STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 11, 2018
v	No. 336605 Jackson Circuit Court
DARIUS DOMINIQUE SPENCER, Defendant-Appellant.	LC No. 15-005419-FC

Before: O'CONNELL, P.J., and HOEKSTRA and SWARTZLE, JJ.

PER CURIAM.

A jury convicted defendant of armed robbery, MCL 750.529, assault with intent to rob while armed, MCL 750.89, conspiracy to commit assault with intent to rob while armed, MCL 750.157a and MCL 750.89, possession of a firearm during the commission of a felony, MCL 750.227b, felon in possession of a firearm, MCL 750.224f, and bribing a witness, MCL 750.122(7)(b). The trial court sentenced defendant as a second-offense habitual offender, MCL 769.10, to concurrent prison terms of 20 to 35 years each for the armed robbery, assault with intent to rob, and conspiracy convictions, 5 to 7-1/2 years for the felon-in-possession conviction, and 5 to 15 years for the bribery conviction, and a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. For the reasons explained in this opinion, we vacate defendant's conviction and sentence for assault with intent to rob while armed, but affirm in all other respects.

Defendant's convictions arise from his participation in the robbery of a gas station in Jackson, Michigan. Evidence at trial indicated that four men—John Weidman, Joshua Mitchell, Trevante Belcher, and defendant—conspired to rob the gas station. Weidman testified pursuant to a plea agreement whereby he pleaded guilty to the armed robbery, assault with intent to rob while armed, and conspiracy charges, in exchange for his testimony against his codefendants and dismissal of a felony-firearm charge and habitual offender enhancement.

Weidman testified that on the night of the robbery offense, defendant phoned him and told him that he had a proposition for him. Weidman later got into defendant's vehicle, a gray Kia. Defendant was the driver and Mitchell was in the front passenger seat. Weidman and Belcher were in the backseat. Defendant proposed that they rob the gas station, which he described as a "quick and easy" robbery. According to Weidman, Mitchell gave him a gun to use during the robbery. A mask was also provided. After being dropped off a short distance

from the gas station, Weidman walked to the gas station and went inside wearing a mask and gloves. Weidman testified that he aimed the gun at the clerk and asked for the money. When Weidman cocked the gun, a bullet fell out, onto the floor. As Weidman looked for the bullet, the clerk ran out the door. Unable to find the bullet, Weidman ran in the opposite direction and called defendant to pick him up. The gray Kia with the same passengers sitting in the same configuration picked Weidman up a couple of minutes later.

As the Kia was driven away from the vicinity of the gas station, a police car began to follow it and eventually activated its lights after the Kia rolled through a stop sign. The Kia accelerated and continued for a while, but it eventually stopped. Following a foot chase, Weidman was apprehended by police. While the foot chase was ongoing, the Kia drove away. A different police officer subsequently observed the Kia, in the same general area, with its driver's door open and a person running away from the vehicle. The officer chased and apprehended the person, who was identified as Mitchell.

Police officers recovered a .9 millimeter bullet from inside the gas station. A .9 millimeter handgun was found in the backyard of a residence near where the officers had been chasing the suspects. It was later determined that the gun had been reported lost in Kentucky. Police also collected a mask and a pair of gloves from the rear passenger seat of the Kia, a Michigan driver's license for Mitchell from the center console in the vehicle, a small bag of marijuana from the driver's side floorboard, and rental car paperwork for the Kia that revealed it had been rented in Radcliff, Kentucky. DNA evidence linked Mitchell to the gun. Defendant's DNA matched DNA on the steering wheel of the Kia. Telephone records revealed that the cell phone attached to the number that Weidman had been dialing to call defendant before and after the robbery had been in Kentucky and that the phone moved from Kentucky, to Indiana, to Michigan, eventually using a cell tower in Jackson on the day of the robbery.

According to the victim, defendant came into the gas station the day after the robbery and told the victim that he knew who committed the robbery and showed him a picture of that person from Facebook. Defendant told the victim that his friend had nothing to do with the robbery and offered him $1,500 to "not go to court." The victim understood that defendant was referring to Mitchell. Defendant was ultimately arrested at a residence owned by Mitchell's relative.

I. PROSECUTOR'S CONDUCT

Defendant first argues that the prosecutor misled the jury during rebuttal closing argument about the benefits of Weidman's plea agreement by stating that Weidman was not receiving anything for his testimony and that a felony-firearm charge is a "throwaway charge." Because defendant did not object to the prosecutor's remarks at trial, this issue is unpreserved, and our review is limited to plain error affecting defendant's substantial rights. *People v Abraham*, 256 Mich App 265, 274; 662 NW2d 836 (2003). "In order to avoid forfeiture of an unpreserved claim, the defendant must demonstrate plain error that was outcome determinative." *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). "[W]here a curative instruction could have alleviated any prejudicial effect we will not find error requiring reversal." *People v Ackerman*, 257 Mich App 434, 449; 669 NW2d 818 (2003).

"[T]he test for prosecutorial misconduct is whether a defendant was denied a fair and impartial trial." *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007). "[A] prosecutor's comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial." *People v Callon*, 256 Mich App 312, 330; 662 NW2d 501 (2003). "Prosecutors are typically afforded great latitude regarding their arguments and conduct at trial." *People v Unger*, 278 Mich App 210, 236; 749 NW2d 272 (2008). However, a prosecutor "may not argue facts not in evidence or mischaracterize the evidence presented." *Watson*, 245 Mich App at 588.

In this case, Weidman testified at trial that he robbed the gas station and that he was offered a plea agreement in exchange for his testimony. The jury was informed during the prosecutor's opening statement that a codefendant, who had been offered a plea agreement, would be testifying. During his testimony, Weidman explained the terms of the agreement, acknowledging that his plea involved the dismissal of a felony-firearm charge and a habitual offender notice. He also stated that his attorney advised him not to accept the agreement because it was "a sucky deal." According to Weidman, "it really wasn't going to benefit [him] to testify against the Codefendants." During closing arguments, defense counsel challenged Weidman's credibility, asserting that Weidman was "trying to keep himself out of trouble" or to at least "lessen the consequences against him." In response, during the prosecutor's rebuttal closing argument, she remarked:

> Now, don't get me wrong, I have no sympathy for John Weidman whatsoever, we told you what his deal was going to be. It's not a good deal, *he's not getting off of anything, he's still pleading to the armed robbery charges, he's getting a felony firearm charge, a throwaway charge.* He said himself, his attorney told him to not take the deal. His attorney told him it is not a good deal, it's not worth it. *We're not giving him anything*. He doesn't have much to gain by doing what he's doing . . . . [Emphasis added.]

Considering the prosecutor's comments, we are troubled by the prosecutor's statement that felony-firearm is a "throwaway charge" and that the dismissal of this charge as well as dismissal of the habitual offender enhancement can be equated with "not giving [Weidman] anything." Such an assertion is not accurate because, as the prosecutor well knows, felony-firearm carries a mandatory two-year consecutive sentence. See MCL 750.227b(1) and (3). We do not think that two years in prison can reasonably be characterized as nothing. Likewise, the sentencing enhancement affects the calculation of the guidelines. See MCL 769.10; MCL 777.21(3)(a). Plainly, the agreement to dismiss the felony-firearm charge as well as the sentencing enhancement involves a benefit that the prosecution "gave" Weidman in exchange for his plea. To state otherwise was inaccurate and improper.

However, while specific portions of the prosecutor's arguments regarding Weidman's plea were improper, this error was not outcome determinative. When the prosecutor's remarks are considered as a whole and in the context of the evidence presented at trial, it is clear that the jury was made aware that Weidman received a deal in exchange for his testimony. In this regard, the prosecutor stated that the jury was told "what his deal was going to be," that "he's still pleading to the armed robbery charges," that Weidman's had been advised not to accept the deal because it was not "a good deal," and that he did not have "much to gain." We see nothing

inappropriate in the prosecutor's more restrained argument that Weidman did not receive a "good deal," and these more temperate arguments regarding the nature of Weidman's plea make plain that, while Weidman still faced significant consequences and he did not have "much to gain," he did receive a deal in exchange for his testimony. These assertions were also based on the evidence presented. Weidman testified that he had been advised not to take the deal and he asserted that "it really wasn't going to benefit" him to testify against defendant. Further, the jury knew that Weidman was charged with armed robbery, assault with intent to rob while armed, conspiracy to commit assault with intent to rob while armed, and felony-firearm, and that he was testifying pursuant to a plea agreement that involved dismissal of the felony-firearm charge and the habitual offender information in exchange for Weidman's testimony and his plea of guilty to armed robbery, assault with intent to rob while armed, and conspiracy.

Because the jury was specifically told the terms of the plea agreement, any mischaracterization of the terms of the plea agreement by the prosecutor during rebuttal did not affect the outcome of the proceedings. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Further, the trial court properly instructed the jury that "[t]he lawyers' statements and arguments are not evidence" and are "only meant to help you understand the evidence in each side's legal theories," and that "[y]ou should only accept things the lawyers say that are supported by the evidence and by your own common sense and general knowledge." "[J]urors are presumed to follow their instructions," and these instructions were sufficient to cure the prejudicial effect of the prosecutor's statements. *Unger*, 278 Mich App at 235. In these circumstances, any misstatement by the prosecutor did not affect the outcome of the proceeding, and defendant has not shown outcome determinative plain error.

Defendant also argues that he was deprived of the effective assistance of counsel because defense counsel did not object to the prosecutor's remarks about Weidman's plea. But even if counsel should have objected, as explained above, any misstatement did not affect the outcome of the proceeding because the jury was clearly informed of the scope of Weidman's plea agreement and the trial court's jury instructions were sufficient to cure any perceived prejudice. Thus, defendant has not shown that he was prejudiced by counsel's failure to object, and he is not entitled to relief. See *People v Ortiz*, 249 Mich App 297, 311-312; 642 NW2d 417 (2001).

II. MOTION TO SEVER

Defendant next argues that the trial court erred by denying his motion to sever the bribery count from the remaining charges. According to defendant, the charges were subject to severance at defendant's request under MCR 6.120(C) because the bribery and armed robbery were unrelated criminal acts that occurred on separate days. We disagree.

MCR 6.120(C) provides that "[o]n the defendant's motion, the court must sever for separate trials offenses that are not related . . . ." "Whether defendant's charges are related is a question of law that we review de novo." *People v Girard*, 269 Mich App 15, 17; 709 NW2d 229 (2005). "The court's ultimate ruling on a motion to sever is reviewed for an abuse of discretion." *Id.*

For purposes of MCR 6.120, "offenses are related if they are based on (a) the same conduct or transaction, or (b) a series of connected acts, or (c) a series of acts constituting parts

of a single scheme or plan." MCR 6.120(B)(1). Under this definition of "related," offenses do not have to occur at the same time to be considered related. *People v Williams*, 483 Mich 226, 241 & n 6; 769 NW2d 605 (2009). Further, the acts do not necessarily have to be "of the same or similar character." *Id.* at 242. In considering whether severance is appropriate, "[t]he admissibility of evidence in other trials is an important consideration because joinder of other crimes cannot prejudice the defendant more than he would have been by the admissibility of the other evidence in a separate trial." *Id*. at 237 (citation, quotation marks, and alterations omitted).

In this case, defendant aided and abetted an armed robbery at a gas station and, the following day, he returned to the same gas station to offer the victim $1,500 as a bribe not to testify against Mitchell, who was defendant's coconspirator in the armed robbery. The two offenses involved the same victim and both were related to the robbery of the gas station. Indeed, the bribery offense amounted to an attempt to cover-up the armed robbery. Cf. *People v Oros*, 320 Mich App 146, 165-166; __ NW2d __ (2017). Evidence of the bribery attempt would have been admissible at a separate trial on the robbery charges as evidence showing a consciousness of guilt, *People v Schaw*, 288 Mich App 231, 237; 791 NW2d 743 (2010); and evidence of the robbery would have been admissible to explain defendant's motive for bribery at a separate trial on that charge, MRE 404(b). On the whole, the two offenses were based on a series of acts that were part of a single scheme involving armed robbery and an attempt to cover-up the crime; and accordingly, they were related within the meaning of MCR 6.120(B)(1)(c). See *Oros*, 320 Mich App at 165-166. See also *United States v Davis*, 724 F3d 949, 955 (CA 7 2013) (approving joinder of bank robbery and witness intimidation charges because witness intimidation was part of a single scheme or plan to hide previous bank robberies); *United States v Balzano*, 916 F2d 1273, 1280 (CA 7 1990) (finding joinder of witness intimidation with extortion and RICO conspiracy charges was proper because "a conspiracy and its cover-up are parts of a common plan").[1] Because the offenses were "related," defendant was not entitled to severance under MCR 6.120(C), see *Abraham*, 256 Mich App at 272, and the trial court did not abuse its discretion by denying defendant's motion, *Girard*, 269 Mich App at 17.

III. DISMISSAL OF A DELIBERATING JUROR

Defendant next argues that the trial court erred when it removed a deliberating juror and replaced the juror with an alternate. According to defendant, the juror who was removed was a lone holdout in favor of acquittal and she was removed simply because her views differed from the other jurors. Alternatively, defendant argues that the trial court should have granted his motion for a mistrial because the dismissed juror exposed the jury to extrinsic evidence.

We review a trial court's decision whether to remove a juror for an abuse of discretion. *People v Mahone*, 294 Mich App 208, 215; 816 NW2d 436 (2011). This Court also reviews a trial court's denial of a motion for a mistrial for an abuse of discretion. *People v Waclawski*, 286 Mich App 634, 708; 780 NW2d 321 (2009). "An abuse of discretion occurs when the court

[1] "Lower federal court decisions are not binding on this Court, but may be considered on the basis of their persuasive analysis." *People v Fomby*, 300 Mich App 46, 50 n 1; 831 NW2d 887 (2013). See also *Williams*, 483 Mich at 235-236.

chooses an outcome that falls outside the range of reasonable and principled outcomes." *Unger*, 278 Mich App at 259.

"A defendant has a right to be tried by a fair and impartial jury." *People v Garay*, 320 Mich App 29, 39; __ NW2d __ (2017). A defendant also has "a fundamental interest in retaining the composition of the jury as originally chosen." *People v Tate*, 244 Mich App 553, 562; 624 NW2d 524 (2001). The decision to remove a juror involves "weighing a defendant's fundamental right to a fair and impartial jury with his right to retain the jury originally chosen to decide his fate." *Id.* Among other reasons, jurors may be removed in cases of illness, *id.*, mental or emotional inability to complete deliberations, *Mahone*, 294 Mich App at 216, bias or prejudice, *People v Mason*, 96 Mich App 47, 50; 292 NW2d 480 (1980), and juror misconduct, see, e.g., *United States v Edwards*, 303 F3d 606, 632 (CA 5, 2002). However, while a juror may be dismissed during deliberations, it would be improper to remove a holdout juror merely to avoid a deadlocked jury. See *United States v Thomas*, 116 F3d 606, 622 (CA 2 1997). In other words, "a court may not dismiss a juror during deliberations if the request for discharge stems from doubts the juror harbors about the sufficiency of the government's evidence." *United States v Brown*, 823 F2d 591, 596; 262 US App DC 183 (1987).

In this case, defendant characterizes the dismissed juror as a lone holdout, who was dismissed merely because she was unprepared to convict defendant and the other 11 jurors had grown frustrated with her viewpoint. In actuality, the record establishes that the juror in question was acquainted with one of the police officers who testified at trial. Based on her own experiences with this officer, the juror had concerns about his credibility because he had lied to her in the past. In violation of the trial court's instruction to consider only the evidence admitted at trial, the juror disclosed her personal experience with the officer to the other jurors. In particular, the jury sent the trial court a note stating: "One Juror believes one of the officers lied to during [sic] testimony because this particular officer lied to this particular juror in the past. The other (11) eleven jurors are concerned about this jurors [sic] bias and not being able to reach a decision." The trial court questioned the juror and she acknowledged that, when the officer testified, she realized that she knew him and that he had lied to her in the past. She also admitted that she told the other jurors about this incident. The trial court then removed the juror because she brought "outside extrinsic evidence into the jury room." In short, it is clear from the record that the trial court removed the juror, not because of her views on the merits of the case, but because she violated the trial court's instructions and improperly introduced extrinsic evidence into the jury room. Cf. *Edwards*, 303 F3d at 632 (juror dismissed for failing to follow instructions regarding extrinsic materials). Dismissing the juror on this basis was not improper.

Having dismissed a juror, the trial court had the authority to recall an alternate, who had also heard the case, to replace the juror who had been removed. See MCR 6.411; MCL 768.18; *Mahone*, 294 Mich App at 217. As required by MCR 6.411, after replacing the dismissed juror with an alternate, the trial court instructed the jury to begin their deliberations anew.[2] These

[2] Defendant emphasizes on appeal that the jury returned a verdict relatively quickly after the alternate juror arrived. According to defendant, this fact confirms that the removed juror was a lone holdout and defendant questions whether the jury actually began its deliberations from the

procedures involving the use of an alternate juror ensured that defendant's right to have his case decided by an impartial jury as chosen was protected See *Mahone*, 294 Mich App at 217-218; *People v Dry Land Marina, Inc*, 175 Mich App 322, 327; 437 NW2d 391 (1989).

On appeal, defendant asserts that, if the juror needed to be dismissed, the trial court should have declared a mistrial because the juror exposed the remaining jurors to extrinsic evidence. "To establish that an extraneous influence was error requiring reversal, a defendant must prove two points: (1) the jury was exposed to an extraneous influence and (2) the extrinsic material created a real and substantial possibility that it could have affected the jury's verdict." *Garay*, 320 Mich App at 40. "Generally, in proving this second point, the defendant will demonstrate that the extraneous influence is substantially related to a material aspect of the case and that there is a direct connection between the extrinsic material and the adverse verdict." *People v Budzyn*, 456 Mich 77, 89; 566 NW2d 229 (1997). "If the defendant establishes this initial burden, the burden shifts to the people to demonstrate that the error was harmless beyond a reasonable doubt." *Id.*

In this case, while the jury appears to have been exposed to extrinsic evidence regarding the dismissed juror's prior personal experience with one of the testifying police officers, defendant has not shown "a real and substantial possibility" that this extraneous influence could have affected the jury. *Id.* The extraneous influence related to the credibility of one of the testifying police officers. However, the credibility of this particular officer was not a material aspect of the case. The officer's involvement consisted of arresting Mitchell. He did not even see defendant on the night of the robbery. Additionally, the court questioned the remaining jurors to determine if the extrinsic information introduced by the dismissed juror would affect their ability to render a fair and impartial verdict, based on the evidence properly admitted at trial. Cf. *People v Partee*, 130 Mich App 119, 129; 342 NW2d 903 (1983). The jurors indicated that the extrinsic evidence would not affect them. Thus, there is no basis for concluding that the extrinsic information had "a real and substantial possibility" of influencing the jury's verdict. See *Budzyn*, 456 Mich at 89. In sum, defendant has failed to show that the trial court abused its discretion by removing the juror, recalling an alternate juror, and denying defendant's motion for a mistrial. Defendant is not entitled to relief on appeal.

IV. DEFENDANT'S STANDARD 4 BRIEF

Defendant raises additional issues in a pro se supplemental brief, filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4.

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beginning once the alternate arrived. However, the jury was properly instructed to begin its deliberations anew, and "jurors are presumed to follow their instructions." *Unger*, 278 Mich App at 235. Any claim of error arising from the speed of the deliberations is simply speculation, and defendant is not entitled to relief merely because the jury returned a verdict in 75 minutes. See *Mahone*, 294 Mich App at 217-218. See also *United States v Martorell*, 81 Fed App'x 754, 757 (CA 2 2003) ("[T]hat the jury returned with a verdict so quickly after the removed juror was excused proves nothing about what the trial judge should have known about her views at the time he removed her from the jury.").

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that trial counsel was ineffective for failing to call alibi witnesses and for failing to conduct adequate pretrial investigation. Defendant's arguments are unpreserved, and our review is limited to errors apparent on the record. *People v Lockett*, 295 Mich App 165, 186; 814 NW2d 295 (2012). To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below objective standards of reasonableness and that, but for counsel's deficient performance, there is a reasonable probability that the result of defendant's trial would have been different. *People v Uphaus (On Remand)*, 278 Mich App 174, 185; 748 NW2d 899 (2008). Defendant bears the burden of establishing the factual predicate for his claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Defendant simply announces, with no evidentiary support and no offer of proof, that defense counsel failed to call a "known alibi witness." He also asserts that counsel failed to properly investigate potential witnesses or speak with defendant in a timely manner in order to prepare a proper defense for trial. Decisions regarding whether to call witnesses are presumed to be matters of trial strategy. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). The failure to call a witness only constitutes ineffective assistance of counsel if it deprived the defendant of a substantial defense, *id*., which is "one that might have made a difference in the outcome of the trial," *In re Ayres*, 239 Mich App 8, 22; 608 NW2d 132 (1999). The record does not disclose the extent of defense counsel's investigation of potential witnesses or counsel's reasons for not calling any specific witness. Moreover, defendant does not identify the alleged alibi witness or provide an affidavit or other appropriate offer of proof showing what testimony the unidentified witness could have provided. Because defendant has not established the factual predicates for his arguments, there is no basis for concluding that defense counsel's performance fell below an objective standard of reasonableness or that defendant was deprived of a substantial defense. Accordingly, his claim of ineffective assistance of counsel is without merit.[3]

B. SUFFICIENCY OF THE EVIDENCE

In his Standard 4 brief, defendant also challenges the sufficiency of the evidence in support of his convictions. Defendant does not challenge the specific elements of the offenses, but only argues that the evidence was insufficient to establish that he "literally participated" in the crimes. According to defendant, Weidman's testimony and circumstantial evidence of his involvement were insufficient to demonstrate his participation.

This Court reviews a challenge to the sufficiency of the evidence de novo. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). In reviewing a challenge to the

[3] To the extent defendant requests that we remand to the trial court for an evidentiary hearing, he makes this request in his Standard 4 brief, which is not a proper motion to remand under MCR 7.211(C)(1). *People v Bass*, 317 Mich App 241, 276 n 12; 893 NW2d 140 (2016). Defendant has also failed to provide an appropriate offer of proof as required by MCR 7.211(C)(1). Because defendant's motion is improperly made and he has failed to show that a remand is warranted, his motion to remand is denied. MCR 7.211(C)(1); *Bass*, 317 Mich App at 276 n 12.

sufficiency of the evidence, we review "the evidence in a light most favorable to the prosecutor to determine whether any rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). Circumstantial evidence and reasonable inferences arising from that evidence can constitute sufficient proof of the elements of a crime. *Carines*, 460 Mich at 757.

In this case, the evidence was sufficient to establish that defendant sought to bribe a witness, MCL 750.122, and that he was guilty of the other offenses as an aider and abettor, MCL 767.39; *Robinson*, 475 Mich at 5-6. Specifically, the facts show that Weidman engaged in an armed robbery using a gun and that he did so as part of a conspiracy with defendant, Mitchell and Belcher. Relevant to defendant's involvement, Weidman testified that defendant suggested the robbery, that defendant told Weidman that the robbery would be "quick and easy," that defendant transported Mitchell (who supplied Weidman with the gun), that defendant drove the car to the vicinity of the robbery location and dropped Weidman off, and that defendant then drove the car that picked up Weidman after the robbery. DNA evidence on the steering while established that defendant had driven the car in question. While defendant disputes Weidman's credibility and contends that DNA cannot establish when defendant drove the car, these concerns relate to the weight and credibility of the evidence, and "[t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). The victim in this case also testified that defendant attempted to prevent him from testifying by offering him a bribe after the robbery, which was sufficient to establish defendant's conviction for bribery, MCL 750.122, and it also tended to a show a consciousness of guilt with regard to the other offenses, see *Schaw*, 288 Mich App at 237. Overall, viewing the evidence in a light most favorable to the prosecutor, there was sufficient evidence to establish defendant's participation and to support defendant's convictions.

V. DEFENDANT'S CONVICTION OF ASSAULT WITH INTENT TO ROB WHILE ARMED

Although defendant does not raise the issue, the prosecution states in its appellate brief, and we agree, that defendant's convictions for armed robbery and assault with intent to rob while armed arising from the same incident involving only one victim violate the double jeopardy prohibition against multiple punishments for the same offense. See *People v Gibbs*, 299 Mich App 473, 488-491; 830 NW2d 821 (2013). To remedy this violation of double jeopardy, we vacate defendant's conviction and sentence for assault with intent to rob while armed. *Id.* at 491.

We vacate defendant's conviction and sentence for assault with intent to rob while armed, and affirm in all other respects.

/s/ Peter D. O'Connell
/s/ Joel P. Hoekstra
/s/ Brock A. Swartzle