STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 19, 2013
v	No. 309790 Kalamazoo Circuit Court
BESHAM BRIAN SUGRIM, Defendant-Appellant.	LC No. 2011-001118-FC

Before: FITZGERALD, C.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

This case arises out of the murder of Linda Gibson, a prostitute, whose body was discovered in a wooded area on September 14, 2003. The victim died from blunt and sharp force injuries. After a jury trial that commenced February 7, 2012, defendant was convicted on February 15, 2012 of first-degree premeditated murder, MCL 750.316(1)(a). On April 11, 2012, the trial court sentenced defendant to life imprisonment. Defendant appeals by right. We affirm.

I. ADMISSION OF EVIDENCE UNDER MRE 404(B)

Defendant first argues that the trial court abused its discretion admitting other acts evidence under MRE 404(b). The claimed inadmissible evidence included a long history of verbal and physical abuse of defendant's wife Bernadette, the prosecution's chief witness, and his children, and a specific instance of child abuse that occurred on May 16, 2011. The trial court also permitted Bernadette to testify that defendant told her about killing a man around 1995 or 1996, and that defendant created false identification in the name of his deceased brother. The trial court also ruled admissible evidence of defendant's use of and familiarity with knives.

A. STANDARD OF REVIEW

The trial court's decision to admit or exclude evidence is reviewed on appeal for a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). But review of questions of law regarding the admissibility of evidence, such as the application of a rule of evidence or statute, is de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Preserved evidentiary trial error does not warrant reversal in a criminal case unless, after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative. *Id*. at 495-496. The trial court abuses its discretion when its decision is outside the range of reasonable and principled outcomes. *People v Watkins*, 491

Mich 450, 467; 818 NW2d 296 (2012). Generally, by definition, a trial court's decision on a close evidentiary question cannot be an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

B. ANALYSIS

After review of the record, we conclude that the trial court did not abuse its discretion by admitting the other acts evidence under MRE 404(b) because the evidence was (1) offered for a purpose other than character propensity, (2) was relevant, and (3) its probative value was not substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). Further, the trial court repeatedly instructed the jury regarding the limited purpose for which the evidence could be considered. *Id*.; MRE 105. Moreover, reversal is not warranted because even without the disputed evidence, there was overwhelming evidence of defendant's guilt such that it does not affirmatively appear more probable than not that the admission of other acts evidence was outcome determinative. *Lukity*, 460 Mich at 495-496.

After a hearing on the prosecutions pretrial motion, the trial court rendered a ruling from the bench and issued its order on February 9, 2012, admitting other acts evidence:

> (1) Extensive evidence of abuse and domineering conduct toward the Defendant's family and pets is admissible; (2) Evidence regarding the child abuse incident on May 11, 2011[1] is admissible; (3) Evidence of the Defendant's admission to his wife regarding the New York murder is admissible, but New York police officers may not testify about it; (4) Evidence of the Defendant's extensive familiarity with knives is admissible, however school officials and police officers may not testify about the Defendant's children carrying knives.

During the course of the trial as the other acts evidence was admitted, the trial court repeatedly—as many as six times during the trial and in the final jury instructions—instructed the jury that it could, if they believed the evidence, use it only for limited purposes. The instruction also explicitly directed the jury that they could not infer defendant was a bad man and therefore committed the crime. The court instructed:

> You have heard evidence that the defendant committed other crimes or improper acts for which he is not on trial from the last witness. This evidence was introduced for a very limited purpose; and, if you believe this evidence, you must be very careful only to consider it for certain purposes. You may only use it to put into context the relationship between the defendant and his wife and family, explain why there was a delay in reporting his alleged involvement, how the

[1] This incident is most often referred to in the record as having occurred on May 16, 2011, but occasionally the date of May 11, 2011 is used. There is no question, however, that a single incident occurred in May 2011 when defendant severely beat his daughter Skye, which resulted in his arrest and conviction for assault with intent to great bodily harm less than murder. It also resulted in Bernadette's revealing to the police what she knew about defendant.

> information came out, whether there was a motive for the murder, and in assessing the credibility of Bernadette Sugrim. You must not consider this evidence for any other purpose.
>
> For example, you must not decide that it shows that the defendant is a bad person or that he is likely to commit crimes.
>
> You must not convict the defendant here because you think he is guilty of other bad conduct. Instead, all the evidence must convince you beyond a reasonable doubt that the defendant committed the alleged crime or you must find him not guilty.

MRE 404(a) states the general rule that except in limited circumstances not pertinent here, "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion[.]" Similarly, MRE 404(b)(1) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Thus, the sole rule of exclusion under MRE 404 is the prohibition of evidence of character to prove conduct or propensity. But this exclusion does not preclude the admission of evidence that is also relevant to something other than showing propensity to act in conformity to character. Evidence may be admitted, for example, "for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case." MRE 404(b)(1). This listing of proper using of other acts evidence under MRE 404(b)(1) is nonexclusive. *People v Sabin (After Remand)*, 463 Mich 43, 56; 614 NW2d 888 (2000).

MRE 404(b) is a rule of inclusion, only prohibiting evidence that is used solely for the purpose of showing action in conformity with character. *People v Mardlin*, 487 Mich 609, 615-616; 790 NW2d 607 (2010). "Evidence relevant to a noncharacter purpose is *admissible* under MRE 404(b) *even if* it also reflects on a defendant's character. Evidence is *inadmissible* under this rule *only* if it is relevant *solely* to the defendant's character or criminal propensity." *Id.* (Emphasis in the original). Where the evidence may also reflect on the defendant's character, the trial court must exercise its discretion whether to admit or exclude the evidence under the balancing test of MRE 403, determining whether the "'probative value is substantially outweighed by the danger of unfair prejudice.'" *Mardlin*, 487 Mich at 616.

A party seeking to admit evidence under MRE 404(b) must show: (1) that the other acts evidence is being used for a proper purpose (one other than propensity to act in conformity with character), (2) that the evidence is relevant to an issue of fact that is of consequence at trial, and (3) that the danger of unfair prejudice does not substantially outweigh the probative value of the evidence, MRE 403. *People v Steele*, 283 Mich App 472, 479; 769 NW2d 256 (2009). A trial court may also give a limiting instruction under MRE 105. *Knox*, 469 Mich at 509.

Thus, a proper purpose under MRE 404(b) is one other than establishing the defendant's character to show his propensity to commit the offense. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). "If the proponent's only theory of

relevance is that the other act shows defendant's inclination to wrongdoing in general to prove that the defendant committed the conduct in question, the evidence is not admissible." *Id*. at 63; see also *Mardlin*, 487 Mich at 615-616; *Knox*, 469 Mich at 510. Here, as the trial court instructed the jury, the prosecution sought to use the other acts evidence to show the "context [of] the relationship between the defendant and his wife and family, explain why there was a delay in reporting his alleged involvement, how the information came out, whether there was a motive for the murder, and in assessing the credibility of Bernadette Sugrim." In sum, the prosecutor sought through the other acts evidence to support the credibility of one of his chief witnesses, Bernadette Sugrim, by providing reasons for her silence and for breaking her silence, and also to provide evidence of a possible motive for the murder.

Defendant first argues that the prosecution improperly used the other acts evidence for the purpose of bolstering the credibility of his witnesses. Defendant does not specifically cite legal authority to support this argument. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Defendant's failure to cite any supporting legal authority constitutes abandonment of this argument. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001). Moreover, evidence that supports or attacks the credibility of a claim or a witness at trial is relevant and has a proper purpose for its admission. *Watkins*, 491 Mich at 491-492; *VanderVliet*, 444 Mich at 82-83. "Clearly, evidence is relevant when it affects the credibility of the victim and when it affects the credibility of witnesses who enhance the victim's credibility." *People v King*, 297 Mich App 465, 476-477; 824 NW2d 258 (2012).

Evidence to bolster the credibility of a complaining witness is improper only when accomplished through the improper character inference of propensity. In *Sabin (After Remand)*, 463 Mich at 69-70, which "precluded the introduction of evidence of sexual acts between the defendant and persons other than the complainant to bolster the complainant's credibility," our Supreme Court noted that "the reason for disallowing the admission of other-acts evidence under MRE 404(b) to bolster the complainant's credibility was that the resulting inference essentially involved propensity." *Watkins*, 491 Mich at 492 n 92. In this case, Bernadette Sugrim was not the complaining victim, and the other acts evidence did not bolster her credibility on the basis of defendant's propensity. Rather, the evidence provided the reason for her silence and why she broke it.[2] Where, as here, evidence relevant for a proper purpose might also support an improper propensity inference, the issue is whether the evidence should be excluded under the balancing test of MRE 403. *Mardlin*, 487 Mich at 615-616.

Additionally, presenting evidence of a possible motive for defendant's committing the crime was a proper purpose for other acts evidence. MRE 404(b)(1) specifically provides that "evidence of other crimes, wrongs, or acts," while "not admissible to prove the character of a

[2] Defendant essentially concedes this point by arguing in his brief on appeal that the other acts evidence "was offered to show motive on the part of the prosecution's critical witness, Defendant's wife, her motive in not previously coming forward."

person in order to show action in conformity therewith," may "be admissible for other purposes, such as proof of motive[.]" Thus, other acts evidence may be used to show a defendant's motive for committing a crime. *Watson*, 245 Mich App 572. "Although motive is not an essential element of the crime, evidence of motive in a prosecution for murder is always relevant." *People v Unger*, 278 Mich App 210, 223; 749 NW2d 272 (2008). Thus, the trial court correctly concluded that the prosecution offered the other acts evidence for proper purposes and that the evidence was relevant to facts in issue. *Knox*, 469 Mich at 509; *Steele*, 283 Mich App at 479. The issue then becomes whether the trial court abused its discretion when applying the balancing test of MRE 403.

MRE 403 provides that "relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." In applying MRE 403, "unfair prejudice" does not mean simply damaging because all relevant evidence presented by one party may be considered damaging to the opponent's case. *People v Schaw*, 288 Mich App 231, 237; 791 NW2d 743 (2010). Rather, evidence is unfairly prejudicial when is marginally probative and might be given undue or preemptive weight by the jury. *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). This determination is best made by the trial court "after its contemporaneous assessment of the presentation, credibility, and effect of testimony." *VanderVliet*, 444 Mich at 81. The trial court should balance several factors, including (1) the time necessary to present the evidence, (2) whether the evidence is cumulative, (3) how directly the evidence tends to prove the fact for which it is offered, (4) how necessary is the fact sought to be proved to the proponent's case, (5) the potential for confusing or misleading the jury, and (6) whether the fact can be proved in another manner without potentially harmful collateral effects. *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008).

With respect to evidence of defendant's history of emotional and physical abuse of his wife and his children, the trial court exercised its discretion under MRE 403 by determining that the danger of unfair prejudice was not great because "defendant's abusive and controlling personality" did not "tend to show a propensity to commit murder." Also, the trial court determined that the probative value of the evidence would not be substantially outweighed by the danger of unfair prejudice, especially because it intended to give appropriate limiting instructions. We find that the trial court stated principled reasons for the exercise of discretion to admit the other acts evidence and therefore the court did not abuse its discretion. Furthermore, the *Blackston* factors also weigh in favor of the trial court's decision: (1) the evidence did not consume a disproportionate amount time to present; (2) the trial court precluded cumulative presentations; (3) the evidence was directly probative of the facts for which it was offered; (4) which was an important but not indispensible part of the prosecutor's case; (5) there was little chance of the jury's being confused or mislead in light of the trial court's repeated instructions regarding both the proper use purpose and the improper use of the evidence, and (6) there was no other ways with less harmful collateral effects to prove the facts for which it was offered. In light of these factors and because jurors are presumed to follow the trial court's instructions, *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998), we conclude that the trial court's decision to admit evidence of defendant's history of emotional and physical abuse of his wife and his children was within the range of principled outcomes. *Watkins*, 491 Mich at 467.

A much closer question is presented by the trial court's decision to permit Bernadette Sugrim to testify that defendant told her around the time they were married in the mid-1990's that he committed a murder in New York. The potential for the evidence to be given undue or preemptive weight by the jury, *Crawford*, 458 Mich at 398, was the greatest among the other acts evidence that was admitted because it related to an offense similar to the charged offense. On the other hand, the probative value of the evidence with respect to the proper purposes the prosecutor sought to prove was also great. Also, the trial court sought to limit any confusion by precluding any collateral proof regarding the details of the alleged murder, limiting proof of it to Bernadette's testimony of what defendant told her. Given the trial court's repeated instructions regarding both the proper use and the improper use of the evidence and that jurors are presumed to follow their instructions, *Graves*, 458 Mich at 486, we conclude that the trial court's decision to admit evidence of what defendant confided in Bernadette regarding another murder was within the range of principled outcomes. *Watkins*, 491 Mich at 467. This conclusion is reinforced by the principle that ordinarily the trial court's decision regarding a close evidentiary question cannot be an abuse of discretion. See *Blackston*, 481 Mich at 467.

Finally, defendant argues that the trial court abused its discretion admitting evidence that defendant improperly used his deceased brother's identity.[3] The prosecutor correctly argues that the trial court considered this evidentiary issue at a hearing on February 1, 2012, and that defendant has not procured a transcript as required by MCR 7.210(B)(1)(a). Therefore, defendant has waived appellate review of this claim because this Court "is unable to review the party's objection and the trial court's reason for the decision." *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995); see also *People v Dunigan*, 299 Mich App 579, 587; 831 NW2d 243 (2013). Because defendant has not provided the transcript of the parties' arguments and the trial court's reasoning on this sub-issue, he has abandoned the argument.

Moreover, harmless error analysis applies to the evidence of false identification, as well as to all of the other acts evidence, because even without it, the evidence of defendant's guilt was overwhelming. Any error in the admission of the other acts evidence does not warrant reversal because the properly admitted evidence overwhelmingly established defendant's guilt so that it does not affirmatively appear more probable than not that admitting the false identity evidence was outcome determinative. *Lukity*, 460 Mich at 495-496. The victim's best friend and coworker, Brandy Davis, although giving conflicting statements in the past, testified that defendant was a regular customer, and on the evening of the victim's death, the victim and Davis were with defendant. After she performed services for defendant he drove the victim and Davis to a location. At some point, defendant stopped his van. The victim and defendant got out; Davis could hear words being exchanged while defendant and the victim began fighting. Davis testified she saw the victim on the ground fighting with defendant; he was on top of the victim hitting her. She never saw the victim alive again.

[3] The prosecutor notes that evidence of flight and preparation to flee, including use of false identification, is relevant in a criminal case as circumstantial evidence of "consciousness of guilt." See *Unger*, 278 Mich App at 226; *People v McGhee*, 268 Mich App 600, 613; 709 NW2d 595 (2005).

A witness saw a van matching the description of a van registered to defendant's wife leaving the scene of where the victim's body was found on September 14, 2003, a location about one mile from where defendant and his family lived at the time. Several witnesses testified that they no longer saw the Sugrim's van after the victim's murder and that defendant was not around for about two months in the fall of 2003. Two witnesses testified that for six to eight weeks in the fall of 2003, defendant stayed with them in New York. A former New York police officer testified that defendant reported his wife's van stolen in that state during the same time period. Defendant would later tell the police investigating this case that he did not know or remember what happened to the van; defendant also denied knowing the victim.

A former neighbor of defendant testified he that would practice kickboxing with defendant in defendant's backyard. One day at defendant's home, defendant introduced him to the victim. This witness was familiar with defendant's van and testified that one day it was simply gone. Before the van disappeared, this neighbor saw what he believed to be blood in the van and also saw defendant cleaning the inside of the van with bleach. A defendant's exculpatory statements that are shown to be false are circumstantial evidence of guilt, especially when the false statements are intended to mislead or avoid suspicion. *People v Seals*, 285 Mich App 1, 5; 776 NW2d 314 (2009).

Defendant's wife, Bernadette, testified that he told her he stabbed the victim in the van that was registered in her name and that he had bleached the van out. Defendant also stated that a neighbor who worked in a junk yard had crushed the van for him. Bernadette testified that when defendant told her about the murder, he had deep, long scratches down his chest. Anthony Stoops also recalled seeing around the time of the victim's murder that defendant's chest had deep, fresh scratches—"like [made by] a three-prong garden rake for doing flowers."

Bernadette also testified that defendant told her he had stripped the victim's body and put it by an old factory; defendant showed her the location, and she in turned showed the police. Further, defendant told Bernadette he had burned the victim's clothing and other evidence in a burn pit in their back yard. The police later recovered remnants of clothing consistent with what the victim was wearing by excavating where the burn pit was located.

After defendant was arrested, he contacted Rex Hall, a reporter for the Kalamazoo Gazette, indicating that he wanted to share his story. Defendant told Hall that he was with the victim in his van on the evening of her death looking for drugs to buy. According to defendant, he and the victim were joined by a man known only as "D" or "T" who, according to defendant, pulled a gun on him. The victim then got out of the van and started walking away; the man got out of defendant's van to follow the victim. Defendant stated he did not see the victim again.

Thus, aside from the other acts evidence, there was overwhelming direct and circumstantial evidence establishing defendant's guilt beyond a reasonable doubt. In light of this untainted evidence, it is not reasonably probable that without the disputed evidence the trial outcome would have been different. Consequently, even if this Court determined that the trial court abused its discretion by admitting the other acts evidence, the error would not warrant reversal. *Lukity*, 460 Mich at 495-496.

II. PROSECUTORIAL MISCONDUCT

A. PRESERVATION

To preserve a claim of prosecutorial misconduct, a defendant must contemporaneously object and request a curative instruction. *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). A contemporaneous objection is required for appellate preservation because it permits the trial court, if it sustains the objection, to give a curative instruction. *People v Abraham*, 256 Mich App 265, 274; 662 NW2d 836 (2003). "Curative instructions are sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements, and jurors are presumed to follow their instructions." *Unger*, 278 Mich App at 235 (citations omitted).

In this case, defendant generally failed to preserve his claims that the prosecutor denied him a fair trial through improper arguments. Defendant preserved an objection to the prosecutor's comments regarding defendant's statements about "evil" during opening statement. And, defendant preserved an objection to the prosecutor's commenting that defense counsel must not believe his client. All of defendant's remaining claims are unpreserved.

B. STANDARD OF REVIEW

A claim of prosecutorial misconduct presents the constitutional question whether the defendant was denied his right to a fair and impartial trial. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008); *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). Appellate review is therefore de novo. *Id.* The alleged improper remarks must be evaluated in context and in light of the individual facts and circumstances of the case at hand, including each party's theory of the case, the opponent's arguments, and the evidence. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004); *Ackerman*, 257 Mich App at 452.

If a claim of misconduct is unpreserved, appellate review is limited to ascertaining whether plain error affected substantial rights. *Brown*, 279 Mich App at 134. Under this standard of review, reversal is warranted only when a plain error results in the conviction of an innocent person, or seriously affected the fairness, integrity, or public reputation of the proceedings. *Unger*, 278 Mich App at 235.

C. ANALYSIS

First, we conclude that the trial court properly denied defendant's objection to the prosecutor's comments in opening statement regarding defendant's statements about "evil" because the comments were supported by evidence and consistent with the prosecutor's theory of the case. Claims of prosecutorial misconduct must be reviewed in context to determine whether the defendant was denied a fair trial and this test applies to both opening statements and closing arguments. *People v Meissner*, 294 Mich App 438, 455-456; 812 NW2d 37 (2011); *People v Moss*, 70 Mich App 18, 32 (M. J. Kelly, J., *concurring in part, dissenting in part*); 245 NW2d 389 (1976). The purpose of an opening statement is for a party's attorney to "make a full and

fair statement of his case and the facts he intends to prove." MCR 2.507(A)[4]; see also *People v Stimage*, 202 Mich App 28, 31; 507 NW2d 778 (1993). Thus, no error occurred because a prosecutor may state what evidence he expects to present and how it relates to his theory of the case. *Meissner*, 294 Mich App at 456; *Thomas*, 260 Mich App at 456 ("a prosecutor is given great latitude to argue the evidence and all inferences relating to his theory of the case").

Defendant's second preserved claim of misconduct is that the prosecutor denigrated defense counsel during rebuttal argument when responding to defense counsel's argument that the only thing not disputed in the case was that the victim was found dead. The prosecutor, noting that defendant in a letter admitted he "torched the van," queried whether defense counsel believed his client. Defense counsel immediately objected, which the trial court sustained. The prosecutor then told the jury that he misspoke and intended to ask whether defense counsel believed the evidence. Soon after this exchange, the trial court stopped the rebuttal argument because of time constraints. Before beginning its final instructions to the jury, the court gave a curative instruction regarding the closing arguments that had just finished.

> During the closing argument of both parties, there was a lot of comment -- And I want to make sure that you put this in the perspective. Now who the prosecutors personally believe, who defense counsel personally believes, that's irrelevant.
>
> As I'm going to explain to you -- as I have explained to you -- you will decide which witnesses you believe, how much of what they said you believe, and how much weight to give it.
>
> It's improper for lawyers in a case to imply in argument that they have some special knowledge of a witness or a witness's credibility. And so, if you got that impression from either side, that needs to be dispelled.
>
> You are the judges of what the facts are in this case; and, again, you decide who you believe and how much of what they say you believe.

A prosecutor may not personally attack defense counsel, *People v McLaughlin*, 258 Mich App 635, 646; 672 NW2d 860 (2003), or suggest that defense counsel is intentionally attempting to mislead the jury, *Unger*, 278 Mich App at 236. But here, to the extent the prosecutor's comments could be interpreted as going beyond the bounds of propriety, it is patent that defendant suffered no unfair prejudice as a result. The trial court's immediate and strong instruction cured any prejudicial effect because jurors are presumed to follow the court's instructions. *Id*. at 235; *Graves*, 458 Mich at 486. Moreover, in the main body of its final instructions, the court told the jury that its verdict must be based "only on the evidence and my instructions on the law" and that "lawyers' statements and arguments are not evidence." Thus, the trial court's general instructions also cured any prejudicial effect from the prosecutor's

[4] MCR 2.507(A) is applicable to criminal trials under MCR 6.001(D). MCR 6.414(C), repealed June 29, 2011, 489 Mich cxciii, provided a similar standard.

improper comment. *Meissner*, 294 Mich App at 458; *Thomas*, 260 Mich App at 456 (holding that any prejudice from a prosecutor's comments was cured by the court instructing the jury it had to decide the case on the evidence and that the remarks of counsel were not evidence).

With respect to defendant's remaining unpreserved claims of prosecutorial misconduct, either plain error affecting defendant's substantial rights did not occur, or reversal is not warranted because the claimed misconduct did not result in the conviction of an innocent person, or seriously affected the fairness, integrity, or public reputation of the trial. *Unger*, 278 Mich App at 235. In short, defendant has not established that plain error occurred that resulted in a miscarriage of justice. *Brown*, 279 Mich App at 134.

Defendant argues that the prosecutor improperly argued the other acts evidence to bolster the credibility of his primary witness, Bernadette Sugrim, and that the prosecutor improperly suggested reasons why the jury should find her testimony credible. The prosecutor's arguments were proper. "A prosecutor may argue the evidence and all reasonable inferences arising from the evidence." *Ackerman*, 257 Mich App at 452. This includes "arguments regarding credibility . . . when based on the evidence, even if couched in terms of belief or disbelief." *Unger*, 278 Mich App at 240. Other acts evidence may be used to bolster the credibility of a witness provided it is not accomplished on the basis of an improper character to propensity inference, i.e., that the witness should be believed because the defendant's character makes it more likely he committed the offense. See *Watkins*, 491 Mich at 492 n 92.

Defendant also argues that the prosecutor personally vouched for the credibility of Bernadette Sugrim. "[A] prosecutor may not vouch for the credibility of his witnesses by implying that he has some special knowledge of their truthfulness." *Thomas*, 260 Mich App at 455. In the transcript that defendant cites, the prosecutor does state that Bernadette was "a believable, credible, truthful witness" and that she "gave truthful answers." But the prosecutor did not imply special knowledge was the basis for these assertions. Rather, read in context, the prosecutor argued that the witness was credible based on matters properly before the jury. The statement that Bernadette was credible was preceded by the prosecutor's stating that this was "clear by her demeanor; it's clear by what she said, how she said it, her consistency from day one when she disclosed" and the statement that "she gave truthful answers" was followed by telling the jury that they "had an ample opportunity to see for yourself" whether "she's lying." Arguments regarding credibility are proper "when based on the evidence," or other matters properly before the jury, "even if couched in terms of belief or disbelief." *Unger*, 278 Mich App at 240.

Defendant next argues that the prosecutor denigrated him by saying defendant was stupid and also improperly interjected religion by commenting on defendant's statements that he was God's favorite son. The record does not support defendant's claim of denigration; the prosecutor repeatedly referred to defendant as intelligent but that defendant had made some stupid mistakes. Furthermore, in his opening statement the prosecutor referred to defendant as charming, articulate, and extremely bright. In context, therefore, the prosecutor's remarks did not improperly denigrate defendant. And while it is improper for the prosecutor to interject issues broader than guilt or innocence, the prosecutor's argument regarding defendant's own statements about being God's favorite son were within the wide latitude accorded prosecutors to argue the evidence and all inferences relating to their theory of the case. *Thomas*, 260 Mich App at 455-

456. The prosecutor did, however, improperly express his personal opinion by asking the jury to trust him and that God had nothing to do with what was inside defendant. But this comment was isolated, and in the context of the entire trial, was "too insignificant to deprive defendant of a fair trial." *McLaughlin*, 258 Mich App at 664; see also *People v Bahoda*, 448 Mich 261, 288; 531 NW2d 659 (1995). Moreover, the trial court's instructions cured any prejudice to defendant. *Meissner*, 294 Mich App at 458; *Unger*, 278 Mich App at 235, 237.

Defendant also argues that the prosecutor improperly appealed to the jury's civic duty to convict by stating that the victim's family had been waiting years for justice. "A prosecutor may not advocate that jurors convict a defendant as part of their civic duty." *Ackerman*, 257 Mich App at 452. Read in context of the prosecutor's entire argument—that the evidence established defendant's guilt beyond a reasonable doubt—the prosecutor's comment was not a call to convict on the basis of civic duty. Rather, in light of the fact that the victim was killed nearly ten years before the trial and that the remarks came at the end of the prosecutor's closing argument, the comments were simply a call for delayed justice based on the evidence presented at the trial. See *People v Matuszak*, 263 Mich App 42, 56; 687 NW2d 342 (2004). It is not improper for a prosecutor to use emotional language during closing argument. *Ackerman*, 257 Mich App at 454. Finally, to the extent the remark was improper the trial court's instructions cured any prejudice. *Meissner*, 294 Mich App at 458; *Unger*, 278 Mich App at 235, 237.

Next, defendant claims that the prosecutor argued facts not in evidence about the New York murder. But evidence regarding the New York murder was admitted for limited purposes under MRE 404(b) through Bernadette Sugrim's testimony and from other statements defendant made. A prosecutor may argue the evidence and all reasonable inferences from the evidence as it relates to his theory of the case. *Bahoda*, 448 Mich at 282; *Thomas*, 260 Mich App at 456.

Finally, defendant argues that if the prosecutor's individual comments standing alone were insufficient to require reversal, the cumulative effect denied defendant a fair trial. "The cumulative effect of several minor errors may warrant reversal even where individual errors in the case would not." *McLaughlin*, 258 Mich App at 664. But only actual errors may be aggregated to determine if a cumulative effect warrants reversal. *Bahoda*, 448 Mich at 292 n 64. Here, one identified error was cured by a sustained objection and immediate curative instruction alleviating any unfair prejudice. *Graves*, 458 Mich at 486; *Unger*, 278 Mich App at 235. Another error was too insignificant to cause unfair prejudice and also was cured by jury instructions. Thus, even considered collectively, the alleged instances of misconduct do not establish seriously prejudicial error that denied defendant a fair trial. *Ackerman*, 257 Mich App at 454. In sum, the cumulative effect of the alleged misconduct does not undermine confidence of the verdict so as to warrant a new trial. *Brown*, 279 Mich App at 146. Consequently, defendant's claims of prosecutorial misconduct do not warrant reversal.

III. MOTION FOR MISTRIAL

A. STANDARD OF REVIEW

The trial court's decision on a motion for mistrial is reviewed for an abuse of discretion. *People v Waclawski*, 286 Mich App 634, 708; 780 NW2d 321 (2009). The trial court abuses its discretion when its decision is outside the range of principled outcomes. *Schaw*, 288 Mich App

at 236. A mistrial should be granted only when an error or irregularity in the proceedings impairs the defendant's ability to get a fair trial. *Id*.; *Waclawski*, 286 Mich App at 708.

B. ANALYSIS

After the parties' closing arguments and the trial court's final instructions, defense counsel moved for a mistrial arguing that the prosecutor's closing arguments were improper in referring to religion, discussing defendant as being evil, informing the jury the police do not bring charges unless they are accurate,[5] bolstering the credibility of its witnesses, and attacking defendant's credibility and his counsel's belief in him. The trial court denied the motion, rejecting defendant's claims for many of the same reasons that we have determined provide no basis for reversal. Consequently, the trial court did not abuse its discretion by denying defendant's motion for a mistrial because the claimed instances of prosecutorial misconduct, as found by the trial court and as discussed in Part II, *supra*, did not deny defendant a fair trial. *Waclawski*, 286 Mich App at 708; *Schaw*, 288 Mich App at 236.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

[5] This claim mischaracterizes the record. The prosecutor asked the Captain of the detective bureau of the Kalamazoo Department of Public Safety, Jim Mallery, if other suspects in the murder of the victim were "cleared through further investigative means?" Captain Mallery answered: "Yes, every one of them . . . was cleared."

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 19, 2013
v	No. 309790 Kalamazoo Circuit Court
BESHAM BRIAN SUGRIM, Defendant-Appellant.	LC No. 2011-001118-FC

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

BECKERING, J. (*concurring*).

I concur in result only.

/s/ Jane M. Beckering