STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 31, 2010
v	No. 283161 Wayne Circuit Court
ADRIAN MAHDEE AKRAM, Defendant-Appellant.	LC No. 07-012443-FC

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appeals as of right. Even though we find defendant's other issues without merit, because we conclude that defendant was prejudiced by trial counsel's failure to investigate or present an alibi defense, we reverse and remand for a new trial.

I. INEFFECTIVE ASSISTANCE OF COUNSEL

This Court granted defendant's motion to remand for a *Ginther*[1] hearing on defendant's claim that defense counsel rendered ineffective assistance when he failed to investigate and pursue an alibi defense.[2] The trial court ruled that defense counsel's performance was deficient because, despite defendant's urging that he pursue the defense, counsel did not contact or interview any of the witnesses defendant had offered to establish his alibi. The trial court ultimately held, however, that defendant failed to show that he suffered prejudice as a result of counsel's performance. Defendant argues that the trial court's decision requires reversal and that he is entitled to a new trial. We agree.

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[2] *People v Akram*, unpublished order of the Court of Appeals, entered January 6, 2009 (Docket No. 283161).

To establish a claim for ineffective assistance of counsel, a defendant must show that trial counsel's performance fell below an objective standard of reasonableness and that, but for counsel's deficient performance, there is a reasonable probability that the result of the trial would have been different. *People v Payne*, 285 Mich App 181, 188-189; 774 NW2d 714 (2009); *People v Matuszak*, 263 Mich App 42, 57-58; 687 NW2d 342 (2004). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001) (quotation omitted). "[T]he test for prejudice is an objective test," and a trial court's determination of prejudice is reviewed de novo. *People v Dendel*, 481 Mich 114, 132 n 18; 748 NW2d 859 (2008). A trial court's credibility determinations following a *Ginther* hearing are reviewed for clear error. *Id.* at 130; see also MCR 2.613(C).

A defendant is entitled to have trial counsel investigate, prepare, and present all substantial defenses. *People v Chapo*, 283 Mich App 360, 371; 770 NW2d 68 (2009); see also *People v Grant*, 470 Mich 477, 486-487; 684 NW2d 686 (2004) (counsel is required to make an independent examination of the facts and pursue all relevant leads). "A substantial defense is one that might have made a difference in the outcome of the trial." *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). "[A] substantial alibi defense would be one in which defendant's proposed alibi witnesses verified his version." *Id.* at 527. In this case, despite defendant's good faith effort to bring the alibi defense to defense counsel's attention, counsel did not contact the alibi witnesses or conduct any investigation into their potential testimony. Thus, we agree with the trial court that counsel's performance fell below an objective standard of reasonableness. *Payne*, 285 Mich App at 188. Indeed, plaintiff states that it "readily agree[s]" that defense counsel's performance was deficient. The only disputed issue concerning defendant's claim of ineffective assistance of counsel is whether counsel's deficient performance prejudiced defendant. We conclude that defendant was prejudiced.

The evidence at trial established that the victim was shot at approximately 5:30 p.m. on May 6, 2007, near 3200 Collingwood Street in Detroit. Evidence presented at the *Ginther* hearing showed that on the same day there was a viewing for defendant's brother, Avery Akram, from 3:00 to 7:00 p.m. at the Swanson Funeral Home, located at 14751 W. McNichols Road. According to Google Maps, the funeral home is 5.8 miles from 3200 Collingwood, and from the funeral home it would take someone approximately 13 minutes to drive to 3200 Collingwood. Defendant presented five alibi witnesses at the *Ginther* hearing: his brother and sister-in-law, Andre and Raquel Akram; two friends of Avery, Antone Webb and James Hunter; and Avery's fiancé, Kamilah Helton. All five witnesses testified that they saw defendant at the viewing.

The trial court found that because the time travel between the funeral home and 3200 Collingwood was short and because the killing did not take long to commit, "[i]t would not even have been difficult, let alone impossible," for defendant to slip away from and return to the viewing unnoticed. Moreover, the trial court did not find that "the testimony of the alibi witnesses, that five of the six [sic] saw [defendant] at the viewing the entire time, from 3:00 p.m. to 7:00 p.m., to be convincing or credible." It further stated, "The declaration of the witnesses that they had [defendant] under their constant eye, in different places at the funeral home and saw [defendant] in different places ('hallway,' 'foyer,' 'porch,' 'parking lot') was not credible. The testimony was at best general, vague, nebulous and conclusory." It did, however, find Andre Akram, who indicated that defendant was present at the viewing but did not know defendant's whereabouts the whole time, to be credible. It ultimately concluded that nothing in

the testimony of the alibi witnesses "was so substantial that it would have changed the outcome of the trial."

We find no clear error with the trial court's credibility findings regarding the alibi witnesses. We also find no clear error with the court's finding that defendant could have slipped away from the viewing, driven to Collingwood Street, shot the victim, and returned to the funeral home unnoticed. However, on de novo review, *Dendel*, 481 Mich at 132 n 18, and in light of all the circumstances, we conclude that defendant established the requisite showing of prejudice and is therefore entitled to a new trial.

Initially, we note that the viewing of Avery Akram, where the alibi witnesses placed defendant, was an event that would be reasonable and logical for defendant to attend, as Avery was defendant's brother. Indeed, the trial court found Andre Akram, also a brother of defendant, to be credible, and Andre's testimony placed defendant at the funeral home 20 to 50 minutes before the shooting. Specifically, the shooting occurred around 5:30 p.m., and Andre testified that he arrived at the funeral home at 3:10 p.m. and that defendant arrived approximately an hour and a half to two hours later. Andre also testified that he may have seen defendant two or three times at the viewing. Based on Andre's testimony, the testimony of the other alibi witnesses, although it may have been "general, vague, nebulous and conclusory," as found by the trial court, cannot be said to be void of all probative value, as each, similar to Andre, testified that he or she saw defendant at the viewing. In addition, even though, as found by the trial court, it may have been possible for defendant to have left and returned to the funeral home unnoticed, the trial court's finding presupposes that upon leaving the funeral home, defendant knew of the victim's whereabouts and could, therefore, quickly and efficiently proceed to that location, shoot the victim, and return to the funeral home. However, when the victim was killed, he was walking with Damia Johnson, after having stopped at a Coney Island restaurant. Nothing in the record suggests that defendant would have known of the victim's whereabouts on the late afternoon of May 6, 2007.

Further, we note that after the first day of deliberations, the jury announced that it was deadlocked. The next day, after a juror failed to appear and was replaced by an alternate juror, the jury, instructed to begin its deliberations anew, announced that it was deadlocked after a few hours of deliberations. These deadlocks call into question the strength of the prosecution's case. At trial, there was never any question that the shooting of the victim was deliberate and premeditated. The only question for the jury was the identity of the shooter. The prosecution claimed that defendant walked up to the victim and Johnson, pulled out a gun that was tucked into his pants, and shot the victim. In support of its claim that defendant was the perpetrator of the killing, the prosecution presented two witnesses, Johnson and Lawrence Archer, who identified defendant as the shooter. However, Johnson's identification was extensively impeached. She had never previously identified defendant as the perpetrator. In fact, a week and a half after the victim was killed, Johnson failed to identify defendant as the shooter in a photo array. Johnson also admitted that she did not realize that defendant was the person who shot the victim until a week before trial, while at the same time admitting that the sister of the victim was her supervisor at work, the sister had told her about a reward for information leading to the person who shot the victim, and the sister drove her to the police department to inform the police that she wanted to testify at trial. Archer's identification of defendant as the shooter, while stronger than Johnson's, was also subject to attack. Archer did not speak to the police and

identify defendant as the perpetrator until almost two months after the killing. In addition, the prosecution's failure to offer evidence of a motive for the killing undermines the strength of the identifications of defendant as the shooter.[3]

In light of the strengths and weaknesses of the competing identification testimony and the alibi evidence, we conclude that defense counsel's failure to investigate or present defendant's alibi defense undermines confidence in the outcome of defendant's trial. *Carbin*, 463 Mich at 600. We believe that had the jury heard the testimony of defendant's alibi witnesses, along with learning of the distance between the funeral home and the location of the shooting, there is a reasonable probability that the result of defendant's trial would have been different. *Matuszak*, 263 Mich App at 57-58. We therefore reverse defendant's convictions. Defendant is entitled to a new trial, unimpeded by trial counsel's failure to present an alibi defense, where all the evidence is heard and weighed by the trier of fact.

II. DEFENDANT'S REMAINING ISSUES

A. PROSECUTORIAL MISCONDUCT

Defendant contends that the prosecutor committed misconduct when, during his opening statement, he referred to evidence that the victim was killed in retaliation for the murder of Avery Akram.

Although defense counsel objected to the retaliation evidence on hearsay grounds, he did not assert that the prosecutor's reference constituted misconduct. An objection on one ground is insufficient to preserve an appellate challenge based on a different ground. *People v Bulmer (After Remand)*, 256 Mich App 33, 34-35; 662 NW2d 117 (2003). Review of a claim of prosecutorial misconduct is "precluded unless the defendant timely and specifically objects, except when 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, 329-330; 662 NW2d 501 (2003). An unpreserved claim of prosecutorial misconduct is reviewed for plain, outcome-determinative error. *Id*.

"'It is a rule that where in an opening statement the prosecutor makes statements which [] [are] not [] substantiated at trial by the evidence, we will not reverse for that fact alone in the absence of a showing of bad faith on the part of the prosecutor *or prejudice to the defendant.*'" *People v Wolverton*, 227 Mich App 72, 77; 574 NW2d 703 (1997), quoting *People v Davis*, 343 Mich 348, 357; 72 NW2d 269 (1955) (emphasis in *Wolverton*).

We hold that defendant has failed to establish bad faith with respect to the prosecutor's opening statement. *Wolverton*, 227 Mich App at 77. Though the prosecutor asserted that the evidence would show that Officer Edward Williams obtained the retaliation information from Manar Akram, defendant's mother, the prosecutor did not specifically inform the jury that Manar

[3] The testimony of Officer Edward Williams, which the prosecutor sought to use to establish that defendant shot the victim in retaliation for the murder of Avery Akram, was struck by the trial court.

told police that the victim was at the scene of her son Avery's murder. The prosecutor also never told the jury that defendant was aware of this information. Rather, the prosecutor's comments were vague and merely indicated that Manar gave the police information about "people who were at the scene[.]" This statement was ultimately supported by Williams's testimony, although that testimony was later stricken. Defendant asserts that because the prosecutor later asked Williams on direct examination the question, "Was there a time when you received more information . . ." in the passive voice, the information regarding the victim must have come from someone other than Manar, and thus, the prosecutor was acting in bad faith during his opening statement. We decline to indulge defendant's speculation that the prosecutor engaged in such manipulation. The record reflects that the prosecutor believed the evidence of a retaliation theory was admissible and that there was a sufficient "link" between the information and defendant's motive because of the family relationship between defendant and Manar and the information he gathered from Williams. The prosecutor listed Williams and Manar on the witness list. Manar was subpoenaed and appeared on the first day of trial, but she failed to appear on the second day of trial. Further, although the trial court ultimately disagreed with the prosecutor regarding the admissibility of Williams's testimony and the retaliation motive evidence, and decided to strike Williams's testimony, we decline to find bad faith on that basis. See *People v Taylor*, 275 Mich App 177, 179, 185; 737 NW2d 790 (2007) (finding no misconduct where the prosecutor made an assertion in opening statement and the trial court later ruled that the evidence relating to the assertion was inadmissible because the prosecutor did not establish that the evidence related to the defendant).

Defendant also asserts that if there was no "bad faith" on the part of the prosecutor, he nevertheless suffered prejudice such that reversal is required. *Wolverton*, 227 Mich App at 77. However, we find no prejudice requiring reversal under the circumstances. Defendant failed to object to the prosecutor's statement or Williams's testimony on prosecutorial misconduct grounds and he did not request a curative instruction regarding the prosecutor's statement. *Callon*, 256 Mich App at 329-330. Further, the trial court twice instructed the jury, once after Williams's testimony, and again during the final instructions, that Williams's stricken testimony was not to be considered at all. Defense counsel approved of the first instruction and requested a second instruction at the end of the trial. The trial court also instructed the jury that the lawyers' statements were not evidence. Because the trial court issued curative instructions, any prejudicial effect was alleviated. *Id.* "[T]he jury must be presumed to have based their verdict upon the evidence, and not upon the statement of counsel." *People v Fowler*, 104 Mich 449, 452; 62 NW 572 (1895); *Wolverton*, 227 Mich App at 76. The prosecutor did not mention the retaliation motive during his closing argument, and we note that defense counsel actually used the prosecutor's opening statement strategically. He argued that "the whole theory was because his brother got killed [sic] then obviously this was some kind of—that was his opening argument, some kind of retaliation or whatever. Whatever. People dying [sic] in Detroit everyday. And just because one die don't [sic] mean that the other one got nothing [sic] to do with it. But when you get the streets talking, or the streets to make it out—because the streets ain't [sic] reliable—that's all hearsay." Defense counsel asserted that the only evidence against defendant was unreliable "street talk and police hunches." In ruling, we note that defense counsel also explored the retaliation issue during his case in chief in examining Sergeant Kevin Hanus regarding why he included a photograph of a family member of defendant's in the photographs shown to witnesses, and Hanus responded, "Because I thought that the Akram family had something to do

with [the victim's] murder." On the record, defendant has failed to establish plain, outcome-determinative error. *Callon*, 256 Mich App at 329-330.

B. STANDARD 4 BRIEF

Defendant first asserts that the prosecutor violated his confrontation rights when Williams and Hanus testified about statements made to them by other people. *Crawford v Washington*, 541 US 36, 59, 68; 124 S Ct 1354; 158 L Ed 2d 177 (2004). Because defendant did not make a Confrontation Clause objection at trial, we review this issue for plain error affecting defendant's substantial rights. *People v Bauder*, 269 Mich App 174, 180; 712 NW2d 506 (2005), citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

With respect to Williams, the trial court ultimately struck Williams's testimony in its entirety and gave limiting instructions that the jury should disregard it. The prosecutor did not reiterate the retaliation theory or evidence in closing. The jury is "presumed to follow [its] instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). We therefore decline to find that plain, outcome-determinative error occurred. *Carines*, 460 Mich at 763-764. In ruling, we note that Williams's testimony about information that others provided him was not offered for its truth, but to establish a retaliation motive. The Confrontation Clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." *Crawford*, 541 US at 59 n 9. Further, the prosecutor's opening statement did not violate defendant's confrontation rights. The prosecutor was not testifying as a witness at trial; he was giving his opening statement. Moreover, the jury was specifically instructed that the lawyers' statements were not evidence.[4]

With respect to Hanus's testimony, we similarly hold that defendant's confrontation rights were not violated. Defense counsel called Hanus as a witness and elicited the challenged testimony that Hanus believed that the "Akram family is retaliating for the murder of [defendant's] brother." Error requiring reversal cannot be predicated on error to which an appellant contributed either by plan or negligence. *People v Gonzalez*, 256 Mich App 212, 224; 663 NW2d 499 (2003). The record reflects that defense counsel purposely elicited this information in order to show that the police investigation and evidence against defendant consisted of little more than "a hunch."

Defendant next argues that the prosecutor presented false testimony to the jury with respect to Williams, in violation of *Giglio v United States*, 405 US 150; 92 S Ct 763; 31 L Ed 2d

[4] Defendant also argues that counsel was ineffective for failing to object on Confrontation Clause grounds. Defendant did not include this issue in his statement of the question presented and it is therefore not properly before this Court. MCR 7.212(C)(5); *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). Moreover, because we find that there was no error, defense counsel did not render ineffective assistance when he approved the trial court's instructions with respect to the stricken testimony. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

104 (1972). Because he failed to preserve this alleged constitutional error, it is reviewed for plain error. *Carines*, 460 Mich at 763-764.

If the prosecution obtains a conviction by knowingly using perjured testimony, the conviction must be set aside where there is "any reasonable likelihood that the false testimony could have affected the judgment of the jury." *People v Aceval*, 282 Mich App 379, 389; 764 NW2d 285 (2009) (quotation omitted). However, we hold that the prosecutor did not present false testimony to the jury.[5] Williams did not specifically testify that Manar gave him information regarding defendant or that defendant knew that the victim was present when Avery was killed. The prosecution acknowledges on appeal that the prosecutor represented to the trial court that Manar Akram gave the police the information that the victim was present during Avery's murder. However, the prosecutor's statements to the trial court occurred outside the presence of the jury. Defendant also emphasizes that the prosecutor presented false testimony that the victim was present during Avery's murder because the victim had actually run away before the murder. However, Williams clearly testified that the victim "was in the van at the time of the homicide prior to the shooting. He jumped out and fled the area."

Defendant also claims that the prosecutor lied when he stated that he intended to present Manar as a witness. However, the record reflects that the prosecutor listed Manar as a witness, subpoenaed her, and she appeared on the first day of trial. Notably, Manar failed to appear in court on the second day of trial and she was never presented by defendant as a witness at the *Ginther* hearing.

Even if defendant could somehow establish that false information was presented to the jury, defendant cannot show that there was any reasonable likelihood that it affected the jury's judgment. *Aceval*, 282 Mich App at 389. The trial court struck Williams's testimony and issued limiting instructions.[6]

Defendant also argues that he was denied effective assistance of counsel at numerous times throughout his trial. The remand for a *Ginther* hearing was limited to the issue of the alibi witnesses. *People v Akram*, unpublished order of the Court of Appeals, entered February 25,

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[5] Defendant briefly argues that the retaliation information was more prejudicial than probative and was hearsay. Defendant has abandoned these claims on appeal because he fails to further discuss them, other than to cite a string of evidentiary rules. A party "may not merely 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).

[6] Defendant also asserts that Williams subsequently murdered his wife, citing to information outside the lower court record. This has no relevance to whether Williams presented false testimony at defendant's trial. In addition, because a party cannot expand the record on appeal, this information may not be considered. *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). Defendant further notes that he reported "the detectives" to the Attorney General's Office. Even if true, this claim, which is not supported by evidence in the lower court record, does not establish that the prosecutor knowingly presented perjured testimony that was material to defendant's guilt.

2009 (Docket No. 283161). Review of his claim is limited to any errors that are apparent on the available record. *Matuszak*, 263 Mich App at 48.

Defendant contends that counsel was ineffective for failing to present an expert witness on eyewitness identification. Defendant offers no proof that an expert witness would have testified favorably for him, and has therefore failed to establish the factual predicate for his claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Further, whether to present expert testimony regarding eyewitness identification is a matter of trial strategy and this Court defers to trial counsel's strategic decisions. *People v Cooper*, 236 Mich App 643, 658; 601 NW2d 409 (1999). Counsel "may reasonably have been concerned that the jury would react negatively to perhaps lengthy expert testimony that it may have regarded as only stating the obvious: memories and perceptions are sometimes inaccurate." *Id.* As in *Cooper*, instead of presenting an expert on eyewitness identification, defendant's lawyer made significant efforts to point out reasons to doubt Archer's and Johnson's identifications of defendant. *Id.* Further, because defendant presented the defense of misidentification, defendant was not deprived of a substantial defense. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999) (failure to call a witness or present evidence constitutes ineffective assistance when it deprives the defendant of a substantial defense, i.e., one that might have affected the outcome of the trial).

Defendant claims that defense counsel was ineffective for failing to move for a *Wade*[7] hearing regarding the photographic identification procedures used by the police. However, defendant fails to argue that the photographic lineup procedures were suggestive. *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998). He merely notes that there were "different descriptions, stories, what was said, how the process went, etc. . ." Defendant has presented no basis upon which to find that a *Wade* hearing was warranted or would have resulted in a finding that the lineup procedures were constitutionally suggestive. Again, he has failed to establish the factual predicate for his claim. *Hoag*, 460 Mich at 6. Because there is no indication that a *Wade* hearing would have been successful, counsel cannot be deemed ineffective for failing to make a meritless motion. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Defendant asserts that counsel should have requested a mistrial regarding the retaliation evidence. Defendant cites no authority to support that a mistrial was warranted, and he has therefore abandoned this claim. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Moreover, a mistrial is appropriate only where there was an irregularity that prejudiced defendant's rights and impaired his right to a fair trial. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). We have fully discussed the effect of Williams's testimony and the prosecutor's statements. See section II.A, *supra*. There was no prejudicial error where Williams's testimony was stricken, the trial court issued curative instructions, and defense counsel used the retaliation theme strategically to defendant's advantage. Thus, even if defendant had not abandoned this claim, it would be meritless, and counsel is not ineffective for failing to advocate a meritless position. *Snider*, 239 Mich App at 425.

[7] *United States v Wade*, 388 US 218; 87 S Ct 1926; 18 L Ed 2d 1149 (1967).

Defendant maintains that counsel was ineffective because he "backed down" and expressed satisfaction regarding the trial court's erroneous reasonable doubt instruction. Defendant cites no legal authority to support his claim that the trial court's instruction was erroneous, and he has therefore abandoned this claim. *Kelly*, 231 Mich App at 640-641. Nonetheless, we note that the jury requested a reasonable doubt instruction during deliberations, and defendant now challenges the trial court's responsive statement that the prosecutor was not required to remove every doubt in a case. However, the trial court also instructed the jury that the prosecutor must prove defendant's guilt beyond a reasonable doubt. The instructions were sufficient to inform the jury that the prosecutor bore the burden of proof and what constituted a reasonable doubt. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). Counsel was not ineffective for failing to object to the trial court's correct instructions. *Snider*, 239 Mich App at 425.

Defendant asserts that counsel was ineffective because, according to defendant, the trial court essentially coerced the jury's verdict and counsel "backed down" when the trial court refused to declare a hung jury. We find nothing in the record to support defendant's claim that the trial court coerced the jury verdict. *People v Vettese*, 195 Mich App 235, 244; 489 NW2d 514 (1992). The jury deadlocked on the first day of deliberations, but a replacement juror was seated on the second day and the jury began deliberations anew. The jury deadlocked that afternoon, but then resumed deliberations. The trial court denied defense counsel's request to declare a hung jury, noting that it would be inappropriate because the new jury had not yet deliberated for a full day nor indicated any problems during deliberations that morning. The jury then agreed on a verdict. There is no indication that the trial court's actions were threatening or coercive. *People v Hardin*, 421 Mich 296, 312, 315; 365 NW2d 101 (1984). Further, there was nothing coercive or threatening in the trial court's statements during jury selection regarding how many days it expected the trial would last and that the length of the jury deliberations would depend on the jury. *Id.* And, because there was no error in continuing to allow the jury to deliberate, counsel cannot be deemed ineffective for failing to pursue a meritless argument. *Snider*, 239 Mich App at 425.

Lastly, defendant claims that the cumulative errors of counsel deprived him of a fair trial. "The cumulative effect of several minor errors may warrant reversal where the individual errors would not." *People v Unger*, 278 Mich App 210, 258; 749 NW2d 272 (2008) (quotation and alteration omitted). However, other than counsel's failure to investigate and present an alibi defense, defendant has failed to establish that any errors occurred.[8]

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto

[8] Defendant also asserts that counsel should have requested a hearing on "disclosure." He cites no law for this assertion and fails to further elaborate. This issue has therefore been abandoned. *Kelly*, 231 Mich App at 640-641.