STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KARL JON DAHLSTROM, II,

Defendant-Appellant.

UNPUBLISHED
December 1, 2005

No. 255875
Tuscola Circuit Court
LC No. 03-008859-FC

Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

Defendant appeals his jury trial convictions of one count of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(f) (causing personal injury to the victim and using force or coercion to accomplish sexual penetration), two counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(f) (causing personal injury to the victim and using force or coercion to accomplish sexual contact), and one count of telephone line cutting, MCL 750.540. Defendant was sentenced as a second habitual offender, MCL 769.10, to concurrent terms of twenty to sixty years in prison for the CSC I conviction, 15 to 22½ years in prison for each CSC II conviction, and two to three years in prison for the telephone line cutting conviction. We affirm.

I. Sufficiency of the Evidence

Defendant argues that the prosecutor presented insufficient evidence at trial to sustain his CSC I and CSC II convictions. We disagree. Appellate courts review challenges to the sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).[1]

[1] The reviewing court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Questions of credibility and intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Circumstantial evidence and the reasonable inferences that arise therefrom can constitute sufficient proof of the elements of a crime beyond a

(continued…)

A person has committed CSC I under MCL 750.520b(1)(f) if the person "(1) causes personal injury to the victim, (2) engages in sexual penetration with the victim, and (3) uses force or coercion to accomplish the sexual penetration." *People v Nickens*, 470 Mich 622, 629; 685 NW2d 657 (2004). MCL 750.520a(l) defines "personal injury" as "bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ." Here, the victim testified that defendant punched her in the head, choked her, held her down, ripped at her breasts, threatened to kill her, forced her legs apart, and digitally penetrated her. Both the neighbor from whom plaintiff asked for help after the attack and the Caro police officer who responded to the scene testified that following the attack the victim had red marks on her body. Further, the doctor who examined the victim testified that she had facial swelling, along with tenderness, bruising, and redness on other parts of her body. The victim also testified that, after the attack, she felt humiliated and ashamed and that she required counseling and psychiatric medications to help her stay calm and focused. Clearly, a rational trier of fact could find that the prosecutor proved the essential elements of CSC I beyond a reasonable doubt.

With regard to defendant's CSC II convictions, the statute, MCL 750.520c(1), states in relevant part:

> A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:
>
> * * *
>
> (f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f)(i) to (v). [MCL 750.520(1).]

MCL 750.520a(n) defines "sexual contact" as:

> the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:
>
> (i) Revenge.
>
> (ii) To inflict humiliation.
>
> (iii) Out of anger. [MCL 750.520a(n).]

(…continued)

reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

Defendant contends that the prosecutor failed to establish that he touched the victim's breasts for the purpose of sexual arousal or gratification, a sexual purpose, or in a sexual manner for revenge, to inflict humiliation, or out of anger. The victim testified that defendant ripped, grabbed, pinched, and pulled at her breasts while referring to her as a "whore" and a "slut." The evidence shows that defendant expressed that he assaulted the victim because he believed that she was sexually involved with another man. This supports an inference that defendant was touching her breasts for revenge, to inflict humiliation, or out of anger.[2]

Defendant also maintains that this Court must overturn his CSC II convictions on double jeopardy grounds because his CSC I and CSC II convictions arose out of the same incident. As the prosecutor correctly states, defendant failed to properly present this issue for review by setting it forth in his statement of questions presented. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). However, we also reject this double jeopardy argument on its merits. Here, separate and distinct conduct supported each of defendant's convictions. Specifically, defendant used force to digitally penetrate the victim and to make sexual contact with both her right and left breasts. Although the force used to accomplish all three sexual contacts and the resulting personal injury were intermingled, this fact does not prevent defendant's convictions of the separate charges. See *People v Martinez*, 190 Mich App 442, 444-445; 476 NW2d 641 (1991). Accordingly, we conclude that defendant's convictions for CSC I and CSC II were each based on distinct conduct and that the Legislature intended that each crime be punished separately.

II. Sentencing

Defendant also asserts that he is entitled to resentencing based on certain alleged scoring errors and because the trial court relied on certain information in the Presentence Information Report (PSIR). However, defense counsel affirmatively stated at sentencing that both she and defendant reviewed the PSIR and found it "to be factually accurate." Thus, this issue has been waived. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Defendant also argues, for the first time on appeal, that he is entitled to resentencing under *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). In *People v Claypool*, 470 Mich 715; 684 NW2d 278 (2004), a majority of the Justices of our Supreme Court opined that *Blakely* is inapplicable to guidelines scoring in Michigan's sentencing scheme. *Id*. at 730-731 n 14 (Taylor, J., joined by Markman, J.), 741 (Cavanagh, J.), 744 (Weaver, J.). Defendant argues that the decision in *Claypool* should be revisited because it was only stated in dicta, but this Court has specifically rejected that contention. *People v Drohan*, 264 Mich App

[2] For the same reasons, we reject defendant's argument that his CSC I and CSC II convictions are against the great weight of the evidence. A verdict is against the great weight of the evidence if "the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). In this case, the evidence clearly does not preponderate against the jury's verdict.

77, 89 n 4; 689 NW2d 750 (2004), lv gtd 472 Mich 881 (2005).[3] Accordingly, defendant's *Blakely* argument fails.

III. Prosecutor's Conduct

Defendant argues that misconduct by the prosecutor deprived him of a fair trial. Because defendant did not timely object to any of the actions he now claims constitute prosecutorial misconduct, appellate review is precluded unless an objection could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). Further, appellate review of this unpreserved issue is only for plain error affecting substantial rights. *Id.*

Many of the claims of error defendant asserts within this issue actually relate to alleged evidentiary errors and not prosecutorial misconduct. "[P]rosecutorial misconduct cannot be predicated on good-faith efforts to admit evidence." *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). There is nothing in the record to indicate that the prosecution acted in bad faith when it introduced the evidence in question. Accordingly, we review the following asserted instances of prosecutorial misconduct as unpreserved evidentiary errors.

The trial court did not err when it admitted the nurse's testimony about the victim's statement to her because the statement was admissible as an excited utterance. MRE 803(2). The nurse testified that the victim made the statement approximately one hour after the attack while she was visibly upset and crying. We also conclude that the trial court correctly admitted the victim's medical records under MRE 803(6) because both the nurse and the treating physician testified that the records were prepared and kept as part of the hospital's ordinary course of business.

The trial court also properly admitted defendant's testimony about a letter he wrote in prison in which he attempted to persuade the recipient to convince the victim not to testify. "If a witness is offering relevant testimony, whether that witness is truthfully and accurately testifying is itself relevant because it affects the probability of the existence of a consequential fact." *People v Mills*, 450 Mich 61, 72; 537 NW2d 909, mod and remanded 450 Mich 1212 (1995). Here, defendant testified that he was not the attacker, which placed his credibility in issue. In the letter, defendant stated that the victim "knows that she never really ever got hurt so bad that any of this would warrant what she is trying to do." This statement clearly casts doubt on defendant's testimony. Further, considering the weight of the other evidence against defendant, there is little danger that the jury gave it undue or preemptive weight. *Elezovic v Ford Motor Co*, 259 Mich App 187, 207; 673 NW2d 776, rev'd in part on other grounds 472 Mich 408 (2005). Nor does introduction of the letter violate MRE 404(b), because it is directly relevant to the determination of a fact in issue without an intermediate inference of character. *People v VanderVliet*, 444 Mich 52, 64; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994).

[3] Our Supreme Court granted leave in *Drohan* limited to the issue of whether *Blakely* and *United States v Booker*, 543 US ___; 125 S Ct 738; 160 L Ed 2d 621 (2005) apply to Michigan's sentencing scheme.

We also reject defendant's assertion that the prosecutor improperly elicited testimony that defendant slashed the victim's tires after he left her apartment. The damage defendant did to the victim's car forms part of the admissible res gestae of the charged offenses. *People v Savage*, 225 Mich 84, 86; 195 NW 669 (1923) ("It is elementary that the acts, conduct and demeanor of a person charged with a crime at the time of, or shortly before or after the offense is claimed to have been committed, may be shown as a part of the res gestae.").

We also conclude that the trial court did not err when it admitted testimony about the vulgar language defendant used in reference to the victim after the attack. The evidence was relevant to the issue of the credibility of both the victim and the person who drove defendant to her apartment on the night of the assault. Further, the evidence was relevant to show the purpose of the assault, i.e., that was it done in a sexual manner for the purpose of revenge, inflicting humiliation, or out of anger. MCL 750.520a(n).

Nor do we find error in the admission of testimony that the victim remained fearful after the attack. One of the elements of CSC I is the infliction of physical injury, which includes mental anguish. MCL 750.520a(l); MCL 750.520b(1)(f). Thus, the victim's continuing fearfulness is relevant to a fact in issue.

Defendant also claims that it was error for the prosecutor to reference "past acquitted charges," but fails to cite to the record where the prosecutor mentioned prior charges in front of the jury. "Defendant may not leave it to this Court to search for a factual basis to sustain or reject his position." *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001).

Defendant asserts that the police committed misconduct when they lied to the person who drove defendant to the victim's apartment by telling him that they knew he was there on the night in question. However, defendant has failed to support his assertion of error with a citation to proper authority. *People v Hermiz*, 235 Mich App 248, 258; 597 NW2d 218 (1999). Moreover, as the prosecutor points out, this Court has previously held that similar police conduct did not render a defendant's confession involuntary. *People v Hicks*, 185 Mich App 107, 113; 460 NW2d 569 (1990). Accordingly, we reject defendant's argument on this issue.

The remainder of plaintiff's allegations of prosecutorial misconduct involve statements made by the prosecutor during trial. In reviewing this issue, this Court must examine the record and evaluate the prosecutor's remarks in context, including any pertinent defense arguments. *Callon*, *supra* at 330.

Defendant asserts that the prosecutor mischaracterized the law and infringed on the jury's responsibility to determine the facts of the case when, during voir dire, he asked jurors whether they agreed that the victim was entitled to a fair trial just as defendant was entitled to a fair trial. Defendant does not characterize this as a civic duty argument, but he claims that the alleged error invited the jury to convict defendant based on a duty outside the facts of the case. At the conclusion of proofs, the trial court properly instructed the jurors that the arguments of the attorneys were not evidence and that it was the jury's job to decide the facts of the case. Further, to the extent defendant claims that the comments misstated the law, the trial judge instructed the jury that the court has the duty to instruct the jury on the law. Specifically, the trial court advised the jury that, "You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say." Jurors are presumed to follow their instructions. *People v*

Graves, 458 Mich 476, 486; 581 NW2d 229 (1998). It is also clear that a timely cautionary instruction could have cured any alleged error. Accordingly, defendant is not entitled to any relief on this issue. See *People v Peery*, 119 Mich App 207, 213; 326 NW2d 451 (1982).

Defendant further claims that the prosecutor made improper statements during closing argument. In *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004), this Court stated:

> [A] prosecutor may not vouch for the credibility of his witnesses by implying that he has some special knowledge of their truthfulness. But a prosecutor may comment on his own witnesses' credibility during closing argument, especially when there is conflicting evidence and the defendant's guilt depends on which witnesses the jury believes. [Citation omitted.]

Here, the victim and defendant gave conflicting testimony about whether an assault occurred and the jury's verdict depended, in part, on whether it believed the victim or defendant. The prosecutor argued from the evidence that the victim was worthy of belief because her version of events remained consistent from her initial disclosure to her trial testimony. The prosecutor did not imply that he had knowledge beyond the evidence introduced at trial that led him to believe the victim. Accordingly, defendant has failed to show that the prosecutor's remarks constituted error. *Callon*, *supra* at 329-330.

Defendant asserts that the prosecutor improperly attempted to appeal to the jurors' sympathy for the victim. *People v Watson*, 245 Mich App 572, 591; 629 NW2d 411 (2001). The prosecutor's comment that the attack was a "life altering event" for the victim countered defense counsel's argument that the victim's testimony about the timing of the assault conflicted with other testimony. The prosecutor argued that the victim's testimony concerning the time of the assault was more credible because she had a greater reason to remember when it occurred. The prosecutor's statements concerning how the victim had to repeat her version of what happened to multiple persons was also part of his argument about the credibility of the witnesses. We hold that, read in context, there was no error in these remarks. See *People v Matuszak*, 263 Mich App 42, 55; 687 NW2d 342 (2004).

Defendant further claims that the prosecutor improperly told the jury that it should not ignore evil, including defendant. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). Defendant also complains that the prosecutor improperly commented about how the victim was treated and argued to the jury that evil should not be ignored. We conclude that these comments are "not so inflammatory as to prejudice defendant." *Watson*, *supra* at 591. Were we to conclude that the prosecutor attempted to appeal to the jury's sympathies when he commented that no person deserves to be treated as the victim was treated, any error was minor, and clearly could have been cured by a timely, cautionary instruction. *Callon*, *supra* at 329. Moreover, the trial court specifically instructed the jurors not to allow sympathy or prejudice to influence their decision. See *Graves*, *supra* at 486.

Furthermore, in referring to defendant as "evil" and the prosecutor's exhortation to the jury to hold defendant accountable for the evil he had done, the prosecutor was simply arguing that the evidence established that defendant committed the crimes charged. Accordingly, "these remarks do not constitute an assertion of personal belief by the prosecutor in defendant's guilt or

an argument that the jury should convict the defendant regardless of the evidence." *Matuszak*, *supra* at 56; see also *People v Williams*, 265 Mich App 68, 71; 692 NW2d 722 (2005) (concluding that "[w]hile the prosecutor vividly described defendant as 'cold blooded' and the crime as 'evil,' she did not unfairly depict the evidence of the crime or defendant's state of mind"). Moreover, as noted, the trial court properly instructed the jury that it should base its verdict only on the evidence and that the arguments of the attorneys were not evidence. For these reasons, we deny defendant's request for reversal.

We also reject defendant's contention that the prosecutor improperly denigrated him and his defense strategy. The record reflects that the prosecutor did not challenge counsel's veracity. *People v Dalessandro*, 165 Mich App 569, 579; 419 NW2d 609 (1988). Rather, the prosecutor's comments countered defendant's position that he was not at the apartment the night of the assault and that the prosecutor failed to prove his case. It is well settled that, "[w]hile the prosecution's assertion that the defense argument was ridiculous may have been characterized differently, a prosecutor need not state arguments in the blandest possible terms." *Matuszak*, *supra* at 55-56.

Defendant also complains that the prosecutor improperly stated his personal belief that the touching of the victim's breasts was done in a sexual manner. However, the record reflects that the prosecutor was not, as defendant suggests, placing the prestige of his office behind the contention that defendant was guilty. Rather, he correctly argued from the evidence that defendant touched the victim's breasts in a sexual manner for revenge, to inflict humiliation, or out of anger. *Callon*, *supra* at 330.

Defendant says that the prosecutor improperly argued that the victim could not call for help because the handset for the phone had been taken when the evidence did not support a finding that she could not use the base of the phone to call for help. Defendant's argument on this point is without merit. In fact, the victim testified that she looked for her phone to call the police, but could only find the base, so she left the apartment. The obvious and reasonable inference is that she could not make a phone call from the base of the phone.

Defendant further asserts that the prosecutor erred by mischaracterizing the definition of an assault. While we agree that the prosecutor's statement of the law was inaccurate, *People v Nickens*, 470 Mich 622, 628; 685 NW2d 657 (2004), a proper instruction on assault and battery was given by the court, as well as the instruction that the jury "must take the law" as given by the court. Accordingly, any error was harmless. *People v Grayer*, 252 Mich App 349, 357-359; 651 NW2d 818 (2002).

Also, defendant alleges that even if the alleged errors described above do not merit reversal individually, the cumulative effect of the errors denied him a fair trial. *People v Ackerman*, 257 Mich App 434, 454; 669 NW2d 818 (2003). We found no error in most of defendant's allegations of misconduct and, of those that may have constituted error, the effect was not prejudicial. Accordingly, defendant was not denied a fair trial and is not entitled to reversal on this basis. *Id*.

IV. Ineffective Assistance of Counsel

Defendant maintains that his trial counsel denied him a fair trial in several respects. The determination of whether a defendant has been denied effective assistance of counsel is a mixed

question of fact and law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). This Court reviews the trial court's factual findings for clear error, while its constitutional determinations are reviewed de novo. *Id.*[4]

Defendant asserts that his trial counsel was ineffective because she failed to object to the asserted evidentiary errors, instances of prosecutorial misconduct, and sentencing errors referenced above. However, for those allegations that we rejected on the merits, counsel cannot be faulted for her actions with respect to each. See *People v Darden*, 230 Mich App 597, 605; 585 NW2d 27 (1998). As for the arguably improper comments made by the prosecutor on the law of assault, we cannot conclude that, had an objection been raised, there is a reasonable probability that the result of the proceedings would have been different or that the proceedings were fundamentally unfair or unreliable. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

Defendant also complains that his attorney should have made a proportionality argument at sentencing. However, arguably, defendant's trial counsel purposely avoided making such an argument because of the circumstances of this crime and this defendant. In any event, defendant has not shown that there is a reasonable probability that the result of the sentencing proceedings would have been different had the argument been raised. Accordingly, defendant has failed to show that he was denied effective assistance of counsel on this basis. *Rodgers*, *supra* at 714.

Defendant further asserts that his counsel was ineffective for failing to adequately investigate the case. Specifically, defendant complains that, before trial, his attorney should have had an investigator interview the man who drove defendant to the victim's apartment for impeachment purposes. However, it is not clear how such an investigation would have benefited defendant. Indeed, at trial, defense counsel thoroughly cross-examined the man, which revealed his disagreement with defendant regarding a work injury and the fact that the man initially told the police that he had not driven defendant to the victim's apartment. Defendant also asserts that he asked his trial attorney to contact a potential witness who was told by the man who drove defendant that he was planning on "getting even" with defendant. However, defense counsel denied that defendant provided her with this information. Moreover, it is not clear how testimony from such a witness would have affected the outcome, given counsel's cross-examination of the driver at trial.

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[4] Effective assistance of counsel is presumed, and a defendant bears a heavy burden in establishing otherwise. *LeBlanc*, *supra* at 578. To establish ineffective assistance, a defendant must show: (1) counsel's performance was below an objective standard of reasonableness under prevailing professional norms; (2) a reasonable probability that, but for the error, the result of the proceedings would have been different; and (3) the concomitant proceedings were fundamentally unfair or unreliable. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). The defendant must overcome the presumption that the challenged action was sound trial strategy. *People v Knapp*, 244 Mich App 361, 385-386; 624 NW2d 227 (2001). Decisions regarding whether to call or question a witness are presumed to be matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant also claims that his attorney should have obtained the victim's phone records. Defense counsel admitted that defendant asked her to obtain the phone records, but said that she explained to him that the phone records were not necessary because it was not disputed that he had a relationship with the victim. Defendant has failed to show that his counsel's decision in this regard was not sound trial strategy.

Defendant also takes issue with defense counsel's failure to have the rape kit analyzed. Defendant argues that an analysis of the rape kit might have revealed that the victim had intercourse with someone else which would cast doubt on her credibility. However, it is not clear that such evidence would have been admissible pursuant to Michigan's rape shield law, MCL 750.520j. Moreover, even if the victim had intercourse with someone else that night, that fact would not rebut the evidence that defendant attacked her. Further, because the rape kit was not analyzed, defense counsel was able to argue that the prosecution failed to meet its burden of proof. Again, defendant has failed to show that his counsel's decision in this regard was not sound trial strategy.

Defendant also argues that his counsel denied him a fair trial because she failed to identify a potential witness who went to the bar with defendant on the night of the crime and signed up with defendant and others to enter a fishing tournament. However, defense counsel testified that she did not recall defendant asking her to identify the person. Moreover, because the unidentified witness did not arrive to go fishing in the morning, this witness could not have added to defendant's alibi defense. Accordingly, there is no reasonable probability that his testimony could have affected the outcome of the proceedings.

Defendant also asserts that his trial counsel was ineffective for failing to strike one of the jurors. However, an attorney's decision whether to strike a juror is a matter of trial strategy and does not support claim of ineffective assistance of counsel. *People v Robinson*, 154 Mich App 92, 95; 397 NW2d 229 (1986).

Defendant further claims that defense counsel failed to adequately cross-examine the victim. Defendant makes specific reference to a matter, not discussed in the record, that he claims would have affected her credibility, and also suggests that counsel should have further questioned the victim about when the attack occurred. However, decisions regarding what evidence to present and whether to question witnesses are presumed to be matters of trial strategy that this Court "will not second-guess with the benefit of hindsight." *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Moreover, defendant has not established that had his trial counsel raised these issues that there is a reasonable probability that the result of the proceedings would have been different.

Defendant also states that defense counsel failed to question the hospital physician regarding whether bruising and tenderness can result from "energetic sex." In this case, defense counsel's questions to the physician indicate that she was trying to dispute the fact that the victim actually suffered any significant bruising at all. Again, decisions regarding what evidence to present and whether to question witnesses are presumed to be matters of trial strategy that this Court "will not second-guess with the benefit of hindsight." *Dixon*, *supra* at 398.

Defendant argues that his trial attorney should have asked the man who drove him to the victim's apartment additional questions about where defendant told him he had thrown the

victim's phone because of alleged inconsistencies in the man's trial testimony and what he told the police. The statements are not necessarily inconsistent but, regardless, because the driver testified before the police officer, counsel may not have learned of any discrepancy until after the driver finished testifying. Counsel could have reasonably decided not to recall the driver because she wanted to leave the discrepancy unexplained in order to use it to discredit the witness. See *Dixon*, *supra* at 398.

Defendant also complains that his attorney should have withdrawn because she admitted that she did not like him.[5] "Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process." *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988). Defendant has not shown that he disagreed with his counsel's overall trial strategy, that they had a legitimate difference of opinion regarding trial tactics, or any other basis that might be considered good cause for a second substitution of counsel in this case. *Id*. Nor has defendant shown that his trial attorney's dislike for him impacted her representation. In fact, there is nothing in the record to indicate that he was dissatisfied with her performance prior to entry of the verdict.

For these reasons, we conclude that defendant failed to establish that he was denied the effective assistance of counsel. *Rodgers*, *supra* at 714.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Peter D. O'Connell

[5] Defendant's initial counsel withdrew shortly before this case was tried.