

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT DAUNIELLE PARIS,

Defendant-Appellant.

UNPUBLISHED

September 18, 2008

No. 278571

Wayne Circuit Court

LC No. 07-004275-01

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted of three counts of assault with intent to murder, MCL 750.83, discharge of a weapon at a building, MCL 750.234b, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant, as a second habitual offender, MCL 769.10, to 50 to 70 years in prison for each of the assault with intent to murder convictions, two to six years in prison for the discharge of a weapon at a building conviction, three to seven years in prison for the felon in possession of a firearm conviction, and five years in prison for the felony-firearm conviction.¹ Defendant appeals as of right, and for the reasons set forth in this opinion, we affirm.

This case arises from a shooting outside a Detroit nightclub on April 12, 2003. That evening, while working as parking lot attendants at the nightclub, Muhammad Shahid and Rana Kahn heard at least 10 to 15 shots fired in the parking lot of the nightclub. Shahid believed that defendant was one of the shooters because as he was patrolling the parking lot he observed defendant and Rhashi Harris by a blue van carrying rifles and one man said to him “Stay away,

¹ Defendant’s codefendant, Rhashi Harris, was tried separately and convicted of three counts of assault with intent to murder, discharge of a weapon at a building, felon in possession of a firearm, wearing body armor during the commission of a violent crime, MCL 750.227f, and felony-firearm. The trial court sentenced him to 50 to 75 years in prison for each of the assault with intent to murder convictions, 32 months to 4 years in prison for the discharge of a weapon at a building conviction, 40 months to 5 years in prison for the felon in possession of a firearm conviction, 32 months to 4 years in prison for the body armor conviction, and two years in prison for the felony-firearm conviction.

stay away.” Both Shahid and Kahn had their backs turned to the shooters during the time in which the shots were fired.

Bullets struck a Mercedes Benz which was occupied by Tommie Hodges and a female passenger later identified as Meleta Miller. Observers witnessed the Mercedes speed away with bullets being fired in its general direction. Once the car was forced to stop at a traffic signal, Miller exited the vehicle and ran away. Hodges exited the vehicle and fired several shots toward the nightclub.

Police arrived on the scene shortly after the shooting and began to track the suspects. After an officer attempted to make contact with the suspects, they fled through surrounding neighborhoods. Police observed the suspects drop several items as they attempted to elude the officers. After defendant and Harris were arrested, the police went back and searched the area where the suspects threw objects during the chase. The officers recovered two handguns, a bulletproof vest and two semiautomatic rifles. Additionally, officers recovered magazines with live rounds and ten spent shell casings near the blue van where Shahid had seen defendant and Harris with rifles.

Defendant’s first argument on appeal is that there was insufficient evidence to prove beyond a reasonable doubt that he was the perpetrator in the offenses arising out of a shooting outside of the nightclub. This Court reviews sufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Therefore, this Court “must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences may be satisfactory proof of the elements of a crime. *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

The prosecutor must establish beyond a reasonable doubt that the defendant was the perpetrator of every charged offense. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). “Identity may be shown by either direct testimony or circumstantial evidence.” *Id.* On the night of the shooting, a parking attendant, Muhammad Shahid, saw defendant and Rhashi Harris in a blue van, parked in the lot across from the nightclub. Just before Shahid heard gunfire, he saw defendant and Harris exit the blue van holding rifles. They warned him to stay away. Then, witnesses heard gunshots fired toward a vehicle parked in front of a nightclub, where Tommie Hodges and Meleta Miller sat. Security guards and approximately 15 patrons standing nearby ran for safety. Darryl White was struck in the cornea. After the shooting, the rifles that Shahid saw defendant and Harris carry were abandoned in the parking lot and another parking attendant, Rana Kahn, saw two men running away toward Gratiot Avenue. Officers Scott Hall and Albert Andrews saw defendant and Harris on Gratiot Avenue and confirmed that they matched the dispatch descriptions of the suspects. Moreover, defendant’s consciousness of guilt could be inferred from his flight from these officers. Finally, gunshot residue on defendant’s body indicated that he fired a gun recently. Consequently, we conclude that there was more than sufficient evidence for a jury to conclude beyond a reasonable doubt that defendant was the perpetrator of these offenses.

Defendant’s second argument on appeal is that the trial court violated his constitutional rights of confrontation and due process when it denied his motion to appoint an expert witness.

Before trial, defendant requested that the trial court appoint an expert, Steven Howard, to dispute the prosecutor's gunshot residue evidence. He estimated that this expert, who charges \$100 per hour, would cost \$2,000 total. Ultimately, the trial court ordered that it would reimburse defendant \$250, plus \$50 for each jail visit.² On appeal, defendant mischaracterizes the trial court's limited reimbursement as a refusal to authorize payment. Nevertheless, we review the trial court's decision regarding defendant's motion for appointment of an expert witness at public expense for an abuse of discretion. *People v Tanner*, 469 Mich 437, 442; 671 NW2d 728 (2003). An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Under MCL 775.15, an indigent criminal defendant does not have an automatic right to a court-appointed expert. *Tanner*, *supra* at 442-443. Instead, a defendant must persuade the trial court to exercise its discretion by demonstrating a "nexus between the facts of the case and need for an expert." *People v Jacobson*, 448 Mich 639, 641; 532 NW2d 838 (1995). The defendant must demonstrate more than a possibility that the expert would assist the defendant. *Tanner*, *supra* at 443. Rather, the defendant must indicate that the "expert testimony would likely benefit the defense." *Id.* Moreover, without the witness, the defendant would be unable to "safely proceed to a trial." MCL 775.15; *Jacobson*, *supra* at 641.

In this case, even though defendant did not have an automatic right to a court-appointed expert and the trial court noted that defendant could likely proceed safely to trial by cross-examining the prosecutor's expert witness, it allotted a reimbursement to defendant. Because the trial court opined that a rebuttal witness, charging \$100 per hour, could testify in two hours, its \$250 reimbursement fell within the range of principled outcomes. *Babcock*, *supra* at 269.

Moreover, the trial court's limitation to the reimbursement was harmless. *Tanner*, *supra* at 442; *People v Whitehead*, 238 Mich App 1, 9-10; 604 NW2d 737 (1999), citing *Neder v United States*, 527 US 1, 19; 119 S Ct 1827; 144 L Ed 2d 35 (1999). On cross-examination, defense counsel elicited testimony that "there are other ways to get gunshot residue on a person other than firing a weapon," such as transference. In his closing argument, defense counsel maintained that reasonable doubt existed regarding this gunshot residue evidence. Therefore, despite the trial court's limited reimbursement, we conclude that the jury was aware of the defense theory and the verdict would have been the same absent the error. *Whitehead*, *supra* at 9-10, citing *Neder*, *supra* at 19.

Defendant's third argument on appeal is that the trial court erred when it denied his motion to suppress the bulletproof vest that was discarded during the police chase because the prosecutor failed to lay proper foundation for its admission and defendant was prejudiced by such irrelevant evidence. "This Court's review of a lower court's factual findings in a suppression hearing is limited to clear error, and those findings will be affirmed unless we are left with a definite and firm conviction that a mistake was made." *People v Davis*, 250 Mich

² There is no explanation in the lower court record regarding defense counsel's decision not to call Howard to testify at trial.

App 357, 363; 649 NW2d 94 (2002). This Court reviews de novo the lower court's ultimate ruling with regard to the motion to suppress. *Id.*

“The decision whether to admit evidence is within a trial court's discretion.” *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). A proper foundation for the admission of physical evidence requires that the evidence be what it is purported to be and also be connected with the crime or the accused. *People v Furman*, 158 Mich App 302, 331; 404 NW2d 246 (1987). Officer Hall testified that, during the chase, he saw either defendant or Harris throw a jacket on Mullet Street. In a subsequent search of this area of Mullet Street, officers recovered the bulletproof vest. Therefore, this connection laid proper foundation for the admission of the bulletproof vest.

Evidence that is not relevant, is not admissible. *People v Mackin*, 477 Mich 1125; 730 NW2d 476 (2007); MRE 402. To determine if evidence is relevant under MRE 401, a reviewing court must examine: (1) the materiality of the evidence, and (2) “whether the evidence makes a fact of consequence more or less probable than it would be without the evidence.” *People v Mills*, 450 Mich 61, 66-67; 537 NW2d 909 (1995). A fact is material if “it is within the range of litigated matters in controversy.” *People v Brooks*, 453 Mich 511, 518; 557 NW2d 106 (1996).

The bulletproof vest admitted into evidence was relevant. First, it was material. The prosecutor had the burden to prove that defendant was the perpetrator. Therefore, the consciousness of guilt demonstrated during the police chase and either defendant's or Harris's disposal of a bulletproof vest and handgun were within the range of litigated matters in controversy. In addition, defendant's and Harris's preparation for the shooting by carrying bulletproof vests and weapons made their intent to kill more probable. *Mills, supra* at 66-67. Therefore, the bulletproof vest was relevant. In light of this relevance to the assault with intent to murder and discharge of a weapon at a building charges, defendant's argument that the bulletproof vest was not relevant because the prosecutor decided not to prosecute him for wearing body armor during the shooting is unpersuasive.

Furthermore, there is no evidence that the jury gave the abandoned bulletproof vest too much weight. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004) (Under MRE 403, “the probative value of the evidence must not be substantially outweighed by unfair prejudice.”) Because Harris wore a bulletproof vest at the time of his arrest, it could be inferred that defendant, not Harris, disposed of his bulletproof vest during the chase. Moreover, because defendant and Harris were seen with rifles in the parking lot immediately before the shooting, the bulletproof vest was not the only evidence that defendant was a shooter. Although defendant suggests that the connection between the crime and the bulletproof vest was tenuous because Officer Hall did not see whether defendant or Harris discarded it, there were no fingerprints and it was not found until defendant was arrested, the jury was fully aware of these facts. Thus, the admission of the bulletproof vest was not unfairly prejudicial and the trial court did not abuse its discretion when it denied defendant's motion to suppress.

Defendant's fourth argument on appeal is that the trial court breached defendant's right to an impartial jury when it belittled defense counsel by requiring him to apologize for delaying the trial after a break. This Court reviews unpreserved challenges of judicial bias for plain error. *People v Carines*, 460 Mich 750, 762-763; 597 NW2d 130 (1999).

The Due Process Clause requires a “‘fair trial in a fair tribunal,’ before a judge with no actual bias against the defendant or interest in the outcome of his particular case.” *Bracy v Gramley*, 520 US 899, 905; 117 S Ct 1793; 138 L Ed 2d 97 (1997), citing *Withrow v Larkin*, 421 US 35, 46; 95 S Ct 1456; 43 L Ed 2d 712 (1975). Thus, a criminal defendant is entitled to a “neutral and detached magistrate.” *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). However, “[a] trial court has wide, but not unlimited, discretion and power in the matter of trial conduct.” *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Therefore, the party claiming bias “must overcome a heavy presumption of judicial impartiality.” *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999). Bias or prejudice is defined as “an attitude or state of mind that belies an aversion or hostility of a kind or degree that a fair-minded person could not entirely set aside when judging certain persons or causes.” *Cain v Dep’t of Corrections*, 451 Mich 470, 495 n 29; 548 NW2d 210 (1996).

The test is whether the judge’s questions and comments may have unjustifiably aroused suspicion in the mind of the jury . . . and whether partiality quite possibly could have influenced the jury to the detriment of the defendant’s case. [*Cheeks*, *supra* at 480.]

Although defense counsel caused two delays in this case, the trial court did not reprimand him in the presence of the jury. See *Lamson v Martin*, 216 Mich App 452, 458; 549 NW2d 878 (1996) (the trial court’s discussion with defense counsel occurred outside the presence of the jury and did not pierce the veil of impartiality.)

At the beginning of the second day of trial, the trial court apologized to the jury for a delayed start. At that time, there was no explanation for the delay, but after the court broke for a brief recess the trial court reprimanded defense counsel for taking a longer break than was authorized, apparently he had left and taken care of other business in a different courtroom during the short recess. The trial court explained that it would not reprimand defense counsel in front of the jury, but suggested that it would be appropriate for defense counsel to apologize to the jury. When the jury returned, defense counsel stated the reason for the delay was his fault and apologized. The trial court’s order that defense counsel apologize to the jury was not of such a nature to influence the jury to defendant’s detriment, such that the bias could not be set aside. *Cheeks*, *supra* at 480; *Cain*, *supra* at 495 n 29. Instead, the apology was designed to offer an explanation for the delay and appease the jury. Moreover, the trial court instructed the jury that if it believed the court had an opinion, that opinion must be disregarded. The jury is presumed to follow the trial court’s instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). For these reasons, we conclude that no plain error has been shown.

Defendant’s fifth argument on appeal is that the prosecutor committed misconduct by violating his Fifth Amendment right to remain silent when the prosecutor elicited testimony from Sergeant David Babcock regarding his failure to respond to some of Sergeant Babcock’s questions during the gunshot residue test. Because the alleged error was not preserved by a contemporaneous objection and a request for a curative instruction, appellate review is for plain error. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Rice (On Remand)*, 235 Mich App 429, 434; 597 NW2d 843 (1999). “Where the record indicates that a defendant’s silence is attributable to an invocation of his Fifth

Amendment privilege or a reliance on *Miranda*³ warnings, use of his silence” violates the defendant’s right to a fair trial and due process of law. *People v McReavy*, 436 Mich 197, 201; 462 NW2d 1 (1990); *People v Solmonson*, 261 Mich App 657, 664; 683 NW2d 761 (2004). “[A] defendant who speaks following *Miranda* warnings must affirmatively reassert the right to remain silent.” *People v Davis*, 191 Mich App 29, 35-36; 477 NW2d 438 (1991). “[A] momentary pause or even a failure to answer a question will not be construed as an affirmative invocation by the defendant of the right to remain silent.” *McReavy*, *supra* at 222.

In the instant case, there are no facts in the lower court record explicitly stating that the police provided defendant with *Miranda* warnings. During the gunshot residue test, defendant responded to a series of Sergeant Babcock’s questions, including his name, occupation and whether he was fingerprinted, handcuffed or washed his hands before the test. Initially, he refused to answer questions about his possession, discharge and recent proximity to firearms. However, at the conclusion of the test, defendant responded that he did not discharge a firearm and did not shoot at the police during the police chase. Consequently, defense counsel argued that defendant knew he had a right to remain silent and deliberately voluntarily waived it when he emphatically denied firing a weapon.

Despite defendant’s apparent waiver with regard to the exculpatory statements, he maintains that the prosecutor violated his right to remain silent by eliciting testimony regarding his silence in response to some of the questions. However, because defendant initially spoke to Sergeant Babcock understanding his right to remain silent, an affirmative reassertion of his right to remain silent was necessary. *Davis*, *supra* at 35-36. Defendant’s mere failure to respond to some questions in the middle of the questioning did not invoke this right. *McReavy*, *supra* at 222. Therefore, defendant was not denied a fair trial when the prosecutor elicited Sergeant Babcock’s testimony.

Defendant’s sixth argument on appeal is that his counsel was ineffective because he failed to object to improper other acts testimony. When reviewing an unpreserved claim of ineffective assistance of counsel, this Court’s review is limited to the facts contained on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). The determination whether a defendant has been deprived of the effective assistance of counsel presents a mixed question of fact and constitutional law. *People v Grant*, 470 Mich 477, 484; 684 NW2d 686 (2004). The court must first find the facts and then decide whether those facts constitute a violation of the defendant’s constitutional right to effective assistance of counsel. *Id.* The trial court’s factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.* at 484-485.

The test for defendant’s ineffective assistance of counsel claim was established by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). *Grant*, *supra* at 485. Effective assistance is strongly presumed and the reviewing court should not evaluate an attorney’s decision with the benefit of hindsight. *Id.* at 485; *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). To demonstrate ineffective assistance, a

³ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

defendant must show: (1) that his attorney's performance fell below an objective standard of reasonableness, and (2) that this performance so prejudiced him that he was deprived of a fair trial. *Grant, supra* at 485-486. Prejudice exists if a defendant shows a reasonable probability that the outcome would have been different but for the attorney's errors. *Id.* at 486.

At trial, the prosecutor questioned Investigator Seagram regarding the investigation of defendant's case and the reasons for his delayed trial. Investigator Seagram explained that defendant was released while the investigation was pending and could not be located after the prosecutor issued his arrest warrant. Then, Investigator Seagram testified that, a few years later, "I got a call from a friend of mine who works for the [Drug Enforcement Agency] DEA." Investigator Seagram explained that this friend formerly worked for the Detroit Police Department and knew that Investigator Seagram was in charge of the shooting at the nightclub. This friend advised Investigator Seagram that the DEA had arrested defendant.

Evidence that the DEA arrested defendant and subsequently contacted Investigator Seagram regarding the arrest was admissible other acts evidence. Generally, "evidence of other crimes, wrongs, or acts of an individual is inadmissible to prove a propensity to commit such acts." *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998); MRE 404(b). Such evidence may be admissible, however, for other purposes:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case. [*Crawford, supra* at 383; MRE 404(b).]

To be admissible under MRE 404(b)(1), other acts evidence must be (1) offered for a proper purpose, (2) relevant under MRE 402, as enforced through MRE 104(b), (3) the evidence's probative value must not be substantially outweighed by the danger of unfair prejudice, and (4) the trial court, upon request, may provide a limiting instruction. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993).

Evidence of the DEA arrest was admissible to prove motive. As defendant maintains in his brief, such a motive was relevant to explain defendant's reason for shooting toward Hodges. Specifically, if defendant had been arrested for a drug-related offense, it could be inferred that he was involved in the drug trade. It could also be inferred that he was an enemy of Hodges, who allegedly was a drug trafficker, thereby making it more probable that defendant had a reason to shoot Hodges. *Mills, supra* at 66-67.⁴

⁴ Defense counsel also argued that the police initially released defendant pending further investigation because they did not believe he was guilty. Therefore, the timeline of the investigation, pursuit and delayed DEA arrest of defendant was within the range of litigated matters in controversy. Defendant's arrest by a DEA agent, who knew of the shooting and the

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The probative value of this testimony was not outweighed by its potential prejudice. Unfair prejudice exists when there is a tendency that evidence with little probative value will be given too much weight by the jury. *People v McGhee*, 268 Mich App 600, 614; 709 NW2d 595 (2005). Evidence of a DEA arrest may be prejudicial. However, the record does not establish that it was given preemptive or undue weight. If the jury believed that defendant was arrested for a drug-related offense, the specific offense was not articulated on the record. Moreover, the reference to this arrest was isolated and the prosecutor did not pursue motive in his closing argument. Thus, this evidence cannot be characterized as unfair under *McGhee*. Consequently, we conclude that defense counsel was not ineffective for failing to object to Investigator Seagram's testimony pursuant to MRE 404(b). *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003) (counsel renders effective assistance even if counsel fails to raise futile objections.)

Defendant's seventh argument on appeal is that the trial court erroneously departed from the minimum sentencing guidelines range for defendant's assault with intent to murder convictions. In reviewing a trial court's grounds for departing from the sentencing guidelines, this Court reviews for clear error the trial court's factual finding that a particular factor in support of departure exists. *Babcock, supra* at 264. However, whether the factor is objective and verifiable is a question of law that this Court reviews de novo. *Id.* In addition, this Court reviews for an abuse of discretion the trial court's determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the statutory minimum sentence range. *Id.* at 264-265. Whether a sentence outside the guidelines range is proportionate to the crime and the defendant's criminal history, is also reviewed by this Court for an abuse of discretion. *Id.* A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes. *Id.* at 269.

Defendant argues that the trial court improperly based its departure on the number of victims to the shooting, which had already been taken into account in OV 9 to determine the appropriate minimum sentencing guidelines range. Absent the death of multiple victims, the maximum number of points that may be assessed under OV 9 is 25 points for ten or more victims, which defendant received. *People v Morson*, 471 Mich 248, 261; 685 NW2d 203 (2004). At sentencing, the trial court noted that defendant had "absolutely no regard for human life. In taking out, with a co-defendant, assault rifles and spraying fire over the whole area; with people that were standing there." Because the trial court concluded that the number of victims and defendant's disregard for human life were not adequately accounted for in the guidelines, the trial court did not abuse its discretion in finding that this was a substantial and compelling reason to depart from the minimum sentencing guidelines range. *Harper, supra* at 617.

Defendant also argues that the trial court improperly based its departure on defendant's ex-offender status, which had already been taken into account in PRV 6 to determine the

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warrant, made defendant's claim that the police did not believe defendant was guilty less probable. *Mills, supra* at 66-67.

appropriate minimum sentencing guidelines range. However, PRV 6 considers a defendant's relationship to the criminal justice system, such as whether he is incarcerated or on probation. MCL 777.56. This variable was not scored, and therefore, did not give adequate weight to defendant's recent relationship to the criminal justice system because he had been discharged from parole shortly before the offense. *Harper, supra* at 617. Therefore, that the trial court did not abuse its discretion in finding that defendant's recent discharge from parole was a substantial and compelling reason to depart from the minimum sentencing guidelines range. *Id.*

Next, defendant argues that the trial court's reliance on his danger to society was subjective and could not be externally proven. In *People v Geno*, 261 Mich App 624, 625; 683 NW2d 687 (2004), the defendant was convicted of CSC-1 for sexually assaulting his girlfriend's daughter. The trial court departed from the recommended sentence under the sentencing guidelines range because of the danger the defendant posed to other children. This Court concluded that such an upward departure was permissible because the trial court considered the following underlying factors: "defendant's past criminal history of sex crimes with children, his admitted sexual attraction to children, and his repeated failure to rehabilitate himself when given the opportunity." *Id.* at 636-637.

Like the trial court in *Geno*, the trial court in defendant's case outlined underlying reasons for defendant's danger to society. First, defendant is only 30-years-old and has a progressively violent criminal history including charges for assault and battery, malicious destruction of property, felonious assault, multiple counts of assault with intent to murder, assault with intent to do great bodily harm, and felony-firearm. Second, defendant failed to rehabilitate himself despite his recent discharge for previous convictions. Third, defendant disregarded human life by shooting at a populated area. Given these underlying reasons for defendant's dangerousness, we conclude that the trial court did not err when found dangerousness to be an objective and verifiable factor necessitating departure.

Additionally, defendant contends that the 11-year departure from the minimum sentencing guidelines range was "disproportionately harsh" given the trial court's inadequate reasons for departure. Individualized sentencing for each defendant is the policy of this state. *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000). Thus, sentences must be "proportionate to the seriousness of the defendant's conduct and to the defendant in light of his criminal record." *Babcock, supra* at 262. The substantial and compelling reasons for departure should "contribute to a more proportionate criminal sentence than is available within the guidelines range." *Id.* at 264.

Defendant's sentence was specifically imposed based on the seriousness of his conduct and his personal history. At sentencing, the trial court stated that it carefully reviewed the case and the presentence report to determine defendant's sentence. The trial court concluded that defendant acted with a disregard for human life when he shot at a populated nightclub. It also concluded that he demonstrated past dangerousness with no signs of rehabilitation. Under the circumstances, the sentence imposed cannot be said to be outside the range of principled outcomes. *Babcock, supra* at 264-265.

Defendant's final claim on appeal is that the cumulative effect of his claims denied him a fair trial. Defendant's unpreserved claim is reviewed for plain error affecting his substantial rights. *Carines, supra* at 762-763.

To determine if a defendant received a fair trial, only actual errors are aggregated for their cumulative effect. *People v Bahoda*, 448 Mich 261, 292 n 64; 531 NW2d 659 (1995). Because we conclude that (1) there was sufficient evidence for a jury to infer beyond a reasonable doubt that defendant committed the charged offenses, (2) the trial court did not abuse its discretion when it authorized limited reimbursement to defendant for an expert witness, (3) the trial court did not err when it denied defendant's motion to suppress the bulletproof vest, (4) the trial court did not demonstrate bias at defendant's trial, (5) the prosecutor's direct examination of Sergeant Babcock was not improper, (6) defendant was not denied the effective assistance of counsel, and (7) the trial court's departure from the sentencing guidelines was not an abuse of discretion, no actual errors cumulatively affected his right to a fair trial.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood