STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 12, 2017
v	No. 334736 Kalamazoo Circuit Court
CHARLES VERNON ECHOLS, Defendant-Appellant.	LC No. 2014-001653-FC

Before: MARKEY, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

A jury convicted defendant of armed robbery, MCL 750.529, and assault with a dangerous weapon (felonious assault), MCL 750.82. The trial court sentenced defendant to concurrent terms of 13 to 35 years' imprisonment for the armed robbery conviction and 608 days' imprisonment for the felonious assault conviction. Defendant appeals by right. We affirm.

In October 2014, defendant, using a knife, robbed the Sunny Mart liquor store in Kalamazoo, Michigan. Defendant admitted to the crime, but he claimed that he committed the robbery under duress. According to defendant, in March 2014, he stole a quantity of cocaine from Reginald Alexander, whom he knew as "Reggie Hogan." Defendant claimed that when Alexander found out, he kidnapped defendant's six-year-old son, J.L., and forced defendant to rob Sunny Mart for money to replace the cocaine.

Detectives for the Kalamazoo Department of Public Safety investigated defendant's claim. They located J.L. and determined that he was never kidnapped. When confronted with this information, defendant claimed that he had two sons with different women, both sons were six years old, and both were named J.L. Defendant claimed that the detectives found the wrong son. The detectives were able to determine that defendant had various children, but only one was named J.L. The detectives were otherwise not able to find any evidence that supported defendant's claim. The detectives also interviewed Alexander, who denied defendant's allegations, and claimed that he did not know defendant had a minor son.

Defendant testified at trial regarding the alleged kidnapping and the resulting robbery under duress. After defendant testified, the prosecution called Alexander as a rebuttal witness to defendant's testimony. During cross-examination, defense counsel asked Alexander if he ever sold drugs to defendant. Alexander asserted his Fifth Amendment right. Alexander otherwise testified that there was no child with him or defendant at any point during the day of the robbery,

that there was no car seat for a child in defendant's car, and that he was not aware that defendant had a minor son. He also denied being at a party with defendant in March 2014 or that defendant was in debt to him for any reason. Alexander denied sending people to defendant's house, kidnapping his son, or forcing defendant to rob Sunny Mart.

Defendant first argues that he was denied a fair trial because he was not able to offer Alexander immunity for his testimony, which would have been pivotal to his duress defense. We disagree.

Neither defendant nor the prosecution ever raised the issue in the trial court of requesting or granting immunity to Alexander. Therefore, the issue is unpreserved for appeal. *People v Lawton*, 196 Mich App 341, 346; 492 NW2d 810 (1992). Unpreserved issues, both constitutional and nonconstitutional, are reviewed for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Plain error requires showing that (1) error occurred; (2) the error was clear or obvious, and (3) the error affected defendant's substantial rights, i.e., that the error affected the outcome of the lower court proceedings. *Id*. at 763. Reversal is warranted only when the plain error "resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity, or public reputation of the judicial proceeding independent of the defendant's innocence." *Id*. (quotation marks and citation omitted).

The United States and Michigan Constitutions guarantee defendant's right to a fair trial. US Const, Am VI, XIV; Const 1963, art 1, § 20; *People v Conley*, 270 Mich App 301, 307; 715 NW2d 377 (2006). "A witness may assert the Fifth Amendment right against self-incrimination at any proceeding in which the witness reasonably believes that the information sought, or that is discoverable as a result of the witness's testimony, may lead to subsequent criminal proceedings against him or her." *People v Bassage*, 274, Mich App 321, 324-325; 733 NW2d 398 (2007). MCL 780.701(1)(a) states that a *prosecutor* may seek immunity from the trial court judge for "any person . . . who might give testimony concerning the violation charged in the complaint . . . ." A defendant who wishes to obtain the testimony of a witness who refuses to testify claiming his right against self-incrimination must ask the prosecutor to seek immunity for the witness, and the prosecutor may decline to do so. *People v Schmidt*, 183 Mich App 817, 824-826; 455 NW2d 430 (1990);[1] see also *Lawton*, 196 Mich App at 346 ("The prosecutor had no duty to grant [the witness] immunity so he could testify for defendant. Indeed, defendant made no such request below . . . .").

Defendant argues that Alexander would have corroborated his duress defense had Alexander been granted immunity and been unable to assert his Fifth Amendment right. But defendant never asked the prosecution to petition the trial court to grant Alexander immunity.

[1] Cases decided before November 1, 1990, are not binding precedent. MCR 7.215 (J)(1). They can, however, be considered persuasive authority. *People v Ford*, 262 Mich App 443, 452; 687 NW2d 119 (2004).

Defendant cites *Holmes v South Carolina*, 547 US 319, 324; 126 S Ct 1727; 164 L Ed 2d 503 (2006), for the proposition that the right to present a complete defense is "abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve." Defendant, however, does not explicitly provide an argument that any rule of evidence or statute involved in this case is arbitrary or disproportionate. And as we have recognized many times:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. . . . Failure to brief a question on appeal is tantamount to abandoning it. [*People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001) (citation omitted).]

Accordingly, because defendant never requested that Alexander be granted immunity, we conclude that defendant has not demonstrated any plain error that affected his substantial rights. Moreover, defendant was permitted to present his defense and was not denied a fair trial due to his inability to offer Alexander immunity for his testimony.

Defendant next argues on appeal that the trial court abused its discretion in allowing Alexander to testify as an unendorsed rebuttal witness. We disagree.

A trial court's decision to allow a late endorsement of a witness is reviewed for an abuse of discretion. *People v Canter*, 197 Mich App 550, 563; 496 NW2d 336 (1992). A trial court abuses its discretion when it chooses an outcome that is outside of the range of reasonable and principled outcomes. *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008).

MCL 767.40a governs the disclosure of witnesses and the addition of late witnesses. That statute states in relevant part:

> (1) The prosecuting attorney shall attach to the filed information a list of all witnesses known to the prosecuting attorney who might be called at trial and all res gestae witnesses known to the prosecuting attorney or investigating law enforcement officers.
>
> (2) The prosecuting attorney shall be under a continuing duty to disclose the names of any further res gestae witnesses as they become known.
>
> (3) Not less than 30 days before the trial, the prosecuting attorney shall send to the defendant or his or her attorney a list of the witnesses the prosecuting attorney intends to produce at trial.
>
> (4) The prosecuting attorney may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties.

"[T]o warrant reversal for a violation of MCL 767.40a, defendant must show that he was prejudiced by noncompliance with the statute." *People v Everett*, 318 Mich App 511, 523; 899 NW2d 94 (2017) (quotation marks and citation omitted). "Ultimately, error in the admission or exclusion of evidence does not warrant reversal if, in light of the other properly admitted evidence, it does not affirmatively appear more probable than not that a different outcome would have resulted without the error." *Id.* at 523-524 (brackets, quotation marks, and citation omitted).

The name Reginald Alexander was not listed on the prosecution's known witness list; however, the name Reggie Hogan was on that list. Defendant believed that Alexander's name was Reggie Hogan. Additionally, Detective Ellis interviewed Alexander, who denied having any involvement in the kidnapping or robbery, and she memorialized that interview in a police report. The prosecution stated that it anticipated that Alexander's testimony would parallel his statements in the police report. Defense counsel confirmed that she had possession of, and had reviewed, police reports that listed Alexander's name and contact information and that Alexander might have relevant information.

Because Alexander's identity, contact information, and the substance of his potential testimony was disclosed to defendant through police reports, because the prosecution's known witness list included one of Alexander's aliases and the name that defendant knew him by, and because defendant himself presented testimony of Alexander's involvement, we conclude that the underlying purpose of MCL 767.40a—notice to defendant of potential witnesses—was satisfied. See, e.g., *People v Callon*, 256 Mich App 312, 326-327; 662 NW2d 501 (2003) (finding the requirements of MCL 767.40a(1) satisfied because the witness's identity was disclosed to the defendant through a toxicology report and the substance of the witness's testimony was known). Moreover, defendant has not demonstrated that he was prejudiced by any noncompliance with the statute or that it "affirmatively appear[s] more probable than not that a different outcome would have resulted without the error." *Everett*, 318 Mich App at 523-524.

Accordingly, the trial court did not abuse its discretion in allowing Alexander to testify.

We affirm.

/s/ Jane E. Markey
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause