

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FARD RAHMAN GRAHAM,

Defendant-Appellant.

UNPUBLISHED

March 22, 2007

No. 263702

Oakland Circuit Court

LC No. 2005-200255-FC

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of armed robbery, MCL 750.529, and two counts of bank robbery, MCL 750.531. He was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 20 to 50 years for each conviction. He appeals as of right. We affirm.

I. Underlying Facts

Defendant's convictions arise from robberies at two banks in the city of Birmingham. The first robbery occurred on a rainy morning on December 7, 2004, at a Charter One Bank where Bradley Grekonich worked as a teller. According to Grekonich, a man wearing a black puffy coat and a baseball hat walked up to the counter and handed him a deposit slip that stated, "I have a gun. Give me the money or I'll kill you." Grekonich gave the man \$1,700. The man walked out of the bank, leaving the deposit slip behind at the counter. Grekonich identified a man depicted in still photographs produced from the bank's video surveillance system as the robber, but failed to identify defendant in a pretrial lineup conducted by the police.

The second robbery occurred on the morning of December 8, 2004, at a Fidelity Bank where Shareen Coles worked as a teller. Coles identified defendant as the robber at trial and in a pretrial lineup. Coles testified that defendant wore a black puffy coat and a baseball cap when he entered the bank. He wrote something on a withdrawal slip and then approached the teller station next to Coles. Because that teller was busy, Coles offered to help defendant. Defendant gave Coles the withdrawal slip, which stated, "I have a gun. Give me all the money now." Coles handed cash from her drawer to defendant. She reported the robbery to bank managers after defendant departed toward a back exit. The withdrawal slip used to commit the robbery was left at the bank.

The person whom Coles identified as the robber drove off in a red Chrysler Sebring. A bank customer followed the vehicle to Webster Street and then showed Birmingham Police Officer Matthew Baldwin the driveway where the vehicle pulled in. After Officer Baldwin determined that the vehicle was inside a detached garage at 1462 Webster Street, he and other police officers secured the area around the house. The police received information that defendant was a renter at the house. Officer Baldwin made phone contact with a female occupant to request that defendant come out. After approximately five hours, defendant exited the house. Police officers subsequently executed a search warrant of the house and garage. Parked inside the garage were a red Chrysler Sebring and a dusty black Mercury Topaz. Among the items in the Mercury Topaz were a wet, black puffy coat and baseball cap. A wet handwritten note in the coat pocket stated, “I have a gun. Give me the money or I will kill you.”

II. Search Warrant

On appeal, defendant argues that the trial court erred in denying his motion to suppress evidence seized by the police from the Mercury Topaz, because this vehicle was not mentioned in the search warrant. Although the trial court conducted an evidentiary hearing, it was limited to Birmingham Police Detective Ron Halcrow’s testimony that the Mercury Topaz was in the garage at the time of the search. Because defendant did not dispute this fact, we review de novo the trial court’s legal ruling that the police had authority to search the Mercury Topaz. *People v Jones*, 249 Mich App 131, 135; 640 NW2d 898 (2002).

A search warrant must describe, with particularity, the place to be searched and the persons or things to be searched. *People v Martin*, 271 Mich App 280, 303; 721 NW2d 815 (2006). The search warrant in this case authorized the police to search a “detached garage located at 1462 Webster.” Because the Mercury Topaz was inside the garage and large enough to hold items sought in the search warrant, the police could lawfully search it. See *People v Hahn*, 183 Mich App 465, 469; 455 NW2d 310 (1989), vacated in part on other grounds 437 Mich 867 (1990) (warrant authorizing search of garage sufficient to authorize search of automobile located in garage); *United States v Evans*, 92 F3d 540, 543 (CA 7, 1996) (“A warrant to search a house or other building authorizes the police to search any closet, container, or other closed compartment in the building that is large enough to contain the contraband or evidence that they are looking for”).

In a pro se supplemental brief, defendant relies on evidence at trial to argue that the search warrant was invalid because it contained false information regarding the description of a hat worn by the person who committed the robberies. Because defendant did not move for a *Franks*¹ hearing, we consider this unpreserved claim under the plain error doctrine set forth in *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999). Defendant must show that (1) an error occurred, (2) the error was plain, and (3) the plain error affected his substantial rights. *Id.* at 763. Even if these requirements are established, “[r]eversal is warranted only when the plain, unpreserved 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 proceedings

¹ *Franks v Delaware*, 438 US 154; 98 S Ct 2674; 57 L Ed 2d 667 (1978).

independent of the defendant's innocence.” *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003).

Without a *Franks* hearing, the record is inadequate to conclude that the information attributed to Grekonich in Detective Ruby’s affidavit was false. At most, the record discloses that Grekonich testified at trial that he did not recall ever describing a “MSU” hat, but that photographs produced from the video surveillance system at the Charter One Bank depicted the person who committed the robbery. Grekonich agreed that a photograph showed the person wearing an “MSU” hat. Furthermore, even if the hat’s description was falsely attributed to Grekonich, it is not apparent that Detective Ruby intentionally or recklessly did so. It is possible that Detective Ruby was merely negligent in listing Grekonich’s description or incorrectly attributed another witness’s description to Grekonich. Indeed, a witness, George Magnielse, testified at trial that he saw the person depicted in a photograph wearing a “green and with white cap with State across the front of it” and that he described this person to the police. Thus, the record does not support defendant’s claim that no witness described the hat as set forth in the affidavit.

Regardless, defendant has failed to show that Detective Ruby knowingly or recklessly made a false statement essential to probable cause. Under *Franks*, a defendant is only entitled to a hearing to challenge the validity of a search warrant if he makes a substantial preliminary showing that the affiant made a false statement knowingly and intentionally, or with reckless disregard for the truth, and that the false statement was necessary for a finding of probable cause. *Martin, supra* at 311. In light of Detective Ruby’s averment that he independently viewed the video surveillance materials, it is not apparent that defendant would have been entitled to a *Franks* hearing, let alone that defendant could have successfully established that the search warrant, in whole or in part, was invalid. Even without Grekonich’s description, the remaining allegations provided probable cause to search for the “State” hat. Therefore, we reject defendant’s claim that he is entitled to a new trial or a *Franks* hearing.

We also reject defendant’s pro se claim that defense counsel was ineffective for failing to challenge the veracity of the information in the affidavit or to subpoena police officers to testify at the suppression hearing, other than Detective Halcrow. Because a *Ginther*² hearing was not held below, we limit our review of this issue to mistakes apparent from the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000). “To demonstrate ineffective assistance of counsel, defendant must show that his attorney’s conduct fell below an objective standard of reasonableness and that the representation so prejudiced defendant that he was deprived of a fair trial.” *People v Gonzalez*, 468 Mich 636, 644; 664 NW2d 159 (2003). “Effective assistance is presumed, and the defendant bears a heavy burden of proving otherwise.” *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

To overcome the presumption that defense counsel’s failure to call witnesses constituted sound trial strategy, defendant must show that he was deprived of a substantial defense that would have affected the outcome of the proceeding. *People v Daniel*, 207 Mich App 47, 58; 523

² *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

NW2d 830 (1994). Here, there is nothing in the record to indicate that additional police testimony would have made a difference in the trial court's conclusion that the search of the Mercury Topaz was authorized by the search warrant. Further, it is apparent from the record that a request for a *Franks* hearing would have been futile. "Defense counsel is not required to make a meritless motion or futile objection." *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).

Defendant's alternative request for a *Ginther* hearing was previously considered by this Court, which denied defendant's motion to remand for failure to show the necessity of a remand. We similarly conclude that defendant has not shown any basis for a remand and, accordingly, also deny defendant's request.

III. Amended Information

Defendant argues that the trial court erred in granting the prosecutor's motion to amend the information to add the additional bank robbery charges. Defendant asserts that the amendment was intended to penalize him for exercising his right to a trial and that he was not afforded fair notice of the charges.

A trial court may amend the information at any time unless doing so would unfairly surprise or prejudice the defendant. MCR 6.112(H); *People v Russell*, 266 Mich App 307, 317; 703 NW2d 107 (2005). We generally review the trial court's decision for an abuse of discretion. *Russell, supra*. Here, however, defense counsel objected to the amendment only on the ground that the prosecutor had ample opportunity to include the bank robbery charges in the initial warrants. Defendant never argued that amendment was not justified because of surprise, prejudice, or vindictive prosecution. "An objection based on one ground is usually considered insufficient to preserve an appellate attack based on a different ground." *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). Therefore, we consider defendant's newly raised claims for plain error. *Carines, supra* at 763.

Although a defendant has a due process right to fair notice of the charges, prejudice is an essential prerequisite of a claim of inadequate notice. *People v Darden*, 230 Mich App 597, 600-602; 585 NW2d 27 (1998). Because defendant did not argue prejudice below, and has failed to establish any prejudice on appeal, we conclude that he has not established any plain due process error arising from his right to fair notice.

Regarding defendant's claim of vindictiveness, "[i]t is a violation of due process to punish a person for asserting a protected statutory or constitutional right." *People v Ryan*, 451 Mich 30, 35; 545 NW2d 612 (1996). Prosecutorial vindictiveness may be presumed or actual, but "it is well established that the mere fact that a defendant refused to plead guilty and forces the government to prove its case is not sufficient to warrant presuming that subsequent changes in the charging decision are vindictive and therefore violate due process." *People v Goeddeke*, 174 Mich App 534, 536; 436 NW2d 407 (1998); see also *People v Jones*, 252 Mich App 1, 7; 650 NW2d 717 (2002). Vindictiveness is not presumed in situations involving plea negotiations because courts sanction the negotiations as a means of resolving criminal cases. Further, a prosecutor's threat to increase charges during plea negotiations is not meaningfully distinguishable from charging more strictly at the onset and then reducing the charges as a result of plea negotiations. See *United States v Gamez-Orduno*, 235 F3d 453, 462-463 (CA 9, 2000).

Because the record indicates that the prosecutor engaged in plea negotiations before moving to amend the information, defendant must show actual vindictiveness. “Actual vindictiveness will be found only where objective evidence of an ‘expressed hostility or threat’ suggests that the defendant was deliberately penalized for his exercise of a procedural, statutory, or constitutional right.” *Ryan, supra* at 36, quoting *United States v Gallegos-Curiel*, 681 F2d 1164, 1168 (CA 9, 1982). The record discloses that the prosecutor gave defense counsel notice at the preliminary examination that he would consider adding the bank robbery charges after the case was bound over to the circuit court. In the motion to add the bank robbery charges, the prosecutor asserted that the defense was advised that bank robbery charges would be added if the case was not resolved with a plea and that defense counsel advised the prosecutor on March 15, 2005, that defendant intended to go to trial. Although defense counsel challenged the timeliness of the prosecutor’s motion, defense counsel did not dispute the prosecutor’s claim that he attempted to negotiate a plea.

Examined in context, the prosecutor’s remarks at the motion hearing do not suggest that defendant was being deliberately punished for exercising his right to a trial. “The mere threat of additional charges during plea negotiations does not amount to actual vindictiveness where bringing the additional charges is within the prosecutor’s charging discretion.” *Ryan, supra* at 36. Therefore, defendant has not met his burden of establishing a plain error warranting appellate relief. *Carines, supra* at 763.

IV. Handwriting Expert

Defendant argues that the trial court abused its discretion by granting the prosecutor’s motion for endorsement of a handwriting expert. We disagree. A prosecutor “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.” MCL 767.40a(4). The purpose of the statute is to give notice to the accused of potential witnesses. *People v Callon*, 256 Mich App 312, 327; 662 NW2d 501 (2003). A trial court’s decision to allow the 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 defendant claiming an abuse of discretion must also establish prejudice warranting a new trial. *Callon, supra* at 328; *People v Herndon*, 246 Mich App 371, 403; 633 NW2d 376 (2001).

Based on the available record, defendant has not demonstrated that the court abused its discretion or prejudice. *Callon, supra*. The prosecutor demonstrated good cause by showing that he did not seek a handwriting expert until after it became clear that defendant would not tender a plea. Further, while there was delay in receiving the handwriting expert’s report, considering defendant’s failure to request an adjournment to prepare for the handwriting expert’s testimony or to request an opportunity for a defense expert to evaluate the evidence, we find no prejudice that would warrant a new trial.

Defendant also argues that the trial court abused its discretion by allowing Ruth Holmes, the prosecutor’s handwriting expert, to testify at trial without evaluating whether her testimony was reliable or would assist the trier of fact. In general, a trial court’s ruling concerning the qualifications of a proposed expert is reviewed for an abuse of discretion. *Woodward v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). “An abuse of discretion occurs when the decision

results in an outcome falling outside the principled range of outcomes.” *Id.* An unpreserved evidentiary issue is reviewed for plain error. See MRE 103(d); *Carines, supra* at 763.

The admissibility of expert testimony is governed by MRE 702,³ which provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

An essential condition for admitting expert testimony is that the testimony be reliable. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 780; 685 NW2d 391 (2004). “While a party may waive any claim of error by failing to call this gatekeeping function to the court’s attention, the court *must* evaluate expert testimony under MRE 702 once that issue is raised.” *Craig v Oakwood Hosp*, 471 Mich 67, 82; 684 NW2d 296 (2004) (emphasis in original).

Review of the record reveals that defense counsel objected to the testimony because of the nature of the “science” and asserted that it was not helpful to the trier of fact. Because MRE 702 is not limited to “exact science” testimony, we conclude that the trial court did not abuse its discretion in denying defense counsel’s objection to Holmes’s testimony on the ground asserted, without further inquiry. As indicated in *United States v Crisp*, 324 F3d 261, 271 (CA 4, 2003), cert den 540 US 888; 124 S Ct 220; 157 L Ed 2d 159 (2003), handwriting comparison testimony has a long history of admissibility in the courts of this country.

Had defendant raised a proper objection to the reliability of Holmes’s methods, or its application to the facts of the case, the trial court would have been obligated to conduct an appropriate searching inquiry to evaluate this matter. *Gilbert, supra* at 782. Because defendant failed to do so, and because a defendant can waive a claim of error by not bringing the matter to the trial court’s attention, *Craig, supra* at 82, we review defendant’s challenge to the reliability of Holmes’s testimony under the plain error doctrine. MRE 103(d); *Carines, supra* at 763. An objection to evidence on one ground does not preserve an appellate attack on a different ground. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996).

At trial, Holmes explained the methodology she used to evaluate the documents. Holmes used various forms of magnifiers to analyze individual letter formations. She scanned the documents so that they could be analyzed on a computer, using different measuring devices to evaluate whether the same person wrote them. She found a number of common characteristics in the documents, which were explained in her testimony. She conceded, however, when cross-examined by defense counsel, that there were some dissimilarities, but they did not alter her

³ The prosecutor also relies on MCL 768.25, but this statute is inapplicable to the case at bar because this case does not involve proof of a signature of a person.

opinion that each document was written by the same person, with the highest level of certainty for an expert in her field.

Because the primary role of a handwriting expert is to draw the jury's attention to similarities between a known handwriting sample and a contested writing, *Crisp, supra* at 271, and there is nothing in the record to indicate that Holmes used an unreliable method to identify similarities between the four documents, we conclude that defendant has not established that the admission of Holmes's handwriting analysis constituted plain error. Whether Holmes gave a reliable opinion regarding the level of certainty that all documents were written by the same person is a distinct question that we need not address because we are satisfied that the admission of Holmes's opinion did not affect defendant's substantial rights.

Moreover, the handwriting opinion was not outcome determinative of whether defendant committed either robbery. The jury had its own opportunity to view the similarities between the robbery notes and defendant's writing sample. The robbery notes' similarities go beyond the handwriting, inasmuch as each note begins with the phrase, "I have a gun" and demands money. Further, there was substantial evidence that defendant committed the robbery at the Fidelity Bank, which, according to Coles's testimony, was committed by defendant writing on and then handing her a withdrawal slip that stated, "I have a gun. Give me all the money now." Although no eyewitness identified defendant as the perpetrator of the robbery at the Charter One Bank, the evidence linking him to that robbery was also substantial. Because defendant has failed to show prejudice, we conclude that, even assuming some plain error in the admission of Holmes's opinion, reversal is not warranted because the error did not affect his substantial rights.

Defendant alternatively argues that defense counsel was ineffective for failing to seek an expert to challenge the reliability of Holmes's handwriting analysis or to dispute her findings. The record is devoid of any evidence that an expert would have provided defendant with a substantial defense. A defendant has the burden of establishing the factual predicate of his claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Therefore, limiting our review to the record, defendant has not established that counsel was ineffective. *Wilson, supra* at 352; *Daniel, supra* at 58.

V. Motion for Substitute Counsel

Defendant argues that the trial court violated his right to due process by denying his request to allow defense counsel to withdraw due to a breakdown in the attorney-client relationship. We review a trial court's decision regarding substitute counsel for an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). Appointment of substitute counsel is warranted only upon a showing of good cause and the substitution will not unreasonably disrupt the judicial process. *Id.* "Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic." *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

The trial court did not abuse its discretion in denying defendant's motion, because defendant failed to establish good cause for substitution. Defense counsel's conduct of informing defendant about a possible plea agreement did not establish good cause for substitution, particularly considering that an attorney's failure to advise a client of a plea offer may constitute ineffective assistance of counsel. See *People v Williams*, 171 Mich App 234,

241; 429 NW2d 649 (1988). Nothing argued by defendant established a legitimate difference in opinion regarding a fundamental trial tactic that would require substitute counsel. *Mack, supra* at 14; see also *Traylor, supra* at 462-464. The evidentiary concerns raised by defendant largely fall within the category of professional judgment and trial strategy that is entrusted to counsel. *Id.* at 463. Examined as a whole, the record does not support defendant's argument that defense counsel represented him as if he intended to plead guilty. Further, we find no basis for disturbing the trial court's decision not to appoint substitute counsel.

VI. Conflict of Interest

In his pro se supplemental brief, defendant argues that defense counsel rendered ineffective assistance by abandoning the duty of loyalty owed to him, thereby creating a conflict of interest. Defendant contends that he demonstrated the conflict of interest when moving for substitute counsel and that defense counsel's performance at trial also establishes this conflict. Defendant did not seek substitute counsel on the basis of an alleged conflict of interest. Further, limiting our review to the record, defendant has not established the necessary factual predicate for his claim. *Hoag, supra* at 6.

Under *United States v Cronin*, 466 US 648; 104 S Ct 2039; 80 L Ed 2d 657 (1984), there are circumstances in which prejudice is so likely to occur that a defendant may establish a denial of the effective assistance of counsel without showing actual prejudice. One such circumstance is where counsel "entirely fails to subject the prosecution's case to meaningful adversary testing." *Id.* at 659; see also *Bell v Cone*, 535 US 685; 122 S Ct 1843; 152 L Ed 2d 914 (2002), reh den 536 US 976; 123 S Ct 2; 153 L Ed 2d 866 (2002). Under some circumstances, courts treat such behavior as an abandonment of the duty of loyalty or a conflict of interest. See *Rickman v Bell*, 131 F3d 1150, 1157-1159 (CA 6, 1997), cert den 523 US 1133; 118 S Ct 1827; 140 L Ed 2d 962 (1998) (defense counsel effectively acted as a second prosecutor by totally failing to actively advocate the defendant's cause and expressing contempt toward the defendant at trial); *Osborn v Shillinger*, 861 F2d 612, 628-629 (CA 10, 1988) (prejudice presumed where counsel publicly chastised the defendant, recklessly disregarded the defendant's interests, and the state proceedings were not adversarial).

In this case, defendant has failed to establish that defense counsel entirely failed to subject the prosecution's case to meaningful adversary testing or otherwise abandoned his duty of loyalty. Therefore, reversal on this ground is not warranted.

VII. Double Jeopardy

Defendant next argues that his convictions for both bank robbery and armed robbery violate the Double Jeopardy Clauses in US Const, Am V, and Const 1963, art 1, § 15. Defendant argues that only one robbery occurred in each bank. This Court's decision in *People v Ford*, 262 Mich App 443; 687 NW2d 119 (2004), is dispositive of defendant's claim. Defendant's convictions do not violate double jeopardy because "the Legislature intended to permit an offender to be convicted and sentenced for violating both MCL 750.729 and MCL 750.531 where the proofs at a single trial disclose both statutes were violated during the same incident." *Ford, supra* at 459-460. Further, defense counsel was not ineffective for failing to raise this issue below. Counsel is not required to make a meritless motion. *Goodin, supra* at 433.

VIII. Sufficiency of the Evidence

Defendant argues that the evidence was insufficient to establish the armed element for armed robbery. We disagree. Under MCL 750.529, as amended by 2004 PA 128, effective July 1, 2004, a person may be convicted of armed robbery if the person represents “orally or otherwise that he or she is in possession of a dangerous weapon.” Viewed in a light most favorable to the prosecution, the evidence in this case indicated that defendant handed each teller a note stating, “I have a gun.” This was sufficient to enable a rational trier of fact to find that the armed element was proven beyond a reasonable doubt. See generally *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

IX. Prosecutorial Misconduct

Defendant argues that the prosecutor’s conduct denied him a fair trial. Because defendant did not object to the prosecutor’s conduct at trial, we review this issue for plain error affecting defendant’s substantial rights. *Carines, supra* at 763; *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000), lv den 463 Mich 928 (2000), abrogated on other grounds in *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

We disagree with defendant’s claim that the prosecutor improperly expressed personal knowledge that he committed the robberies when remarking in closing argument that it was obvious that the same man robbed both banks and that “[e]verything points to the same robber.” Further, the prosecutor did not improperly vouch for evidence when arguing that the jury could convict defendant based on similarities in the robbery notes. A prosecutor may not vouch for evidence by implying special knowledge regarding the credibility of evidence. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004). Considered in context, the prosecutor’s remarks indicated that the jury should find defendant guilty based on the evidence. A prosecutor is free to argue the evidence and reasonable inferences arising from it. *Schutte, supra* at 721. Defendant has failed to establish a plain error.

Similarly, examined in context, the prosecutor’s rebuttal argument regarding Coles’s testimony and demeanor was based on the evidence and, therefore, did not constitute improper vouching for her credibility. A prosecutor may argue from the evidence that a witness is credible. *Schutte, supra* at 722. “The credibility of a witness is determined by more than words and includes tonal quality, volume, speech patterns, and demeanor, all giving clues to the factfinder regarding whether a witness is telling the truth.” *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998).

Finally, while it is improper for a prosecutor to interject issues broader than guilt or innocence, *Thomas, supra* at 455, we find no plain error in the prosecutor’s rebuttal remarks regarding defendant’s failure to exit the house during the police standoff after the robbery at the Fidelity Bank. The evidence that defendant hid from the police supported an inference of consciousness of guilt. *Goodin, supra* at 432; *People v Biegajski*, 122 Mich App 215, 220; 332 NW2d 413 (1982). The prosecutor was entitled to comment on this evidence and the reasonable inferences that could be drawn from it. *Goodin, supra* at 432-433.

Having concluded that the prosecutor's conduct was not improper, we reject defendant's alternative claim that defense counsel was ineffective for failing to object to the prosecutor's remarks or move for a mistrial. *Goodin, supra* at 433.

X. Consciousness of Guilt Instruction

Defendant argues that he was denied due process because there was no evidence to support the trial court's jury instruction that his consciousness of guilt could be inferred from evidence that he ran away or drove away after the alleged crime and hid when the police tried to arrest him. Defense counsel's expression of agreement with the court's jury instructions constitutes a waiver of this instructional issue. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002). Moreover, defense counsel was not ineffective for not challenging the court's instruction. *Gonzalez, supra* at 644. The instruction was supported by evidence that defendant drove away from the Fidelity Bank after the robbery and then hid in the house from the police. Additionally, the trial court protected defendant's rights by instructing the jury that "[a] person may run or hide for innocent reasons such as panick [sic], mistake or fear" and that "[y]ou must decide whether the evidence is true and if true whether it shows whether [sic] the Defendant had a guilty state of mind."

XI. Sentencing Issues

Defendant argues that the trial court erred in scoring two offense variables, OV 13 and OV 19, when determining the sentencing guidelines range for the armed robbery convictions. We will uphold a trial court's scoring decision for which there is any evidence to support it. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). But matters involving the proper interpretation and application of the statutory guidelines are reviewed de novo as questions of law. *People v Francisco*, 474 Mich 82, 85; 711 NW2d 44 (2006).

The trial court scored 25 points for OV 13. MCL 777.43(1)(b) provides that 25 points may be scored for OV 13 where the "offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person." MCL 777.43(2)(a) further defines how a "pattern" is determined. *Francisco, supra* at 86. It provides that "all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." *Id.*

The Legislature has categorized both bank robbery and armed robbery as a crime against a person. MCL 777.5(a); MCL 777.16y; *Ford, supra* at 456. Thus, all four of defendant's crimes could be used to score OV 13. The fact that concurrent convictions are scored in prior record variable 7, MCL 777.57, is not material. Our goal in construing a statute is to determine the Legislature's intent. *People v Mack*, 265 Mich App 122, 126; 695 NW2d 342 (2005). Had the Legislature intended to exclude crimes resulting in concurrent convictions in OV 13, it would have provided for the exclusion. Therefore, we conclude that the trial court did not err in scoring 25 points for OV 13. Cf. *People v Harmon*, 248 Mich App 522, 532; 640 NW2d 314 (2001), lv den 467 Mich 900 (2002) (concurrent convictions supported score for OV 13).

The trial court scored ten points for OV 19, relying on the evidence that defendant delayed coming out of the house during the police standoff. Ten points may be scored for OV 19 if an offender "interfered with or attempted to interfere with the administration of justice." MCL

777.49. The phrase “interfered with or attempted to interfere with the administration of justice” encompasses more than obstructing justice or interfering with judicial process. *People v Barbee*, 470 Mich 283; 681 NW2d 348 (2004). In *Barbee*, our Supreme Court determined that giving a false name to law enforcement officers constitutes interference with the administration of justice. *Id.* at 288. In this case, there was evidence, including trial testimony that the police delayed executing the search warrant until after defendant came out of the house on Webster Street, to support an inference that defendant impeded the police investigation following the second robbery. The trial court reasonably concluded that defendant interfered with the administration of justice.

Finally, defendant argues that he is entitled to sentence credit of 144 days, notwithstanding his parole status when he was arrested, because he did not receive a parole violation hearing. Because defendant did not raise this issue below, we review it for plain error. *People v Meshell*, 265 Mich App 616, 638; 696 NW2d 754 (2005), lv den 474 Mich 934 (2005).

Defendant has not established a plain error. “[A] parolee convicted of a new sentence is entitled to have jail credit applied exclusively to the sentence for which parole was granted.” *People v Stead*, 270 Mich App 550; 552; 716 NW2d 324 (2006). The time is credited against the sentence for which parole was granted, even if prison authorities abandon parole violation proceedings. *People v Stewart*, 203 Mich App 432, 433; 513 NW2d 147 (1994); see also MCL 768.7a(2) (“If a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense”).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Deborah A. Servitto