STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 3, 2002
v DAVID MICHAEL NEELIS, Defendant-Appellant.	No. 229166 Jackson Circuit Court LC No. 00-001361-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v RYAN ANTHONY PALMER, Defendant-Appellant.	No. 229263 Jackson Circuit Court LC No. 00-001362-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	
v EARNEST JAMES EISON, JR., a/k/a GEORGE EISON, Defendant-Appellant.	No. 229647 Jackson Circuit Court LC No. 00-001359-FC

Before: Whitbeck, C.J., and Hood and Kelly, JJ.

PER CURIAM.

In these consolidated appeals, defendants appeal as of right their jury convictions of armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.157a, and

possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant Neelis was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 12 ½ to 30 years in prison for each of the armed robbery and conspiracy convictions, and a consecutive two-year term for the felony-firearm conviction. Defendant Palmer was sentenced as a second habitual offender, MCL 769.10, to concurrent prison terms of ten to twenty years in prison for each of the armed robbery and conspiracy convictions, and a consecutive two-year term for the felony-firearm conviction. Defendant Eison was sentenced as a second habitual offender, MCL 769.10, to concurrent prison terms of 10 ½ to 20 years in prison for each of the armed robbery and conspiracy convictions, and a consecutive two-year term for the felony-firearm conviction. We affirm.

I. Basic Facts and Procedural History

This case arose from a robbery of Maiden's Trading Post. Three men wearing black clothes and ski masks entered the store at approximately 9:00 a.m. One of the men pointed a pistol at the storeowner. During the robbery, the storeowner received a black eye, and his grandsons were bound with duct tape. Approximately $11,000 was stolen from the store. The three men escaped in a black Pontiac Grand Am, later identified as belonging to Annette Bennett, with whom defendant Eison was living. The driver of the "get away" vehicle was later identified as Chad Farquhar, also residing with defendant Eison and Bennett.

Initially, both Bennet and Farquhar were charged with the defendants. However, Farquhar made a full confession after arrest and Bennett pleaded guilty to a reduced charge of accessory after the fact[1] before defendants' trial began. Both testified against defendants at the preliminary examination.

Before trial, the prosecution moved to adjourn Farquhar's trial, in effect severing Farquhar's trial from that of the remaining three defendants. Defendants immediately requested all information regarding whether a deal had been offered to Farquhar in exchange for his testimony, or whether Farquhar had a reasonable expectation of receiving such a deal or special treatment. The prosecutor responded:

> We haven't made any deal with [Farquhar], Judge. I think what the Court will find out is Mr. Farquhar confessed. Once he confessed, he was screwed basically and - - and when he confessed he implicated all these other individuals. And so he's - - he's in a position that he really has no position, and we haven't offered him any consideration. I suspect and he's testified at preliminary examination. He's hoping not to go away for natural life. And those were asked by brother counsel at preliminary examination. That's probably his expectation. I can't speak to what's on his mind, but from our office perspective, we have not offered anything.

In opening statement, the prosecutor informed the jury that Farquhar agreed to testify and that, "[h]e is not receiving anything in exchange for his testimony." During direct examination,

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[1] *People v Dumas*, 454 Mich 390, 404; 563 NW2d 31 (1997).

Farquhar testified that no promises were made by the police or prosecutor in exchange for his testimony. During cross-examination, Farquhar indicated his hope that he would avoid a life sentence and that any sentence for his participation in the armed robbery would run concurrent with his pending federal sentence. He also testified regarding all defendants' participation in the planning and execution of the robbery.

The prosecution also offered the testimony of Leonard Day, defendant Palmer's cellmate while awaiting trial. Defendant Palmer told Day that another prisoner had named defendant Palmer as a participant in an armed robbery. Defendant Palmer complained to Day that if the prisoner had not opened his mouth, "we" would have gotten away with it. Defendant Palmer also told Day that the prisoner only served as a lookout during the robbery. Defendant Palmer indicated that he and three others robbed a man while wearing masks and that drove a black Pontiac belonging to one robber's girlfriend. Defendant Palmer also stated that he threw the gun in a river and burned the masks. Palmer also told Day that they got "something like" $10,000 in the robbery.

After defendants were convicted, Farquhar entered a plea of guilty to the reduced charge of attempted armed robbery,[2] substantially reducing his potential life sentence for armed robbery. Farquhar ultimately received a sentence of two to five years' imprisonment which ran concurrent to a federal prison sentence. Defendants moved for a new trial or evidentiary hearing, arguing that the prosecutor failed to disclose all facts surrounding Farquhar's plea and sentence. The trial court denied defendants' motions finding that defendants were on a "fishing expedition."

II. Motion for New Trial or an Evidentiary Hearing

Defendants first argue that the trial court erred in denying their motion for a new trial or an evidentiary hearing because the prosecutor misrepresented that Farquhar was not promised anything in exchange for his testimony. We disagree. The trial court's decision to deny a motion for a new trial is reviewed for an abuse of discretion. *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998).

Defendants argued before the trial court that Farquhar must have had a deal or promise of leniency before testifying. However, defendants did not present any facts to support their request for an evidentiary hearing or new trial, but instead relied upon speculation and inference. Indeed, we note that defendant Neelis conceded, without objection from defendants Eison or Palmer, that transcripts from Farquhar's case did not specifically support their position. Neelis argued that Farquhar *possibly* received consideration for his testimony and that this fact was not disclosed to the jury. Defendants argued that Farquhar's transcripts *suggested* that there were negotiations for a deal before Farquhar testified. However, such a suggestion is contained in only one transcript from a hearing before the defendants' trial. Defendant Neelis later conceded that nothing in the transcripts specifically supported defendants' position that Farquhar received a two to five year sentence in exchange for his testimony. Defendants nevertheless argued that it appeared that there *may* have been negotiations or discussions before trial and that an evidentiary hearing was warranted.

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[2] MCL 750.92.

Our Supreme Court addressed a substantially similar situation in *People v Atkins*, 397 Mich 163; 243 NW2d 292 (1976). As in the case at bar, the *Atkins* defendant produced no evidence to support his claim that an agreement for a certain witness' testimony existed. *Id.* at 172. The defendant argued that it would be naïve to believe that there was no actual or incipient deal, and it was obvious that even if there was no actual deal, the witness knew there would be one after he testified. *Id.* at 172-173. Although the witness' charges were dismissed after he testified, the prosecutor argued there was no agreement at the time of the defendant's trial. *Id.* at 173. The Court observed:

> The well of informer cooperation would soon run dry if law enforcement consistently adhered to a policy of no consideration. Furthermore, we would not be so paternalistic as to believe that jurors are not well aware of these facts of life.
>
> Where an accomplice or co-conspirator has been granted immunity or other leniency to secure his testimony, it is incumbent upon the prosecutor and the trial judge, if the fact comes to the court's attention, to disclose such fact to the jury upon request of defense counsel. The same requirement of disclosure should also be applicable if reasonable expectations, as opposed to promises, of leniency or other rewards for testifying resulted from contact with the prosecutor. It has been held to be a denial of due process for a prosecutor not to correct the testimony of such a witness against the defendant, where the witness testifies that he has been promised no consideration for his testimony and the prosecutor knows this statement to be false. In regard to this duty to disclose, the prosecutor's office has been treated as an entity, and the promise of one of its attorneys, even if unknown to the assistant prosecutor trying the case, has been attributed to the state.
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> However, it is one thing to require disclosure of facts (immunity or leniency) which the jury should weigh in assessing a witness's credibility. It is quite another to require "disclosure" of further possibilities for the jury's speculation. Indeed, if a prosecutor were required to volunteer that, although there was no agreement, he intended to recommend some sort of consideration for a witness because the witness was testifying in this and other cases or had corrected his past misdeeds, could this not be viewed as vouching for that witness's credibility? The focus of required disclosure is not on factors which may motivate a prosecutor in dealing subsequently with a witness, but rather on facts which may motivate the witness in giving certain testimony. *Of the latter, this jury was made well aware by means of thorough and probing cross-examination by defense counsel.* [*Id.* at 173-174 (emphasis added).]

Here, while both Farquhar and his counsel expected to receive some kind of consideration, no such offer had been made at the time of trial. We find the prosecutor was not required to disclose mere future possibilities. The record also discloses Farquhar's motivation for testifying was fully disclosed before the jury through cross-examination. The jury heard Farquhar testify that he did not expect to receive a life sentence and that he hoped for both leniency and a sentence that would run concurrent with his federal prison term. No false testimony stood uncorrected and no false representations were made. Therefore, following

Atkins, we find no abuse of discretion in the trial court's denial of defendants' motion for a new trial or evidentiary hearing.[3]

III. Severance and Right of Confrontation

Defendant Neelis argues that the trial court abused its discretion when it failed to grant his motion to sever his trial from that of defendants Palmer and Eison.[4] He further contends that trying him jointly violated his constitutional right of confrontation. We disagree. A trial court's decision on a motion for separate trials is reviewed for an abuse of discretion. *People v Hana*, 447 Mich 325, 346, 355; 524 NW2d 682 (1994). Constitutional issues are reviewed de novo. *People v Brown*, 239 Mich App 735, 750; 610 NW2d 234 (2000).

A. Joint Trial

On the first day of trial, defendant Neelis moved to sever his case from that of his codefendants, claiming that some of the evidence presented "a *Bruton*[5] problem." Defendant Neelis renewed this motion on the second day of trial. The trial court denied both motions. We find no abuse of discretion.

"There is a strong policy favoring joint trials in the interest of justice, judicial economy, and administration, and a defendant does not have an absolute right to a separate trial." *People v Etheridge*, 196 Mich App 43, 52; 492 NW2d 490 (1992). To overcome this "strong public policy," severing trials is only required, under MCR 6.121(C),

> when a defendant provides the court with a supporting affidavit, or makes an offer of proof, that clearly, affirmatively, and fully demonstrates that his substantial rights will be prejudiced and that severance is the necessary means of rectifying the potential prejudice. The failure to make this showing in the trial court, absent any significant indication on appeal that the requisite prejudice in fact occurred at trial, will preclude reversal of a joinder decision. [*Hana, supra* at 346-347 (footnotes omitted).]

In this case, Defendant Neelis failed to make the requisite showing that severance was necessary. While defendant Neelis made vague arguments that his rights would be prejudiced, he failed to provide a supporting affidavit or make an offer of proof that clearly, affirmatively,

[3] We also find no merit to defendant Neelis' separate argument that the prosecutor's decision to delay a trial of Farquhar's case until after defendants' trial was improperly designed to gain an unfair tactical advantage. However, we note that the cases against Farquhar and the defendants were all resolved within a short time of one another and were all sentenced within a year. Defendant Neelis fails to otherwise explain or rationalize his position. An appellant may not leave it to this Court to discover and rationalize the basis for his claim. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

[4] Defendant Palmer also attempts to raise this issue on appeal. However, the issue is not contained in the Statement of Questions presented. Furthermore, defendant Palmer never requested severance. *People v Miller*, 238 Mich App 168, 172; 608 NW2d 791 (1999).

[5] *Bruton v United States*, 391 US 123; 88 S Ct 1620; 20 L Ed 2d 476 (1968).

and fully demonstrated that his substantial rights would be prejudiced at trial if severance was not granted. *Hana, supra* at 345.

B. Right of Confrontation

Defendant Neelis also argues that Farquhar and Day's testimony about defendant Palmer's out-of-court statements severely prejudiced his case and denied him his right of confrontation. Without explaining or rationalizing his position, defendant Neelis simply argues, "a separate trial was mandated because Mr. Palmer's statements to Mr. Day and Mr. Farquhar . . . would have been excluded at Mr. Neelis' trial . . . if he were tried alone."[6] A defendant may not simply announce his position and leave it to this Court to discover and rationalize the basis for his claims. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Thus, the issue is not properly presented.

In any event, the material question is not whether the evidence at issue would have been admissible in defendant Neelis' separate trial, but whether the evidence prejudiced defendant Neelis' case in the joint trial. Clearly, the evidence was damaging to defendant Palmer. See *People v Beasley*, 239 Mich App 548; 609 NW2d 581 (2002). However, we find no significant indication on appeal that the requisite prejudice occurred at trial. *Hana, supra.* The evidence about which defendant Neelis complains was not used as substantive evidence against him, did not directly incriminate him, and was accompanied by instructions to the jury that it should not be considered against him. *People v Perez-DeLeon*, 224 Mich App 43, 60; 568 NW2d 324 (1997). We acknowledge that the cautionary instructions to the jury could have been clearer. Nevertheless, when we consider the testimony complained of along with the cautionary instructions, we conclude there was not a substantial risk that the jury utilized the nontestifying codefendant's statements in assessing defendant Neelis' guilt. See *People v Frazier*, 446 Mich 539, 564-565; 521 NW2d 291 (1994). Therefore, we find that the trial court did not err in denying defendant Neelis' motion to sever his trial from that of defendants Palmer and Eison.

IV. Testimony of Annette Bennett

Defendants Neelis and Palmer argue that Bennett's testimony was the product of prosecutorial intimidation and, as such, denied them due process and a fair trial. Defendants Neelis and Palmer also argue that the prosecutor improperly called Bennett as a witness only to impeach her with her preliminary examination testimony. We disagree. Because neither defendant Neelis nor defendant Palmer objected to Bennett's testimony on either ground before the trial court, these issues are not preserved. We review this unpreserved issue for plain error affecting defendants' substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

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[6] In his brief on appeal, defendant Neelis also argues that admission of defendant Eison's statements to Bennett was improper and implicated his right of confrontation. Because defendant Eison testified and was subject to cross-examination, defendant Neelis' appellate argument has no merit. *Hana, supra* at 361. Defendant Neelis acknowledges this in his reply brief on appeal.

We note at the outset, this Court will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Terry,* 224 Mich App 447, 452; 569 NW2d 641 (1997). The alleged threats and intimidation against Bennett were fully explored before the jury, which determined her credibility. Bennett's trial testimony was not damaging to defendants Neelis or Palmer. Bennett recanted her prior testimony and indicated that defendant Neelis was not in her house the night before or the morning of the robbery. While she testified that defendant Eison, defendant Palmer, and Farquhar were there, she did not implicate defendant Palmer in the robbery. Further, Bennett testified that she met defendant Neelis once a couple of years before the robbery and that she never really knew him. There was no plain error requiring reversal. *Carines, supra;* See *People v Stacy,* 193 Mich App 19, 25-30; 484 NW2d 675 (1992).

In regard to defendants' argument that the prosecutor improperly called Bennett as a witness only to impeach her with her preliminary examination testimony, we note that, pursuant to MRE 607, a prosecutor may impeach his or her own witnesses with evidence of prior inconsistent statements even if the statements inculpate the defendant. *People v Kilbourn,* 454 Mich 677, 682-684; 563 NW2d 669 (1997). Here, the record does not support a finding that the prosecutor called Bennett solely to impeach her with her prior inconsistent testimony. Bennett testified about several relevant matters, including that she owned the car identified as being in the vicinity of the Jay Hawk Junction near the time of the robbery, that she heard conversations about a robbery and a weapon, and that she was later involved in the changing of the tires on her automobile. This occurred one day after the police informed her that her car may be connected to the robbery. This testimony was important to the prosecutor's case and Bennett's credibility was clearly at issue. Thus, the prosecutor properly impeached her with her prior preliminary examination testimony, which was inconsistent with her testimony at trial.

Within his argument, defendant Neelis also complains that the prosecutor improperly refreshed Bennett's memory on two occasions and that he objected to this improper procedure. This issue is not raised in defendant Neelis' statement of the questions presented and, therefore, is not properly presented for appeal. *People v Miller,* 238 Mich App 168, 172; 604 NW2d 781 (1999).

Defendant Eison also argues that he was denied a fair trial because double hearsay was improperly admitted for the purpose of impeaching Bennett on a collateral matter. We disagree. We review this unpreserved issue for plain error. *Carines, supra*.

As discussed above, in *Kilbourn, supra* at 677, the Court addressed when a witness' prior inconsistent statements are admissible for impeachment purposes. The exception is that a prosecutor cannot use a statement that inculpates the defendant under the guise of impeachment when there is no other testimony from the witness for which his credibility is relevant. *Id.*

> The rule set forth in *People v Stanaway* [446 Mich 643; 521 NW2d 557 (1994)] is that the impeachment should be disallowed when (1) the substance of the statement purportedly used to impeach the credibility of the witness is relevant to the central issue of the case, and (2) there is no other testimony from the witness for which his credibility was relevant to the case. [*Kilbourn, supra* at 683-684.]

In this case, Bennett's statements to the police related to the central issues before the jury, specifically, whether defendant Eison was involved in the crime. However, Bennett testified about numerous events directly related to the crime, including why the tires were changed on the automobile and who was at her home on the morning of the robbery. Her credibility was at issue. The prosecutor did not improperly impeach Bennett with her prior statements to the police. *Kilbourn, supra* at 682-684.

Defendant Eison's additional argument that the impeachment involved a collateral matter is not only unpreserved, but is also improperly presented to this Court. Defendant Eison fails to discuss or explain his position that Bennett's credibility was a collateral matter. Thus, the issue is abandoned. *Kelly, supra*. In any event, we note that Bennett's credibility with respect to her testimony about the crimes at issue was not collateral. Collateral issues are questions "or issues which are not directly involved in the matter." Black's Law Dictionary (5th ed), p 237. The prosecutor sought to impeach Bennett's credibility on matters directly related to the case. "[C]redibility of a witness is an issue "of the utmost importance" in every case." *People v Mumford,* 183 Mich App 149, 152; 455 NW2d 51 (1990). Therefore, we find that defendant Eison was not denied a fair trial by the improper admission of hearsay.

The other issues raised within defendant Eison's argument are not set forth in the statement of the questions presented and, therefore, are not properly before this Court. *Miller, supra*.

V. Sufficiency of the Evidence

Defendant Palmer also argues there was insufficient evidence to support his convictions. We disagree. When reviewing the sufficiency of the evidence in a criminal case, the reviewing court "must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Hoffman,* 225 Mich App 103, 111; 570 NW2d 146 (1997), citing *People v Wolfe,* 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

In making his argument, defendant Palmer asks this Court to ignore Farquhar's "tainted" testimony and to discredit Day's testimony as well. We do not agree that Farquhar's testimony was tainted, or that we are permitted to weigh Day's credibility. Accordingly, we will consider this testimony when determining whether the evidence was sufficient. Viewing the evidence in a light most favorable to the prosecution, as we must, there was sufficient evidence presented to support defendant Palmer's convictions. Testimony from Farquhar and Day confirmed defendant Palmer's role in the conspiracy and robbery in detail, including identifying defendant Palmer as the gunman.

VI. Admission of the Weapon into Evidence

Defendants Palmer and Eison argue that the trial court improperly admitted the partial weapon found in the Grand River. We disagree. We review the trial court's admission of evidence for an abuse of discretion. *People v Aldrich,* 246 Mich App 101, 113; 631 NW2d 67 (2001). "An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no excuse for the ruling made." *Id.*

Farquhar testified that he showed the police where the weapon was thrown after the robbery. Police testimony established that the Grand River was dragged in the area identified by Farquhar. The frame of a weapon was found. Neither the police nor the prosecutor asked any of the witnesses to identify the recovered weapon. When the trial court admitted the recovered weapon, it cautioned the jury that there was no proof that it was the actual weapon used during the robbery.

Generally, all relevant evidence is admissible. MRE 402. MRE 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evidence may be excluded "if its probative value is 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." MRE 403.

While there were questions about the link between the weapon and the armed robbery, these questions did not affect the admissibility of the evidence, only the weight it should be given. The recovered weapon could have been the robbery weapon. The issue was for the jury to determine. The evidence was relevant to the elements of the crime and was admissible under MRE 401. See *People v Wilson*, 252 Mich 390; ___ NW2d ___ (2002); *People v Cumbus*, 143 Mich App 115, 119-120; 371 NW2d 493 (1985).

We further find that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. Not only were the deficiencies in the evidence pointed out by defense counsel, the evidence was not confusing or misleading. Any risk that the jury would give the weapon undue weight or misconstrue it was dispelled by the trial court's cautionary instruction. *Wilson, supra.* Decisions on close evidentiary questions ordinarily cannot constitute an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). Therefore, we find that the trial court did not abuse its discretion in admitting the weapon into evidence.

VII. Prosecutorial Misconduct

Defendant Palmer argues three instances of prosecutorial misconduct. Specifically, he argues that the prosecutor improperly (1) questioned Bennett about whether defendant Palmer was a prostitute, (2) inferred that a letter written to Farquhar was written at defendant Palmer's direction, and (3) vouched that disputed facts were, in fact, established facts. We disagree. Because defendant Palmer failed to object to any of the conduct about which he now complains, these issues are not preserved. *People v Avant*, 235 Mich App 499, 512; 597 NW2d 864 (1999). Accordingly, the issues are reviewed for plain error. *Aldrich, supra* at 110 citing *Carines, supra.*

With respect to the first two issues, defendant Palmer fails to explain or rationalize his positions that the prosecutor improperly questioned Bennett and that the prosecutor made improper inferences about the letter. Defendant Palmer also fails to cite any applicable authority to support his positions. Accordingly we deem these issues abandoned. *Kelly, supra; People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995).

With respect to the allegation that the prosecutor improperly vouched that disputed facts were, in fact, established facts, we find no plain error. When the prosecutor summarized the

evidence presented at trial, he repeatedly prefaced his recitation of the facts by stating, "We know that . . . ." Defendant Palmer challenges the prosecutor's use of that phrase by arguing that it constitutes improper vouching. However, in *People v Reed*, 449 Mich 375, 397-399; 535 NW2d 496 (1995), the Court determined that the prosecutor's use of the phrase "we know" was not improper vouching. Here, viewed in context, the phrase was not used to place the credibility of the prosecutor's office behind the case or to show that the prosecutor possessed extrajudicial information on which defendant should be convicted. Rather, it was used in the context of asserting that, based on the evidence and reasonable inferences, the evidence supported the propositions advanced. Therefore, we find no prosecutorial misconduct.

Defendant Eison argues that the prosecutor engaged in misconduct when he questioned defendant Eison's employment status. This unpreserved claim of misconduct is reviewed for plain error. *Aldrich, supra.*

> Evidence of poverty and unemployment to show motive is generally not admissible because its probative value is outweighed by unfair prejudice and discrimination toward a large segment of the population, and the risk is that the jurors will view defendant as a "bad man." [*People v Stanton*, 97 Mich App 453, 460; 296 NW2d 70 (1980) (citations omitted).]

However, this Court found that evidence of a defendant's unemployment did not require reversal where the references were few and "arguably relevant to show the source of the cash found on defendant's person." *Id.* In *People v Henderson*, 408 Mich 56, 62-63; 289 NW2d 376 (1980), the Court indicated that there is no rule that per se precludes evidence of a defendant's financial condition. The Court warned, however, that there is a need to avoid undue prejudice in individual cases and to prevent a two-tiered standard of justice, which would more heavily impact the poor. *Id.* at 65.

In this case, the prosecutor asked Bennett about defendant Eison's employment status in the context of questioning her about the source of the $110 that defendant Eison gave to her on the morning of the robbery. On cross-examination, the prosecutor asked defendant Eison's sister whether he worked. Later, the prosecutor asked defendant Eison, himself, whether he was employed. Defendant Eison indicated that he was not employed, but that he was waiting to get his license restored so that he could be reinstated at his former job. During closing argument, the prosecutor did not argue that defendant Eison had a financial motivation to commit the crime. The prosecutor used information about defendant's unemployment to argue the source of the money deposited by Bennett shortly after the robbery and to argue the source of the money used to purchase clothes and other items after the robbery.

Under the circumstances, the evidence was clearly relevant to the issue of defendant Eison's identity as a perpetrator. The evidence of defendant Eison's unemployment excluded employment as a possible source of the cash that he and Bennett had on the morning of the robbery. As such, its admission was not plain error.

VIII. Cumulative Error

Finally, defendant Eison argues that cumulative error denied him a fair trial. The cumulative effect of several minor errors may warrant reversal in some cases even where

individual errors in the case would not warrant reversal. *People v Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999). In order to reverse, the errors must be of consequence. *Id.* In this case, there are no errors of consequence that combined to deny defendant Eison a fair trial.

Affirmed.

/s/ William C. Whitbeck
/s/ Harold Hood
/s/ Kirsten Frank Kelly