

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD HILL,

Defendant-Appellant.

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October 13, 2026

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No. 373980

Wayne Circuit Court

LC No. 22-000171-01-FC

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

PER CURIAM.

Defendant, Ronald Hill, appeals by right his convictions of second-degree murder, MCL 750.317, felon in possession of a firearm (felon-in-possession), MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On appeal, defendant contends that the prosecutor committed prejudicial error when questioning a witness, that the trial court abused its discretion by dismissing a juror, and that the trial court erred by failing to properly instruct the newly constituted jury. Defendant also raises several arguments in a supplemental brief filed *in propria persona*, otherwise known as a “Standard 4” brief.<sup>1</sup> For the reasons stated in this opinion, we disagree with defendant’s arguments and therefore affirm.

I. BACKGROUND AND FACTS

This case arises from the June 25, 2021 shooting death of Jordan Boston. At 11:14 p.m., police responded to a Shot Spotter alert<sup>2</sup> for seven rounds of gunfire near 18980 Ferguson Street in Detroit as well as several 911 calls. Police found a man, who was later identified as Boston, lying in the street with several gunshot wounds to his abdomen and chest. A severe storm and flooding were occurring when the evidence technician arrived at the scene around 1:20 a.m., but

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<sup>1</sup> See Administrative Order No. 2004-6, 471 Mich c, cii (2004).

<sup>2</sup> Shot Spotter is a system installed on towers in Detroit with microphones that detect the sound of gunfire in real time, sending alerts to police.

several spent shell casings and fired bullets from the same firearm were recovered next to the body, and no weapons were found. The medical examiner (ME) found ten gunshot wounds to the victim's body and a very high blood alcohol concentration, which could have been elevated because of postmortem distribution. The ME determined that the cause of death was multiple gunshot wounds and that the manner of death was homicide.

Two young men told police that they saw a silver or white Dodge Caravan and heard two male voices shouting, with one shouting something to the effect of, "f\*\*\* scrapping, I will start shooting," shortly before hearing five or six shots, and then the vehicle accelerated southbound on Ferguson Street. Similarly, a neighbor saw and heard two men arguing a couple houses over, and after one said, "F\*\*\* scrapping, I'll shoot," she heard shots, silence, and a couple more shots.

That night, Boston had been at a nearby bar called Encore. At about 11:00 p.m., Boston called an acquaintance, Khari Green, and asked Green to pick him up from Encore. Green testified that when he arrived at Encore, Boston was speaking with a security guard outside. Green initially denied that he saw Boston speaking with someone in a white van, but when the prosecutor played a video of his interview with police, Green admitted that he said that Boston was arguing with a man in a white Dodge Caravan outside the bar. As Green drove Boston back to Green's house, Boston seemed upset. After Green went into the house to use the bathroom, he heard gunshots. When Green went outside, he saw Boston lying in the street.

Police recovered surveillance video from a nearby gas station on the corner of Seven Mile and Ferguson Street that was recorded at approximately 11:10 p.m. the night of the incident. The video, which was played for the jury and contained sound, shows a man walking on the street and a white van pulling up beside him, the sound of arguing, and the driver exiting the vehicle to shoot the other man. The driver fired two shots, and the victim fell to the ground. The driver went back to the vehicle for several seconds, then turned around and fired five more shots at the victim. The altercation lasted a little over a minute, and the men's faces were not visible.

Viewing the surveillance video and still images, Rayshena Epperson-Pacely, Boston's ex-wife, identified Boston and defendant, whom she had known for about 20 years, by the images, their voices, their demeanor, and how they walked. Marcus Lipford, Boston's nephew, identified the van in a still image from the surveillance video as a van that he said his uncle had sold to defendant months before the incident. He also identified Boston and defendant in the surveillance video, stating that he recognized the van and defendant's voice. Epperson-Pacely and Lipford also identified the two men in still images taken at Encore on the date of the incident. Likewise, Encore's bar manager, Dantelle Jackson, identified Boston in still images, and stated that Boston was arguing with someone that night by the pool table.

Sharmayne Hill,<sup>3</sup> defendant's wife with whom he shared children, testified that at the time of the incident, her family owned a white Chrysler Town & Country minivan with the license plate DAF 580. Sharmayne initially indicated that defendant drove the minivan "some of the time" and denied telling police that it was defendant's primary vehicle, but when shown her interview with

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<sup>3</sup> Because defendant and his wife share the same last name, we refer to Sharmayne Hill by her first name.

police, agreed that she had stated, “that’s his main car,” referring to the van. Sharmayne agreed that the van in the surveillance video of the shooting looked like a white or silver Town & Country, but she stated that her Town & Country had a black bumper, unlike the van in the surveillance video. Sharmayne acknowledged, however, that approximately three weeks after the shooting she told police that she had noticed about a week before that the bumper of the vehicle had been changed.<sup>4</sup>

Sharmayne stated that defendant never came home on the night at issue, and that she lied to police when she previously stated that he came home around 11:30 p.m. She stated that her husband had called her late that evening and told her to check the basement and that when she did, she realized it was flooded, so she put the couple’s children in the minivan and went to her cousin’s house. On the way, Sharmayne said, defendant met her at a gas station. Sharmayne stated that she had lied to police when she told them that she did not drive the van that night because she did not have a license and the police had accused her of being involved in a murder when she was not involved. Sharmayne also testified that the next day, she went to a friend’s house on Snowden Street and left the van in the backyard at that location, where it was later seized by police.

The following exchange then occurred between the prosecutor and Sharmayne:

[Prosecutor:] Did you make any Google searches after you talked to your husband on the phone?

[Sharmayne:] I don’t remember.

[Prosecutor:] You don’t remember? Do you remember googling, how to get gunpowder residue off hand -- or, I’m sorry, on hands?

On the basis of this question, which Sharmayne did not answer, defense counsel asked for a mistrial, but the trial court denied the motion. The trial court later instructed the jury to disregard the question. The prosecutor resumed questioning Sharmayne about specific Google searches she made that the trial court had permitted questioning on, including whether she searched “shooting on Seven Mile and Ferguson” and “Channel 7 News Detroit,” which Sharmayne admitted to doing.

Data extracted from Boston’s and defendant’s phones revealed that the two had contacted each other by phone a total of 78 times. They had two phone conversations on June 25, 2021, the date of the shooting—one at 6:10 p.m. and another at 6:18 p.m. On July 9, 2021, defendant sent messages via Facebook Messenger to friends stating, “I gotta disappear ASAP,” and in response to an incoming message that stated, “disappear? What you trying to do?”, defendant said, “yeah, like out of State.” On June 27, 2021, defendant texted a video file to someone named Val.<sup>5</sup> Val initially responded, “I can’t really see nothin’ but your van,” and defendant replied, “I didn’t say

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<sup>4</sup> When recalled by the defense, Sharmayne testified that, contrary to Lipford’s testimony, the van was purchased from a dealership, not from Boston. When questioned by the prosecutor, Sharmayne agreed that the VIN and license plate of the vehicle she purchased matched those of the vehicle later taken into police evidence.

<sup>5</sup> There was no evidence presented of Val’s last name.

that was my van.” Then Val said, “Oh . . . I can’t really see nothing but a van and somebody walking by it . . . What’s going on bro??” followed by, “Whoa . . . Now I see it.” The video appears to be a grainy version of the surveillance video of the shooting. When Val asked, “do you need me to do anything for you??”, defendant responded, “I might, bro, if so I’ll have wife call.” The next day, Val texted, “You Gucci bro,”<sup>6</sup> and defendant responded, “tryin’ to be . . but so far yep.”

On the evening of the shooting, a license plate reader detected a vehicle with plate number DAF 580 and a silver or white bumper in two locations—at Seven Mile and Greenfield (at 7:57 p.m.), and at Greenfield and Grand River (at 11:35 p.m.). The jury was also shown cell-tower mapping of calls made before and after the incident from defendant’s phone number in the vicinity of the incident location.

Defendant was apprehended after he was spotted leaving the house on Snowden Street with his wife in another car that defendant owned, a GMC truck. When searching the truck, police found a certificate of insurance for the Town & Country van naming defendant as the insured.

Defendant was convicted as previously stated. This appeal followed.

## II. ANALYSIS

### A. PROSECUTOR’S GUNPOWDER RESIDUE QUESTION

Defendant contends that the trial court erred by denying his motion for mistrial after the prosecutor questioned defendant’s wife regarding whether she made a Google search about removing gunpowder residue from hands and that the prosecutor’s misconduct denied defendant a fair trial. We disagree.

We review for an abuse of discretion the trial court’s denial of a motion for a mistrial. *People v Dickinson*, 321 Mich App 1, 18; 909 NW2d 24 (2017). “This Court will find an abuse of discretion if the trial court chose an outcome that is outside the range of principled outcomes.” *People v Schaw*, 288 Mich App 231, 236; 791 NW2d 743 (2010). “A motion for a mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant’s ability to get a fair trial.” *Id.* (quotation marks and citation omitted). We review de novo claims of prosecutorial misconduct to determine whether a defendant was denied a fair and impartial trial. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003).

“Given that a prosecutor’s role and responsibility is to seek justice and not merely convict, the test for prosecutorial misconduct is whether a defendant was denied a fair and impartial trial.” *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007). “A defendant’s right to a fair trial may be violated when the prosecutor interjects issues broader than the guilt or innocence of the accused.” *People v Rice (On Remand)*, 235 Mich App 429, 438; 597 NW2d 843 (1999).

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<sup>6</sup> “Gucci is a slang word with a variety of positive meanings, including . . . ‘good’ and ‘excellent.’ ” Merriam-Webster, *Slang and Trending: Gucci* <<https://www.merriam-webster.com/slang/Gucci>> (accessed October 8, 2026).

Prosecutorial misconduct issues “are considered on a case-by-case basis, and this Court must examine the entire record and evaluate a prosecutor’s remarks in context.” *Dobek*, 274 Mich App at 64. The prosecutor generally has great latitude in relation to their arguments and conduct. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). A “prosecutor is entitled to attempt to introduce evidence that he legitimately believes will be accepted by the court, as long as that attempt does not prejudice the defendant.” *People v Noble*, 238 Mich App 647, 660-661; 608 NW2d 123 (1999). “As a result, a claim of prosecutorial misconduct cannot be predicated on a good-faith effort to admit evidence.” *People v Allen*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW3d \_\_\_ (2025) (Docket No. 352625); slip op at 8.

Additionally, “[a]n error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the trial court” is not a ground for reversal “unless refusal to take this action appears . . . inconsistent with substantial justice.” MCR 2.613(A); MCR 6.001(D); see also MCL 769.26. “Under this rule, reversal is required only if the error is prejudicial. The defendant claiming error must show that it is more probable than not that the alleged error affected the outcome of the trial in light of the weight of the properly admitted evidence.” *People v McLaughlin*, 258 Mich App 635, 650; 672 NW2d 860 (2003) (citations omitted).

Before Sharmayne testified, she was appointed counsel to advise her regarding the spousal privilege, MCL 600.2162, and her Fifth Amendment privilege. In a colloquy with the trial court outside the jury’s presence, Sharmayne indicated that she had been married to defendant for seven years and would be asserting the spousal privilege. During the colloquy, the prosecutor indicated that she sought to clarify that Sharmayne was “asserting the privilege over all of the communications between the couple,” to which Sharmayne’s counsel answered, “Yes.” The prosecutor stated, “Then the people would just seek to ask some additional questions outside of communications she had with him and he had with her.” The trial court indicated that there would not be anything precluding the attorneys from “asking questions about things that don’t involve any communications between the two parties.” Sharmayne’s counsel then stated that Sharmayne planned to assert her Fifth Amendment privilege regarding any questions that could possibly result in criminal charges or accessory charges. Mindful that it would not be appropriate for a witness to assert the Fifth Amendment privilege in front of the jury, the parties agreed that if Sharmayne was asked a question about which she had Fifth Amendment concerns, she would simply state that she “need[ed] a moment,” at which point the jury would be excused and she could consult with her counsel.

The exchange with which defendant takes issue is as follows:

[Prosecutor:] Did you make any Google searches after you talked to your husband on the phone?

[Sharmayne:] I don’t remember.

[Prosecutor:] You don’t remember? Do you remember googling, how to get gunpowder residue off hand -- or, I’m sorry, on hands?

At that point, defendant's counsel said, "I think we need a moment," the parties approached the bench, and the jury was excused for a brief recess.

After the jury was sent out, the trial court ruled that it would not allow that question to be asked. The trial court then asked whether it should instruct the jury to disregard the gunshot residue question, and defense counsel stated, "I don't want you to highlight it in any way." The parties and the trial court discussed permissible areas of questioning, with the court prohibiting specific questions that would likely prompt the witness to assert her Fifth Amendment privilege but allowing questions about Sharmayne's Google searches concerning "shooting on Seven Mile and Ferguson" and "Channel 7 News Detroit." Defense counsel ultimately asked for a mistrial because of the gunpowder residue question. The prosecutor opposed a mistrial and responded, "I did not ask her why she made that Google search. I said, did you make this Google search." The prosecutor also explained that her understanding was that the Google search was not the basis of defense counsel's concern about marital communications. The trial court denied the motion for a mistrial, noting that "now we have a more firm footing with regard to what is going to be allowed and what is not going to be allowed." When the jury returned, the trial court stated: "[B]efore our last break [the prosecutor] asked a question regarding gunshot residue. I'm instructing you to disregard that question and not utilize that question in any way, shape or form in determining the facts and circumstances of this case."

Defendant argues that the trial court abused its discretion by denying his motion for mistrial because the prosecutor elicited prejudicial testimony and relatedly argues that the prosecutor committed prosecutorial misconduct entitling him to reversal. As an initial matter, we note that the witness did not actually answer the question, so the alleged error that defendant highlights concerns the prosecutor's question itself, rather than the elicitation of prejudicial testimony.

Although defendant argues that the question was asked "in direct contravention" of Sharmayne's asserted privileges in an attempt to paint defendant as guilty and Sharmayne as an accomplice, the trial court did not, in advance, specifically prohibit any particular question or line of questioning. Instead, with regard to the spousal privilege, it was generally agreed that Sharmayne could be questioned "outside of communications she had with him and he had with her." And with regard to the Fifth Amendment privilege, it was agreed that Sharmayne would "ask for a moment" if she needed to consult with counsel regarding her possible assertion of privilege in response to a question. The prosecutor stated that she did not believe that the question infringed on privileged marital communications, and indeed the question did not directly inquire as to what defendant and Sharmayne said to one another. This context suggests that prosecutor asked the question in good faith and thus did not commit misconduct. See *Allen*, \_\_\_ Mich App at \_\_\_; slip op at 8. On the other hand, given that Sharmayne's counsel made clear that Sharmayne would assert her Fifth Amendment privilege in response to any questions "that could possibly result in my client facing criminal charges or accessory charges," it is a fair inference that asking a question about Googling how to get gunpowder residue off one's hands could encroach into off-limits territory, i.e., possible accessory-after-the-fact liability. And, indeed, the trial court later ruled that, for Fifth Amendment reasons, it would not allow the question.

Ultimately, however, we need not decide whether the prosecutor erred by asking the question, because we conclude that defendant has not established that doing so caused outcome-determinative prejudice. See *McLaughlin*, 258 Mich App at 650. Only a single question was

asked, it was isolated and did not lead to further related inquiry, it was never actually answered, and it was not referenced in the prosecutor's closing arguments.

In addition, the weight of the properly admitted evidence makes it unlikely that the question affected the outcome. See *id.* This was not a particularly close case. Two witnesses who knew both defendant and the victim identified defendant in the surveillance footage that showed the shooting, defendant's vehicle resembled the one in the surveillance video, and photographs by a license plate reader and cell-tower mapping data placed defendant and his vehicle near the scene of the bar and the murder. Further, defendant sent a video of the shooting to a friend and told other friends that he needed to "disappear ASAP," which was evidence of consciousness of guilt.

Defendant also argues that the prejudice could not be cured by jury instructions, citing *United States v Murry*, 784 F 2d 188, 188-189 (CA 6, 1986) (explaining that a timely curative instruction was "very close to an instruction to unring a bell"). But given the discussion above regarding the weight of the properly admitted evidence, we conclude that any prejudice was cured by the trial court's instructions to the jury to disregard the question. "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). The prosecution directs us to *People v Alexander*, 76 Mich App 71, 76-77; 255 NW2d 774 (1977), in which a question posed by the prosecutor (but not answered) was objected to by the defense, the trial court sustained the objection, and the trial court "promptly caution[ed] the jury to disregard the question." This Court held that the trial court's actions "cured any error the prosecutor may have committed." *Id.* at 77. Similarly here, the prosecutor's question was not answered by the witness and the trial court immediately (after a bench conference) instructed the jury to ignore it. On these facts, reversal is not warranted.

## B. DISMISSAL OF JUROR AND REPLACEMENT WITH ALTERNATE

Defendant claims two errors regarding the trial court's dismissal of a juror and replacement with an alternate juror. The factual background for these arguments is as follows:

The trial court and the parties selected thirteen jurors, anticipating a jury of twelve plus one alternate. During voir dire on Monday, October 21, 2024, juror number two, who was later dismissed, had notified the trial court that she had a flight early in the morning that Friday to see her boyfriend, and the court indicated that it anticipated having the trial finished by then.

Immediately following the trial court's instructions to the jury at the close of proofs on Wednesday, the trial court randomly selected one juror from the thirteen as the alternate. The trial court released that juror with instructions not to discuss the case until a verdict had been reached and to provide the court with contact information in case it became necessary to recall her.

Deliberations began immediately; the jury deliberated for a little over an hour that day and returned to continue deliberations the next day. That day (a Thursday), the jury sent a note asking, "what happens if we don't come to an agreement?" and the trial court provided the deadlocked-jury instruction, M Crim JI 3.12. Moreover, when the jury deliberations had extended into Thursday, the trial court raised the issue of juror number two's schedule conflict to the parties, indicating that it would question the juror about the importance of the conflict and whether she

could make alternate arrangements, and then determine whether to excuse her from jury service. Defense counsel opposed the substitution and raised concerns about the alternate juror, stating that “she couldn’t roll her eyes more and be more disinterested than anyone that I’ve seen on any panel, frankly.” The trial court responded that it routinely scans the jury to make sure they are paying attention and did not make the same observations. The prosecutor also stated that she “did notice that [the juror] was paying attention” and “didn’t notice her rolling her eyes,” but was not totally sure.

When questioned by the trial court, juror number two explained that she was traveling out of state on a 5:40 a.m. flight and had planned the trip, which was for her boyfriend’s birthday, months in advance. When asked whether she could change the trip or make alternate arrangements, the juror said no. The trial court then excused the juror from service and directed the jury services department to contact the alternate juror.

The next day, a Friday, the alternate juror appeared for service. That morning, following some deliberations, the trial court indicated that it had “just received some correspondence from the jury noting that they’ve reached a verdict,” but that the trial court had intended to bring the jury out when the replacement juror arrived to provide the jury instruction regarding a replacement juror, M Crim JI 3.11a. The jury was then brought out and the trial court provided the instruction as follows:

[L]adies and gentlemen, I wanted to first begin, there’s, of course, a new juror. The alternate juror has returned and there’s an instruction the Court is going to give you regarding that alternate juror. So, members of the jury, one of your fellow jurors was unable to continue with deliberations. Do not consider the reason for the juror’s discontinuing as a juror. Alternate juror -- would you state your name, please. . . . Thank you -- will now participate. You are a new jury and must start over with your deliberations.

The trial court also acknowledged that the jury had previously advised the court that it had reached a unanimous verdict. Then, the court separately questioned the alternate juror. When asked whether she had discussed the case with anyone and whether she had participated in the jury deliberations that morning, the juror answered, “No,” but acknowledged that deliberations were ongoing that morning and that she had the opportunity to participate in the deliberations. Likewise, the jury foreperson indicated that the jury, including the alternate juror, had the opportunity to deliberate. The foreperson also stated that “[i]t was a shorter discussion because everybody kind of slept on it last night and then the alternate, also.”

When the full jury was brought back in, the trial court instructed the jury that it should “go back to the jury room now that [the alternate juror] instruction has been given” and “continue . . . deliberations.” Approximately one hour later, the court went back on the record as the jury had reached unanimous verdict finding defendant guilty as previously described. When polled, each individual juror affirmed the verdict as their own. The trial court denied defendant’s motion for mistrial, which was made on the basis that the jury had not been instructed properly before reaching its verdict.

## 1. JURY COMPOSITION

Defendant first contends that the trial court abused its discretion by dismissing juror number two, thereby denying his fundamental interest in retaining the composition of the jury and his right to a fair and impartial jury. We disagree.

Although a defendant has “a fundamental interest in retaining the composition of the jury as originally chosen,” *People v Dry Land Marina, Inc*, 175 Mich App 322, 326; 437 NW2d 391 (1989), they have “an equally fundamental right to have a fair and impartial jury made up of persons able and willing to cooperate, a right that is protected by removing a juror unable or unwilling to cooperate,” *People v Tate*, 244 Mich App 553, 562; 624 NW2d 524 (2001). “Removal of a juror under Michigan law is therefore at the discretion of the trial court, weighing a defendant’s fundamental right to a fair and impartial jury with his right to retain the jury originally chosen to decide his fate.” *Id.* A trial court has discretion to remove a juror “[s]hould any condition arise during the trial of the cause which in the opinion of the trial court justifies the excusal of any of the jurors so impaneled from further service . . .” MCL 768.18(1). “[R]einstating a discharged alternate juror during deliberations, absent consent of the defendant, requires reversal of a conviction only when the defendant has been prejudiced by the procedure.” *Dry Land Marina, Inc*, 175 Mich App at 329; see also *Tate*, 244 Mich App at 564.

Although defendant argues that “the juror’s plans to attend her boyfriend’s birthday party in New York” were outweighed by defendant’s constitutional rights, the trial court had broad discretion to dismiss the juror. See *Tate*, 244 Mich App at 562; MCL 768.18(1). Indeed, the statute permits the trial court to excuse a juror from service “[s]hould *any* condition arise during the trial of the cause which in the opinion of the trial court” justifies excusal. MCL 768.18(1) (emphasis added). In another case in which a juror had travel plans on the day deliberations were set to begin, this Court found no abuse of discretion when the trial court dismissed the juror and replaced him with an alternate, reasoning that the trial court “could well have decided that the juror would not be impartial if required to cancel his travel plans in order to remain on the jury.” *People v Weatherspoon*, 171 Mich App 549, 559; 431 NW2d 75 (1989). We similarly find no abuse of discretion here, when the juror had disclosed her travel plans during voir dire and, in response to questioning by the trial court, stated that she could not change her plans or make alternate arrangements.

In addition, defendant has not demonstrated prejudice. See *Dry Land Marina, Inc*, 175 Mich App at 329. Under MCR 6.411 and MCL 768.18(1), the trial court and the parties selected thirteen jurors. As a result, all the jurors selected were deemed acceptable by the parties. As required by MCR 6.411, and as the trial court had instructed, an alternate juror was randomly selected at the close of the case and the alternate juror did not discuss the case with anyone until after the trial court had provided the alternate juror instruction. Although defense counsel raised the issue of the alternate juror appearing uninterested and rolling her eyes, the trial court (and the prosecutor) did not observe that behavior. We give deference to the trial court’s factual findings. *People v Harris*, 261 Mich App 44, 53; 680 NW2d 17 (2004). Given this, there is no indication that defendant’s right to a fair and impartial jury was compromised. See *Tate*, 244 Mich App at 562.

## 2. JURY INSTRUCTIONS

Defendant relatedly contends that the trial court denied defendant's rights to a fair, impartial, and unanimous jury by failing to instruct the newly reconstituted jury until after a verdict had been reached.

This Court reviews claims of instructional error de novo. *People v Rosa*, 322 Mich App 726, 738 n 6; 913 NW2d 392 (2018). In doing so, we consider the jury "instructions as a whole, rather than piecemeal, to determine whether any error occurred." *People v Joesel*, 36 NW3d 293, 297 (Mich, 2026).<sup>7</sup> Reversal on the basis of an instructional error is warranted only when, "after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative." *Id.* (quotation marks and citation omitted). It follows that "reinstating a discharged alternate juror during deliberations, absent consent of the defendant, requires reversal of a conviction only when the defendant has been prejudiced by the procedure." *Dry Land Marina, Inc*, 175 Mich App at 329; see also *Tate*, 244 Mich App at 564.

"A criminal defendant is entitled to have a properly instructed jury consider the evidence against him." *People v Czuprynski*, 325 Mich App 449, 456; 926 NW2d 282 (2018) (quotation marks and citation omitted). "A court must properly instruct the jury so that it may correctly and intelligently decide the case." *People v Clark*, 453 Mich 572, 583; 556 NW2d 820 (1996). Relevant here, MCR 6.411 provides that "[i]f an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew." M Crim JI 3.11a provides a complementary model instruction:

Members of the jury, one of your fellow jurors is unable to continue the deliberations with you. Do not consider the reasons for the juror's discontinued service. Alternate juror [name alternate juror] will now participate. You are now a new jury and must start over with your deliberations.

Here, as indicated, the trial court, after the jury had communicated that it reached a unanimous verdict, instructed the jury as follows and sent them back to the jury room to deliberate:

[L]adies and gentlemen, I wanted to first begin, there's, of course, a new juror. The alternate juror has returned and there's an instruction the Court is going to give you regarding that alternate juror. So, members of the jury, one of your fellow jurors was unable to continue with deliberations. Do not consider the reason for the juror's discontinuing as a juror. Alternate juror -- would you state your name, please. . . . Thank you -- will now participate. You are a new jury and must start over with your deliberations.

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<sup>7</sup> "An order of th[e] [Supreme] Court is binding precedent if it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision." *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369; 817 NW2d 504 (2012).

Defendant likens this case to *People v Hunter*, 370 Mich 262, 270-271; 121 NW2d 442 (1963). In that case, our Supreme Court explained that

it is not until the final submission of the case that the jurors are told that a defendant is under the law presumed to be innocent and not guilty and that that presumption attends him throughout the trial, so that it is incumbent upon the Government to prove the guilt of the defendant beyond a reasonable doubt. These instructions are deemed of vital importance as fixing the standards to be followed by the jury in determining the guilt or innocence of a defendant. If, however, the jurors may discuss the case among themselves, either in groups of less than the entire jury, or with the entire jury, that are giving premature consideration to the evidence. By due process of law is meant a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The jury should not discuss the case among themselves because, first, they have not heard all of the evidence; second, they have not heard the instructions of the court as to how this evidence is to be considered by them, and neither have they heard the arguments of counsel. [*Id.*, quoting *Winebrenner v United States*, 147 F2d 322, 328 (CA 8, 1945) (quotation marks omitted).]

In context, the Court was addressing the trial court's problematic instruction to the jury that they could discuss evidence among themselves during the trial. *Hunter*, 370 Mich at 269. The Court clarified that "juries should be directed by the court not to" discuss evidence "until ready to deliberate upon their verdict at the conclusion of the trial." *Id.* Here, we are faced with a very different scenario. The jury was instructed to deliberate at the close of trial as a jury of twelve, but then one juror was dismissed and replaced by an alternate after discussions had been ongoing. This case therefore implicates the postsubmission substitution procedure governed by MCR 6.411.

As stated, MCR 6.411 requires the court to "instruct the jury to begin its deliberations anew" in circumstances when "an alternate juror replaces a juror after the jury retires to consider its verdict." Here, the jury indicated that it had reached a verdict before the trial court provided the alternate juror instruction. The trial court indicated that it had planned to provide the alternate juror instruction before the newly constituted jury began deliberations, but this did not occur. Instead, at that point, the trial court provided an alternate juror instruction consistent with M Crim JI 3.11a and sent the jury back to start over with deliberations. Thus, the trial court did err by failing to give the instruction before deliberations began with the new juror. See MCR 6.411.

However, reversal is warranted only if defendant was prejudiced. Defendant claims prejudice because the jury's decision "was based upon the deliberations of the previous day with the previous juror which 'everybody kind of slept on' " after the fourth day of trial. However, defendant's concern is merely speculative and insufficient to rise to the level of outcome-determinative prejudice. The jurors were given an alternate juror instruction directing deliberations to begin anew, and jurors are presumed to follow their instructions. *Unger*, 278 Mich App at 235. Given this, the absence of record evidence to the contrary, and that the newly constituted jury went on to deliberate for approximately an hour before reaching a unanimous verdict, we discern no outcome-determinative prejudice. See *Dry Land Marina, Inc*, 175 Mich App at 329; see also *Tate*, 244 Mich App at 564 (rejecting as speculative the defendant's claim

that a shorter deliberation time before, versus after, the substitution evidenced juror coercion). Therefore, defendant is not entitled to reversal.

### C. STANDARD 4 BRIEF

#### 1. SUFFICIENCY OF THE EVIDENCE

In defendant's Standard 4 brief, he contends that the evidence was insufficient to support his conviction of second-degree murder because evidence of identification was lacking. We disagree.

An appellate court reviews a trial court's determination that there was sufficient evidence to support a conviction de novo. *People v Prude*, 513 Mich 377, 384; 15 NW3d 249 (2024). "We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime to have been proved beyond a reasonable doubt." *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Bailey*, 310 Mich App 703, 713; 873 NW2d 855 (2015) (quotation marks and citation omitted).

"Identity is an element of every offense," *People v Bass*, 317 Mich App 241, 263; 893 NW2d 140 (2016) (citation modified), so the prosecution must always produce enough evidence to prove beyond a reasonable doubt that it was the defendant who committed the crime. But "[t]he credibility of identification testimony is a question for the trier of fact that we do not resolve anew." *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). And "this Court has stated that positive identification by witnesses may be sufficient to support a conviction of a crime." *Id.*

Multiple pieces of evidence supported defendant's identification. Sharmayne's testimony established that defendant drove a white van Chrysler Town & Country minivan, and the van was insured in defendant's name. The surveillance video showed that the shooter was driving a white van. Viewing the surveillance video, Epperson-Pacely, Boston's ex-wife, identified defendant, whom she had known for about 20 years, by his image, voice, demeanor, and manner of walking. Lipford, Boston's nephew, also identified defendant in the video, stating that he recognized defendant's van and his voice. Epperson-Pacely and Lipford also identified defendant from still images taken at Encore that night. To the extent that defendant disputes the credibility of the witnesses, we must defer to the jury's credibility determinations. See *Davis*, 241 Mich App at 700.

Adding to the sufficiency of the evidence that defendant was the shooter, a license plate reader detected a vehicle with plate number DAF 580 near Encore Lounge, at Seven Mile and Greenfield at 7:57 p.m., and near defendant's home, at Greenfield and Grand River at 11:35 p.m. In addition, the jury was shown cell-tower mapping of calls made before and after the incident from defendant's phone number in the vicinity of the incident location. Although defendant's counsel argued in closing that there were two vans, one that the victim sold, and one with a black bumper that defendant purchased from a dealership, as the jury was instructed, the attorneys' statements and arguments are not evidence, see *Bahoda*, 448 Mich at 281 n 38, and the jury was

free to weigh for itself the evidence introduced at trial regarding the shooter’s van, see *Dunigan*, 299 Mich App at 582.

Thus, viewed in the light most favorable to the prosecution, a rational jury could have found that defendant was the shooter. See *Meissner*, 294 Mich App 438, 452.<sup>8</sup>

## 2. DOUBLE JEOPARDY

Defendant next contends that his convictions of felon-in-possession, CCW, and two counts of felony-firearm violate the prohibition against double jeopardy. We disagree.

“The United States Constitution and the Michigan Constitution both prohibit placing a defendant twice in jeopardy for a single offense.” *People v Dickinson*, 321 Mich App 1, 10; 909 NW2d 24 (2017), citing US Const, Am V; Const 1963, art 1, § 15. To preserve a double-jeopardy issue for appellate review, a defendant must raise the issue at trial. *People v Wilson*, 242 Mich App 350, 359-360; 619 NW2d 413 (2000). Because defendant did not object below, this issue is unpreserved. See *id.* We review unpreserved claims of constitutional error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). “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.” *Id.* at 763. And “[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 (citation modified).

In *People v Miller*, 498 Mich 13, 17; 869 NW2d 204 (2015), our Supreme Court explained that

[t]he prohibition against double jeopardy protects individuals in three ways: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense. The first two protections comprise the “successive prosecutions” strand of double jeopardy,

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<sup>8</sup> Defendant also argues that there was insufficient evidence that defendant actually or constructively possessed a firearm, as no firearm was discovered upon a police search of the Snowden Street home. But because defendant provides no supporting authority for this argument, he has abandoned it. See *People v Russell*, 266 Mich App 307, 316; 703 NW2d 107 (2005). Regardless, we note that police recovery of a firearm is not required for a weapons conviction. See *People v Hayden*, 132 Mich App 273, 296; 348 NW2d 672 (1984) (“Where conviction of an offense requires proof beyond a reasonable doubt that a defendant possessed a firearm, this element may be proven without the actual admission into evidence of the weapon.”). Defendant has therefore failed to establish that there was insufficient evidence to support his convictions of CCW, felon-in-possession, and felony-firearm.

while the third protection is known as the “multiple punishments” strand. [(Citation modified.)]

At issue in this case is whether defendant’s multiple convictions violate the “multiple punishments” strand of double jeopardy.

Our Supreme Court has held that cumulative punishments for felon-in-possession and felony-firearm, *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003), and cumulative punishments for felony-firearm and CCW when the felony-firearm conviction is based on a distinct felony, *People v Sturgis*, 427 Mich 392, 405-406; 397 NW2d 783 (1986), do not violate the prohibition against double jeopardy. Because the felony-firearm conviction here is premised upon the second-degree murder conviction, defendant’s convictions of both felony-firearm and CCW are permissible. Thus, punishment for these combinations of offenses does not violate the guarantee against double jeopardy.

As for defendant’s convictions for CCW and felon-in-possession, in the absence of published caselaw specifically addressing these offenses, we apply the “abstract legal elements” test set forth in *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932), and *People v Ream*, 481 Mich 223; 750 NW2d 536 (2008). Generally, Michigan courts apply the “abstract legal elements” test “to ascertain whether the Legislature intended to classify two offenses as the ‘same offense’ for double jeopardy purposes.” *Miller*, 498 Mich at 19. As explained in *Miller*:

Under the abstract legal elements test, it is not a violation of double jeopardy to convict a defendant of multiple offenses if “each of the offenses for which defendant was convicted has an element that the other does not . . . .” [*Ream*, 481 Mich at 225-226.] This means that, under the *Ream* test, two offenses will only be considered the “same offense” where it is impossible to commit the greater offense without also committing the lesser offense. [*Id.* at 241.] [*Miller*, 498 Mich at 19.]

In *Ream*, the Court also clarified that, in line with *Blockburger*, the focus must be on “the statutory elements, not the particular facts of the case . . . .” *Ream*, 481 Mich at 238.

For CCW, defendant was convicted under a theory that he had carried a pistol in a vehicle in violation of MCL 750.227(2) as follows: “A person shall not carry a pistol . . . whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol.” For felon-in-possession, defendant must have knowingly possessed a firearm in the state, and at the time of possession, had previously been convicted of a specified felony.<sup>9</sup> MCL 750.224f(4), (6). Accordingly, CCW requires that the person carry a pistol “in a vehicle operated or occupied by the person,” whereas felon-in-possession distinctly requires that at the time of possession of a firearm, the person had been previously convicted of a specified felony. Thus, “ ‘each of the offenses for which defendant was convicted has an element that the other does not .

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<sup>9</sup> At trial, the parties stipulated that defendant had previously been convicted of a specified felony and did not have the right to possess a firearm on the date of the incident.

...’ ” *Miller*, 498 Mich at 19, quoting *Ream*, 481 Mich at 225-226. As a result, reversal is not warranted on double-jeopardy grounds.

### 3. PROSECUTORIAL MISCONDUCT DURING CLOSING ARGUMENTS

Defendant also contends that several statements by the prosecutor during closing arguments were not supported by the evidence and therefore improperly inflamed the jury and caused prejudice to defendant. We disagree.

Prosecutorial misconduct issues “are considered on a case-by-case basis, and this Court must examine the entire record and evaluate a prosecutor’s remarks in context,” *Dobek*, 274 Mich App at 64, “in light of defense arguments and the relationship they bear to the evidence admitted at trial to determine whether a defendant was denied a fair and impartial trial,” *People v Brown*, 267 Mich App 141, 152; 703 NW2d 230 (2005). The prosecutor generally has great latitude in relation to their arguments and conduct and may argue the evidence and reasonable inferences arising from the evidence in support of their theory of the case. *Bahoda*, 448 Mich at 282. However, a prosecutor “may not argue facts not in evidence or mischaracterize the evidence presented.” *People v Watson*, 245 Mich App 572, 588; 629 NW2d 411 (2001).

Defendant argues that no testimony or evidence in the record supported the prosecutor’s argument that a license plate reader detected the van at Encore. The prosecutor stated in closing that the phone mapping “puts [defendant] at the Encore Bar at seven o’clock up until the time of the shooting.” This was a reasonable inference grounded in record evidence. See *id.* First, an exhibit admitted at trial (without objection) that depicted a map of where a license plate reader detected the DAF 580 license plate showed an icon of a cocktail glass labeled “Encore Lounge” on the corner of Seven Mile and Greenfield Road. Second, police testimony established that the license plate reader detected the van at this intersection. In addition, Epperson-Pacely and Lipford identified both the victim and defendant in still photographs taken at Encore that night. Thus, multiple pieces of evidence supported the inference stated by the prosecutor—that defendant was at Encore that evening before the murder.

Defendant next argues that the prosecutor improperly stated that Green saw Boston arguing with a man in a white van wearing a baseball cap. Green did in fact admit that he told police that Boston was arguing with “a guy in a white van, a Dodge Caravan,” and the police interview was played for the jury. Defendant is correct that Green did *not* state that the man driving the van was wearing a baseball cap. However, this is a minor discrepancy. The prosecutor also stated that Lipford, who had identified defendant in the still image from Encore wearing a baseball cap, saw defendant and Boston arguing. Thus, viewed in context, the prosecutor likely misspoke, as other evidence suggested that Boston was seen arguing with defendant, who was wearing a baseball cap. See *Dobek*, 274 Mich App at 64. Moreover, any minor error in this statement is insufficiently prejudicial to warrant reversal. See *McLaughlin*, 258 Mich App at 650.

Defendant quarrels with the prosecutor’s statement that Sharmayne testified that defendant was the “only person” or the “other person” that had access to their white Town & Country minivan. Defendant’s attribution of the phrase “only person” to the prosecutor mischaracterizes the prosecutor’s statement, which instead was that defendant “was the other person that had access to that vehicle.” This statement was supported by trial testimony, as Sharmayne had indicated that

defendant drove the vehicle sometimes (in her testimony) or that it was his “main car” (in her interview with police). See *Bahoda*, 448 Mich at 282. That Sharmayne also stated that the children had access to the minivan does not amount to a mischaracterization of the evidence. See *Watson*, 245 Mich App 572.

Defendant also challenges the prosecutor’s statement that defendant sent a friend a Facebook message saying that he had to disappear and get out of state “a couple days” after the incident, as the messages were sent 14 days later, on July 9, 2021. Although the prosecutor may have misstated the timing of the evidence, see *id.*, this slight mischaracterization did not rise to the level of denying defendant “a fair and impartial trial,” *Brown*, 267 Mich App at 152, especially when the message was indeed sent not long after the victim’s death.

Lastly, defendant takes issue with the prosecutor’s statement that defendant’s phone records placed him at the scene of the homicide. However, this statement was a fair inference made on the basis of police testimony that defendant’s phone number connected to cell towers near the incident location that night. See *Bahoda*, 448 Mich at 282.

In sum, because the statements by the prosecutor in closing were either reasonable inferences based upon the evidence or contained minor discrepancies that were not prejudicial, no prosecutorial error during closing arguments warrants reversal.

#### 4. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant’s final contention is that trial counsel performed ineffectively by failing to request a directed verdict of acquittal either before or after the jury’s verdict because the prosecutor failed to present sufficient evidence of identification.

To establish a claim of ineffective assistance of counsel, “a defendant must show (1) that counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel’s error, the result of the proceedings would have been different.” *People v Shaw*, 315 Mich App 668, 672; 892 NW2d 15 (2016), citing *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984). It is presumed that trial counsel was effective, and a defendant must overcome the strong presumption that counsel’s performance was sound trial strategy. *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). Whether a defendant has been denied the effective assistance of counsel is a “mixed question of fact and constitutional law.” *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004) (quotation marks and citation omitted). Factual findings are reviewed for clear error and questions of constitutional law are reviewed de novo. *Id.*

A defendant bears “the burden of establishing the factual predicate for [their] claim of ineffective assistance of counsel[.]” *People v Solloway*, 316 Mich App 174, 189; 891 NW2d 255 (2016) (quotation marks and citation omitted). Generally, when there is no *Ginther*<sup>10</sup> hearing, as

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<sup>10</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

here, our review is limited to errors apparent on the record. See *People v Buie (On Remand)*, 298 Mich App 50, 61; 825 NW2d 361 (2012).

Because, as discussed above, defendant has not established that there was insufficient evidence of identity to support the verdict, counsel was not ineffective for failing to move for a directed verdict on that basis. See *Shaw*, 315 Mich App at 672.

### III. CONCLUSION

To summarize, we reject defendant's arguments regarding the prosecutor's unanswered question to defendant's wife about gunpowder residue, the trial court's dismissal of a juror and related jury instructions, and the arguments in defendant's Standard 4 brief. We therefore affirm defendant's convictions.

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