STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 25, 2008
v	No. 277639 Macomb Circuit Court
RIGOBERTO CARDENAS-BORBON, Defendant-Appellant.	LC No. 2005-004728-FC

Before: Wilder, P.J., and Jansen and Owens, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of possession with intent to deliver 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(*i*), and conspiracy to possess with intent to deliver 1,000 or more grams of cocaine, MCL 750.157a; MCL 333.7401(2)(a)(*i*). He was sentenced to consecutive prison terms of 16 to 40 years for each conviction. We affirm.

I. Sufficiency of the Evidence

Defendant argues that the evidence was insufficient to support his convictions. We disagree. When ascertaining whether sufficient evidence was presented at trial to support a conviction, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. Rather, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

A. Conspiracy to Deliver 1,000 or More Grams of Cocaine

Under MCL 333.7401(2)(a)(*i*), it is unlawful for a person to deliver 1,000 or more grams of cocaine. A "person who conspires together with 1 or more persons to commit an offense prohibited by law . . . is guilty of the crime of conspiracy[.]" MCL 750.157a; *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001). Conspiracy is a specific intent crime, requiring the intent to combine with others and the intent to accomplish an illegal objective. *Id.* To prove the intent to combine with others, it must be shown that the intent, including knowledge, was possessed by more than one person. *People v Blume*, 443 Mich 476, 482; 505 NW2d 843

(1993). For intent to exist, the defendant must know of the conspiracy, know of the objective of the conspiracy, and intend to participate cooperatively to further that objective. *Id*. at 485. Direct proof of a conspiracy is not essential. Rather, a conspiracy may be proven by circumstantial evidence or by reasonable inference, and no overt act in furtherance of the conspiracy is required. *People v Justice* (*After Remand*), 454 Mich 334, 347; 562 NW2d 652 (1997); *People v Cotton*, 191 Mich App 377, 393; 478 NW2d 681 (1991).

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant conspired with others to deliver 1,000 or more grams of cocaine. Defendant and the charged coconspirators came to Michigan from Arizona. While in Arizona, through Jesus Ramon Cottleon, Jamie Cardenas met with codefendant Hugo Moran-Dopico to discuss trafficking a large quantity of cocaine in the Detroit area. Thereafter, Moran-Dopico and Cottleon flew from Arizona to Detroit together and met with their drug connection. In Detroit, the codefendants arranged a deal for the delivery of ten kilograms of cocaine to be delivered within a few days. Moran-Dopico remained in Detroit, while Cottleon returned to Arizona. Soon thereafter, an Explorer containing the cocaine, driven by codefendant Antonio Perez-Chica, left Arizona. Defendant and Cottleon also left Arizona en route to Michigan in a white Durango, following the Explorer for the purpose of delivering the cocaine. Defendant told Cottleon that the cocaine was in the Explorer. Once in Detroit, defendant and Cottleon met Moran-Dopico and their drug connection. Defendant had been communicating with Perez-Chica via cellular phone. Defendant ultimately contacted Perez-Chica to learn the location of the Explorer, and advised Cottleon that he would drive the Explorer with the cocaine to the drug distributor's house. Defendant then traveled with Cottleon to a hotel, where Cottleon took control of the Explorer as planned. When Cottleon was arrested, he was en route to meet Moran-Dopico to deliver the cocaine to the drug distributor. Two days after the police seized the cocaine in the Explorer, the Durango was stopped heading toward Arizona. Defendant was in the vehicle with Moran-Dopico.

This evidence established a basis for the jury to conclude that defendant conspired with others to deliver the cocaine found in the Explorer. Defendant's behavior and his associates' interactions provided evidence of their concert of action, which created an inference of conspiracy. See *Cotton*, *supra* at 393-394. Further, the credibility of Cottleon's testimony was for the jury to determine. *Wolfe*, *supra* at 514. Viewed most favorably to the prosecution, the evidence was sufficient to support defendant's conviction of conspiracy to deliver 1,000 or more grams of cocaine.

B. Possession with Intent to Deliver 1,000 or More Grams of Cocaine

Defendant asserts that there was insufficient evidence that he possessed the cocaine, because there was no evidence that he knew about the cocaine transaction.[1] We disagree.

[1] The elements of possession with intent to deliver 1,000 or more grams of cocaine are: (1) the recovered substance was cocaine, (2) the cocaine was in a mixture weighing more than 1,000 grams, (3) the defendant was not authorized to possess the cocaine, and (4) the defendant knowingly possessed the cocaine with the intent to deliver it. MCL 333.7401(2)(a)(*i*); *Wolfe*, *supra* at 516-517.

Possession of a controlled substance may be either actual or constructive, and may be joint as well as exclusive. *Wolfe*, *supra* at 519-520. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Id.* at 520. "The essential question is whether the defendant had dominion or control over the controlled substance." *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

At trial, the prosecutor advanced the theory that defendant was guilty as a principal or as an aider and abettor. A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. "'To support a finding that a defendant aided and abetted a crime, the prosecution must show that (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement.'" *People v Izarraras-Placante*, 246 Mich App 490, 495-496; 633 NW2d 18 (2001) (citation omitted).

"Aiding and abetting" describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991). "The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime." *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). An aider and abettor's state of mind may be inferred from all the facts and circumstances, including a close association between the defendant and the principal, and the defendant's participation in the planning or execution of the crime. *Carines*, *supra* at 758.

Viewed in a light most favorable to the prosecution, the same evidence that enabled the jury to conclude that defendant conspired with others to possess and deliver the cocaine also established a proper basis for the jury to conclude beyond a reasonable doubt that defendant possessed the cocaine with the intent to deliver it. A jury could have reasonably inferred from defendant's actions and associations that he constructively possessed the cocaine or assisted others in possessing the cocaine found in the Explorer. There was sufficient evidence to sustain defendant's conviction of possession with intent to deliver 1,000 or more grams of cocaine.

II. Great Weight of the Evidence

Defendant also argues that his conviction was contrary to the great weight of the evidence. We disagree. Because defendant failed to preserve this issue by raising it in a motion for a new trial, we review the issue for plain error affecting his substantial rights. *Carines*, *supra* at 763-764; *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003).

In evaluating whether a verdict is against the great weight of the evidence, the question is whether the evidence preponderates so heavily against the verdict 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). A verdict may be vacated only when it does not find reasonable support in the evidence, but is more likely to be attributed to causes outside the record such as passion, prejudice,

sympathy, or some extraneous influence. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). Conflicting testimony and questions regarding the credibility of witnesses are not sufficient grounds for granting a new trial. *Lemmon, supra* at 643. Indeed, "unless it can be said that directly contradictory testimony was so far impeached that it 'was deprived of all probative value or that the jury could not believe it,' or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination." *Id*. at 645-646 (citation omitted).

Turning back to the present case, we cannot conclude that the evidence preponderates so heavily against the jury's verdict that a miscarriage of justice would result if the verdict were allowed to stand. *Lemmon, supra* at 627. We find no plain error in this regard.

III. Motion to Sever Trials

Defendant next argues that he was denied a fair trial by the trial court's refusal to sever his trial from that of his codefendants. We disagree. The decision to sever or join the trials of codefendants lies within the sound discretion of the trial court. *People v Hana*, 447 Mich 325, 346; 524 NW2d 682 (1994).

In general, a defendant does not have a right to a separate trial. *People v Hurst*, 396 Mich 1, 6; 238 NW2d 6 (1976). Indeed, a strong policy favors joint trials in the interest of justice, judicial economy, and administration. *People v Etheridge*, 196 Mich App 43, 52; 492 NW2d 490 (1992). Severance is mandated under MCR 6.121(C) only when a defendant clearly and affirmatively demonstrates through an affidavit or offer of proof that his substantial rights will be prejudiced by a joint trial and that severance is the necessary means of rectifying the potential prejudice. *Hana, supra* at 346. "'[I]ncidental spillover prejudice, which is almost inevitable in a multi-defendant trial, does not suffice.'" *Id.* at 349 (citation omitted).

The charges against defendant and codefendants Perez-Chica and Moran-Dopico arose out of a single criminal episode that involved numerous witnesses and substantially identical evidence. To hold separate trials in these substantially identical cases would have been unnecessarily duplicative. The interests of justice and judicial economy clearly called for a joint trial in this case. Further, defendant has not demonstrated that his substantial rights were prejudiced by the joint trial, and the record does not show any "significant indication" that the requisite prejudice in fact occurred. *Id*. at 346-347. All of the defendants claimed to have no knowledge that the cocaine was in the Explorer. In addition, because each defendant was charged with conspiracy, the prosecutor would have been entitled to present the same evidence in separate trials. *Id*. at 362. Finally, the trial court instructed the jury on reasonable doubt and the determination of guilt or innocence, and cautioned the jury that each case had to be considered and decided on the evidence as it applied to each individual defendant. See *id.* at 351, 356 (observing that the risk of prejudice from a joint trial may be allayed by a proper cautionary instruction). "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). The trial court did not abuse its discretion by denying defendant's motion for a separate trial.

IV. Ineffective Assistance of Counsel

Because defendant failed to raise this issue in a motion for a new trial or request for an evidentiary hearing, our review is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that it is "reasonably probable that the results of the proceeding would have been different had it not been for counsel's error." *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007); see also *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

A. Failure to Argue Motion to Suppress

We reject defendant's claim that defense counsel was ineffective for failing to pursue or request a decision on his outstanding motions to suppress the evidence seized from the Dodge Durango. The record does not support defendant's suggestion that defense counsel neglected to follow through on the motion. At the motion hearing, defense counsel argued there was no reasonable suspicion or probable cause to justify a stop of the Durango or to arrest defendant, and questioned whether the actions of the St. Louis police were based solely on a phone call from a law enforcement officer in Michigan regarding defendant's possible connection with Cottleon. The trial court granted defense counsel's request for an evidentiary hearing to hear testimony from the two officers directly involved. The two officers were present on the first day of trial, but the attorneys indicated that they had reached an agreement regarding the "traffic stop." Defense counsel stipulated to allow the introduction of only two items recovered from the vehicle: (1) copies of two airline passenger receipts in Cottleon's name, and (2) an insurance card in defendant's name. Defense counsel reserved the right to renew the motions to suppress if the prosecutor attempted to introduce other items that were seized.

From the record, it is apparent that after receiving additional information regarding the circumstances of the stop, defendant's arrest, and the search of the vehicle, defense counsel reconsidered the motions and crafted an agreement with the prosecutor to limit what items could be introduced at trial. Defendant has not presented any evidence or viable argument that trial counsel's decision to proceed in this manner was objectively unreasonable or prejudicial. Decisions about defense tactics, including what arguments to make, are presumed to be matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). "This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight." *Id*. at 76-77.

B. Offense Variable 14

We find no merit to defendant's argument that defense counsel was ineffective for failing to adequately argue that he was not a leader in this multiple-offender situation. At sentencing, defense counsel challenged the evidence against defendant and argued that defendant was only a "minor player" in this drug trafficking case. Although defendant asserts that counsel should have further argued this issue and should have directly addressed specific statements made by the prosecutor, decisions about how to argue an issue and what specific arguments to make are matters of trial strategy. *Id.* at 76. To the extent that defendant relies on the fact that counsel's argument was not successful, nothing in the record suggests that counsel's argument was

unreasonable or prejudicial. "The fact that defense counsel's strategy may not have worked does not constitute ineffective assistance of counsel." *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Second, counsel was not ineffective for failing to object to the scoring of offense variable (OV) 14. MCL 777.44(1)(a) permits the trial court to score ten points for OV 14 if the defendant was a leader in a multiple offender situation. The entire criminal transaction should be considered. MCL 777.44(2)(a). Facts relied on in scoring the sentencing guidelines need only be proven by a preponderance of the evidence. *People v Golba*, 273 Mich App 603, 614; 729 NW2d 916 (2007). The evidence here showed that although several codefendants were involved in the drug conspiracy, defendant directed several aspects of the criminal episode. Defendant followed the Explorer from Arizona to Michigan and maintained contact with Perez-Chica, the driver of the Explorer. Once in Detroit, defendant called to Perez-Chica to attain the location of the Explorer. Defendant directed Cottleon to pick up the Explorer and instructed Perez-Chica to turn the Explorer over to Cottleon. Consequently, there was evidence that supported the trial court's finding that defendant had a leadership role in this multiple offender situation. Because there was no basis for an objection to the scoring of OV 14, defense counsel was not ineffective for failing to object to the trial court's ten-point score. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

V. Prosecutorial Misconduct

Defendant next argues that he was denied a fair trial because the prosecutor knowingly presented the false testimony of Cottleon to secure his conviction. We disagree. Because defendant failed to object on the basis he now asserts, we review this claim for plain error affecting substantial rights. *Carines*, *supra*.

A prosecutor may not knowingly use false testimony to obtain a conviction. *People v Lester*, 232 Mich App 262, 276; 591 NW2d 267 (1998). The prosecutor must also correct false evidence when it is presented. *Id.* Absent proof that the prosecutor knew that trial testimony was false, however, reversal is unwarranted. See *People v Herndon*, 246 Mich App 371, 417-418; 633 NW2d 376 (2001).

Defendant has failed to show that Cottleon's trial testimony was actually false. Although Cottleon made inconsistent statements before trial, the jury was aware of those inconsistencies. The prosecutor told the jury in opening statement that "at times [Cottleon] has been deceitful." "I'm telling you from the get go [Cottleon] isn't completely truthful with the officers . . . I'm going to have to pick through what's a lie and what's not." During trial, Cottleon admitted that he had used several aliases. He further admitted that he had lied previously, including lying in police interviews on numerous occasions. He claimed that he initially lied because he was "trying to protect [defendant]" and he "thought Jamie was going to help him with an attorney." At one point during the investigation, he "also feared that [his] family would be harmed" because they were threatened. In addition, Cottleon explained the scope of the sentencing agreement under which he testified against defendant. The trial court instructed the jury that Cottleon was charged with possession with intent to deliver 1,000 or more grams of cocaine and that, pursuant to a sentencing agreement, he was testifying against the other defendants in exchange for a minimum sentence of seven years. The jury was also instructed to carefully consider Cottleon's testimony because he was an accomplice who received leniency in exchange for his testimony.

Under the circumstances, defendant's challenge to Cottleon's testimony involves a matter of witness credibility, which was for the jury to decide. See *Lemmon*, *supra* at 642. The problems with Cottleon's credibility were plainly presented to the jury. The record discloses that defense counsel vigorously attacked Cottleon's credibility and thoroughly explored his motivation to lie. Additionally, the trial court's instructions protected defendant's rights.[2] There is simply no tangible indication that the prosecutor engaged in misconduct, and defendant has failed to demonstrate plain error affecting his substantial rights in this regard.

VI. Motion to Quash the Information

Defendant argues that the district court abused its discretion by binding him over for trial. Again, we disagree. Generally, this Court reviews for an abuse of discretion both a district court's decision to bind a defendant over for trial and a trial court's decision on a motion to quash the information. *People v Fletcher*, 260 Mich App 531, 551-552; 679 NW2d 127 (2004). But "[i]f a defendant is fairly convicted at trial, no appeal lies regarding whether the evidence at the preliminary examination was sufficient to warrant a bindover." *People v Wilson*, 469 Mich 1018; 677 NW2d 29 (2004). Here, defendant's argument fails because sufficient evidence at trial supported his convictions, and there is no indication that he was otherwise prejudiced by the claimed error. *People v Hall*, 435 Mich 599, 601-603; 460 NW2d 520 (1990). Defendant has failed to state a cognizable claim on appeal regarding the sufficiency of the evidence at the preliminary examination.

VII. Defendant's Supplemental Brief

Defendant raises several additional issues in a supplemental brief filed *in propria persona*, none of which has merit.

A. Ineffective Assistance of Counsel

Because defendant failed to raise these issues in the trial court by way of a motion for a new trial or an evidentiary hearing, our review is limited to mistakes apparent on the record. *Sabin*, *supra* at 658-659.

1. *Brady* violation

Defendant argues that by failing to investigate and challenge "the disappearance" of his "passport/visa/permit" for nationwide travel, defense counsel allowed a violation of the rule set forth in *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963). A criminal

[2] To protect a defendant's rights "when the state grants concessions in exchange for testimony," "safeguards include (1) full disclosure of the terms of the agreements struck with such witnesses, (2) the opportunity for full cross-examination of such witnesses regarding the agreements and their effect, and (3) instructions cautioning the jury to carefully evaluate the credibility of witnesses who have been induced by agreements with the prosecution to testify against the defendant." *People v Jones*, 236 Mich App 396, 405; 600 NW2d 652 (1999).

defendant has a due process right of access to certain information possessed by the prosecution if that evidence might lead a jury to entertain a reasonable doubt about a defendant's guilt. *People v Lester*, 232 Mich App 262, 280; 591 NW2d 267 (1998). In order to establish a *Brady* violation, a defendant must prove (1) that the state possessed evidence favorable to the defendant, (2) that the defendant did not possess the evidence and could not have obtained it himself with any reasonable diligence, (3) that the prosecution suppressed the favorable evidence, and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. *Lester*, *supra* at 281.

There is no indication that the prosecutor either possessed or suppressed defendant's travel documents. Furthermore, defendant does not explain how this evidence was favorable to his defense. A defendant must provide a factual basis to sustain his position. See *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001). Because there is no basis for finding a *Brady* violation in this case, defendant cannot establish a claim of ineffective assistance of counsel in this regard.

2. Mexican Consulate

We also reject defendant's claim that reversal is required because defense counsel failed to investigate and challenge the alleged denial of his right to contact the Mexican consulate under the terms of the Vienna Convention. Defendant has failed to demonstrate that any inaction by defense counsel prejudiced his defense. That is, defendant does not explain how contacting the Mexican consulate would have affected the result of the proceedings. His vague assertion that he may not be able to raise a claim of violation of the Vienna Convention in a federal habeas proceeding does not demonstrate that there is a reasonable probability that the result of the proceeding would have been different if counsel had pursued this issue.

B. Expert Witness

Defendant argues that the trial court abused its discretion by allowing a federal DEA agent to testify as an expert witness. We disagree. Expert testimony is admissible if the expert is qualified, the evidence gives the trier of fact a better understanding of the evidence or assists in determining a fact in issue, and the evidence is from a recognized discipline. *People v Murray*, 234 Mich App 46, 53-54; 593 NW2d 690 (1999). Contrary to defendant's position, "drug-related law enforcement is a recognized area of expertise." *People v Williams (After Remand)*, 198 Mich App 537, 542; 499 NW2d 404 (1993). Additionally, a law enforcement officer may testify as an expert on drug-related law enforcement by virtue of his training and experience. *Id.*; see also *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991). Here, the agent's training and experience in the area of narcotics trafficking qualified him to testify about the significance of the quantity of drugs recovered and other aspects of drug trafficking. In addition, the agent's knowledge of the drug trade was used to help the jury understand the significance of the amount of cocaine at issue and the complexity of drug trafficking conspiracies. See *Murray*, *supra* at 53. Therefore, we reject this claim of error.

C. Fair Trial

Defendant has not identified any basis in the record for concluding that any juror was biased against him because of his status as an illegal alien. On the contrary, the record shows

that the defense attorneys were permitted to question prospective jurors to test their reaction to illegal aliens. Defense counsel asked the prospective jurors if anyone "might have a problem" with the immigration "issue" or "think that it might be an issue that would somehow make them less impartial or might somehow get into their mind set about this case." Each prospective juror responded in the negative. One of the codefendant's attorneys asked the prospective jurors if they could "put [codefendant's] immigration status out of [their] mind and judge him fairly based on the accusations." Each prospective juror responded in the affirmative. The trial court asked each potential juror if he or she could be a fair and impartial juror in this case, to which each juror responded affirmatively. The purpose of voir dire is to expose potential juror bias so that a defendant may be tried by a fair and impartial jury. *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). There is no evidence of jury bias based on defendant's status as an illegal alien in this case. Accordingly, defendant is not entitled to a new trial on this ground.

D. Prosecutorial Misconduct

Contrary to defendant's argument, the record shows that the prosecutor disclosed Cottleon's "expectation of leniency." During his testimony, Cottleon testified that he understood that he would receive a minimum sentence of seven years in exchange for his testimony. Immediately thereafter, the court advised the jury that Cottleon had been charged with possession with intent to deliver 1,000 or more grams of cocaine and that, pursuant to an agreement, he would testify against the other defendants in exchange for a minimum sentence. In its final instructions, the court reiterated the charges against Cottleon and again explained the sentencing agreement under which he had agreed to testify. Accordingly, there is no merit to defendant's argument that the prosecutor failed to disclose the consideration that Cottleon received in exchange for his testimony.

E. Cumulative Effect of Errors

Lastly, we reject defendant's argument that the cumulative effect of several errors deprived him of a fair trial. Because no cognizable errors warranting relief have been identified, reversal under a cumulative error theory is unwarranted. *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Kathleen Jansen
/s/ Donald S. Owens