App at 658; *Dobek*, 274 Mich App at 94.

Relatedly, defendant argues that the trial court abused its discretion by failing to hold a *Daubert* hearing. We disagree. The trial court had considerable discretion in determining whether to conduct a *Daubert* hearing, and because neither party indicated that they intended to present an expert witness to testify about the crash data, the court concluded that a pretrial *Daubert* hearing would be premature. See *People v Carll*, 322 Mich App 690, 700-701; 915 NW2d 387 (2018), citing *Kumho Tire Co, Ltd v Carmichael*, 526 US 137, 150; 119 S Ct 1167; 143 L Ed 2d 238 (1999). The record supports that conclusion. The prosecution expressly stated during pretrial hearings that it did not intend to introduce the crash data as evidence at trial as part of its case-in-chief, and defendant never indicated that he intended to introduce the crash data as evidence until he attempted to do so at trial through the testimony of the officer in charge. Additionally, neither party listed an expert on their witness list who could have been qualified as an expert to testify about the crash data. Defendant thus had no basis to request that a *Daubert* hearing be conducted prior to trial, and has shown no abuse of discretion in the court's decision not to hold one. Nor has defendant shown any error in this regard based on the court's handling of the matter during trial. As noted, the officer in charge mentioned his retrieval of crash data from the CDR of defendant's car during his investigation, but consistent with the pretrial proceedings on the topic, he did not purport to testify about what that data meant. And when defendant then sought to admit the data through the officer in charge, the court considered whether the crash data, or expert testimony from the officer about it, would be admissible under the standards set forth in *Daubert*. See *Spaulding*, 332 Mich App at 658. Accordingly, we see no grounds for relief as to this claim.[6]

IV. SUFFICIENCY OF THE EVIDENCE

Defendant next argues in his Standard 4 brief that the prosecution failed to present sufficient evidence as to the causation element of all three of his convictions, and he is therefore entitled to a new trial. We disagree.

In determining whether the evidence is sufficient to sustain a conviction, we review the record evidence de novo in the light most favorable to the prosecution and consider whether it was

[6] Defendant also argues, in brief and conclusory fashion, that the prosecution intentionally "prevent[ed] the Trial Court from holding a *Daubert* hearing" so that the prosecution "could then turn around and argue that the [crash] data [wa]s not trustworthy . . . to prevent [him] from admitting the crash data" at trial. Defendant does not provide any meaningful argument or identify any legal or factual support for this claim, leaving it improperly presented for this Court's review. See *People v Burkett*, 337 Mich App 631, 639 n 4; 976 NW2d 864 (2021) ("An appellant may not simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments[.]") (cleaned up). We note further that this claim, from what we can glean of it, is belied by the record and lacks any apparent merit.

sufficient "to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *People v Harris*, 495 Mich 120, 126; 845 NW2d 477 (2014). "Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of a crime, and it does not matter that the evidence gives rise to multiple inferences or that an inference gives rise to further inferences." *People v Walker*, 330 Mich App 378, 382; 948 NW2d 122 (2019) (quotation marks, citations, and alteration omitted). It is the jury's role, as factfinder, to determine "the weight of the evidence [and] the credibility of witnesses," *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008), and "a reviewing court is *required* to draw all reasonable inferences and make credibility choices in support of the jury verdict," *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018) (quotation marks and citation omitted).

Causation is a necessary element of all defendant's convictions. See *People v Fredell*, 516 Mich 1, 12; 33 NW3d 320 (2024) (involuntary manslaughter and reckless driving causing death); *People v Wood*, 276 Mich App 669, 670-671, 676-677; 741 NW2d 574 (2007) (first-degree fleeing and eluding). To prove causation, the prosecution was required to prove beyond a reasonable doubt that defendant was both the factual and proximate cause of Rosales's death.[7] See *People v Feezel*, 486 Mich 184, 194-195; 783 NW2d 67 (2010). "Factual causation exists if a finder of fact determines that 'but for' defendant's conduct the result would not have occurred." *Id*. (citation omitted). "For a defendant's conduct to be a proximate cause, the victim's injury must be a 'direct and natural result' of the defendant's actions." *People v Schaefer*, 473 Mich 418, 436; 703 NW2d 774 (2005) (citation omitted). A defendant's conduct will not be deemed a proximate cause if an "intervening cause . . . superseded [that] conduct such that the causal link between the defendant's conduct and the victim's injury was broken." *Id*. at 436-437.

To start, defendant provides little meaningful argument or factual support for his position that the prosecution failed to sufficiently prove that he caused the car crash that resulted in Rosales's death. See *People v Burkett*, 337 Mich App 631, 639 n 4; 976 NW2d 864 (2021). In any event, the prosecution presented sufficient evidence from which a rational jury could conclude beyond a reasonable doubt that defendant, during the police pursuit, caused the crash that, in turn, caused Rosales's death.

Several officers involved in the pursuit testified that throughout the pursuit, defendant drove well over the posted speed limits, swerved in and out of oncoming traffic, and forced other drivers off the road. The officers testified that they had successfully deployed stop sticks on three separate occasions, but defendant continued to flee from them at excessive rates of speed, even

[7] We recognize that, generally, only factual causation need be proven with regard to a charge of first-degree fleeing and eluding. See *Wood*, 276 Mich App at 672 (concluding that "by using the word 'result' instead of 'cause' in the statute, the Legislature specifically directed that only factual causation need be established"). However, after a lengthy discussion with the parties about the final jury instructions, the trial court instructed the jury that it was required to find factual and proximate causation for all the charged offenses and the lesser offense of involuntary manslaughter. And, as explained above, the prosecution presented sufficient evidence from which a rational jury could conclude beyond a reasonable doubt that defendant both factually and proximately caused Rosales's death.

after three of his tires had been damaged. A few of the officers testified that defendant eventually lost two of his tires completely but continued to drive on two rims and a flat tire, which caused him to have less control over his car, particularly as he tried to turn or avoid other cars. The officer leading the pursuit testified that he paced defendant at about 50 mph in a 30-mph speed zone immediately before the crash. The two officers directly behind defendant both testified that they slowed down to safely negotiate a sharp turn, but defendant did not, and so when he attempted to turn, he lost control of his car, went off the roadway, and crashed into a lamppost. Additionally, the officer in charge of this case, who did not become involved in the investigation until after the crash occurred, testified that the evidence at the crash site was consistent with defendant losing control of his car as he attempted to negotiate a turn. Finally, a senior paramedic who responded to the crash testified that Rosales had already taken her last breaths by the time that responding officers pulled her from the car, and the medical examiner testified that Rosales had sustained several fatal blunt force injuries, all of which were consistent with a car crashing into a fixed object and had ultimately caused her death. Given this evidence, a rational jury could have found beyond a reasonable doubt that Rosales's death would not have occurred "but for," and was a "direct and natural result" of, defendant's actions. *Schaefer*, 473 Mich at 435-436 (quotation marks and citations omitted); see also *Feezel*, 486 Mich at 194-195.

At bottom, defendant's insufficiency argument hinges on his belief that the officers' eyewitness testimony about the pursuit and crash was not credible. This formed the basis of defendant's theory of defense at trial, and he devoted his cross-examinations and closing argument to attacking the officers' credibility and presenting an alternative explanation for the cause of the crash. Defendant's theory of the case and his corresponding challenge to the credibility of the prosecution's evidence were thus fully presented to the jury, but the jury ultimately rejected them and, consistent with the officers' testimony and other evidence presented at trial, concluded that defendant caused Rosales's death. It is the jury's role, as factfinder, to make credibility determinations and weigh all the evidence presented to it; given the record before us, we see no basis to disrupt the jury's findings here. See *Kanaan*, 278 Mich App at 619; *Oros*, 502 Mich at 239. Accordingly, defendant has shown no grounds for relief as to this issue.[8]

V. OV SCORING

Finally, in his brief filed by counsel, defendant argues that he is entitled to resentencing because the trial court erroneously scored OVs 3, 5, 12, and 17. We disagree.

A. STANDARDS OF REVIEW

Because defendant challenged the scoring of OV 17 at sentencing, that issue is preserved. See *People v Ventour*, 349 Mich App 417, 433; 27 NW3d 660 (2023). We review a trial court's factual findings under the sentencing guidelines for clear error, and we review de novo whether

[8] Defendant also briefly argues that the cumulative effect of all the errors alleged in his Standard 4 brief entitles him to a new trial. But, as discussed above, defendant has not shown error as to any of the claims raised in his brief, and so reversal on this basis is not warranted. See *People v Butsinas*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 364778); slip op at 29.

those factual findings "are adequate to satisfy the scoring conditions prescribed by statute[.]" *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "A trial court's findings of fact are clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake." *People v Carlson*, 332 Mich App 663, 666; 958 NW2d 278 (2020). The trial court's factual findings "must be supported by a preponderance of the evidence," *Hardy*, 494 Mich at 438, which "means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth," *People v Cross*, 281 Mich App 737, 740; 760 NW2d 314 (2008). "When calculating sentencing guidelines, the trial court may consider all record evidence, including the presentence investigation report (PSIR), plea admissions, and testimony," and it may rely on all reasonable inferences therefrom. *People v Montague*, 338 Mich App 29, 55; 979 NW2d 406 (2021).

Defendant, however, did not challenge the scoring of OVs 3, 5, or 12 "at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in this Court," and so these issues are unpreserved and thus reviewed for plain error affecting substantial rights. *Ventour*, 349 Mich App at 433. To obtain appellate relief under this standard, the defendant must show: (1) an error occurred, (2) the error was clear or obvious, and (3) the error affected substantial rights. *Id*. As to the third element, "[a]n error affected substantial rights when it affected the outcome of the lower court proceedings." *Id*. (quotation marks and citation omitted). And even when these three requirements are met, "[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*. (quotation marks and citations omitted).

B. OV 17

We turn first to defendant's preserved challenge to the scoring of OV 17, which pertains to the "degree of negligence exhibited" during the sentencing offense. MCL 777.57(1). OV 17 is scored only when the sentencing offense is a crime against a person involving, as relevant here, "the operation of a vehicle." MCL 777.22(1). The trial court must assess five points when "[t]he offender failed to show the degree of care that a person of ordinary prudence in a similar situation would have shown." MCL 777.47(1)(b). But a score of 10 points is required when "[t]he offender showed a wanton or reckless disregard for the life or property of another person." MCL 777.47(1)(a). "Wantonness" refers to "conduct indicating that the actor is aware of the risks but indifferent to the results." *Feezel*, 486 Mich at 196 (cleaned up). Reckless disregard exists when the actor's conduct demonstrates "indifference to the rights of others that is equivalent to a criminal intent." *Schaefer*, 473 Mich at 438 (quotation marks and citation omitted).

Defendant argues, as he did below, that OV 17 should be scored at five, rather than 10, points because the record evidence did not demonstrate "a wanton or reckless disregard" as required under MCL 777.47(1)(a). Defendant asserts that this standard is more akin to what is required for second-degree murder than for involuntary manslaughter. Thus, according to defendant, because he was acquitted of second-degree murder and convicted of involuntary manslaughter, the trial court impermissibly "label[ed his] conduct as wanton and willful" and relied on acquitted conduct in scoring the OV, contrary to *People v Beck*, 504 Mich 605; 939 NW2d 213 (2019). We disagree.

The trial court, when scoring OV 17, never found defendant's conduct to be "willful" or purported to label it as such. Rather, the trial court scored OV 17 based on the jury's determination that defendant was grossly negligent—a necessary element of defendant's involuntary-manslaughter conviction given the prosecution's theory of the case. See, e.g., *Fredell*, 516 Mich at 12. The trial court's finding in this regard was fully consistent with the "wanton or reckless disregard" standard of conduct required for a 10-point score under OV 17. See MCL 777.47(1)(a); *Fredell*, 516 Mich at 14 (noting "Michigan's traditional understanding of criminal gross negligence as encompassing wantonness and disregard of the consequences or dangers of one's actions"); see also *Feezel*, 486 Mich at 196; *Schaefer*, 473 Mich at 438. Defendant has offered no authority to suggest otherwise. And for these same reasons, the trial court did not improperly rely on acquitted conduct contrary to *Beck* when scoring OV 17. Accordingly, we see no error in the trial court's assessment of 10 points for OV 17. See *Hardy*, 494 Mich at 438; *Carlson*, 332 Mich App at 666.

C. OV 3

Defendant next argues that the trial court erroneously assessed 25 points for OV 3, MCL 777.33 (physical injury to a victim), and that OV 3 should instead be scored at zero points. Defendant's argument rests entirely on his assertion that *People v Houston*, 473 Mich 399, 401; 702 NW2d 530 (2005), which interprets MCL 777.33, was wrongly decided and should be overruled. But *Houston*—which defendant acknowledges forecloses his claim—is binding precedent from the Michigan Supreme Court that we must follow. See *People v Armstrong*, 344 Mich App 289, 299; 1 NW3d 299 (2022) ("[W]e are bound to follow Michigan Supreme Court decisions except where those decisions have been clearly overruled or superseded.") (cleaned up); *People v Armisted*, 295 Mich App 32, 53; 811 NW2d 47 (2011) ("[T]his Court is without authority to reverse decisions of the Michigan Supreme Court."). Accordingly, we see no basis to conclude that the trial court plainly erred by assessing 25 points for OV 3.

D. REMAINING OV CHALLENGES

Finally, defendant challenges the trial court's assessment of 15 points for OV 5, MCL 777.35 (psychological injury to member of victim's family), and of five points for OV 12, MCL 777.42 (contemporaneous felonious criminal acts). According to defendant, both of those OVs should have been scored at zero points. The prosecution, for its part, agrees with defendant that the trial court erred by assessing five points for OV 12, but disagrees that the court erred by assessing 15 points for OV 5. Ultimately, we need not reach the merits of these challenges because removal of the 20 points assessed for OVs 5 and 12 from defendant's total OV score would not alter his sentencing guidelines range and thus would not entitle him to resentencing. See *People v Armogeda*, ___ Mich ___; ___ NW3d ___ (2026) (Docket No. 167760); slip op at 1-2, 5-6.[9]

[9] We note, however, that while we agree with the parties that OV 12 was erroneously scored, our review of the record does not reveal plain error in the trial court's assessment of 15 points for OV 5, given that Rosales's mother and brother submitted victim impact statements attesting to the

Affirmed.

/s/ Michael F. Gadola
/s/ Colleen A. O'Brien
/s/ Philip P. Mariani

"profound and lasting emotional harm" they and Rosales's niece have suffered as a result of Rosales's death. *People v Felton*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 375518); slip op at 5; see also *Ventour*, 349 Mich App at 433.