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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 11, 2026 9:10 AM
v	No. 374258 Oakland Circuit Court
IMMANUEL AUGUSTINE SANTIAGO, Defendant-Appellant.	LC No. 2024-288012-FC

Before: LETICA, P.J., and RICK and GARRETT, JJ.

PER CURIAM.

Defendant, Immanuel Augustine Santiago, fired a gun into a closed door immediately after his girlfriend, SE, exited through the door with her two young children. The bullet struck SE in her lower back and caused life-threatening injuries. Santiago's defense at trial was that he did not fire the gunshot, although the evidence showed that he was the only person in the apartment when the shot was fired. A jury convicted Santiago, as charged, of assault with intent to commit murder, MCL 750.83; possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; felon in possession of a firearm (felon-in-possession), MCL 750.224f; two counts of fourth-degree child abuse, MCL 750.136b(7); and discharge of a firearm in or at a building causing injury, MCL 750.234b(3). The trial court sentenced Santiago, as a second-offense habitual offender, MCL 769.10, to 29 years and 8 months to 99 years' imprisonment for assault with intent to commit murder to be served consecutively to 2 years' imprisonment for felony-firearm, and concurrently with 3 to 7 years and 6 months' imprisonment for felon-in-possession, 1 year imprisonment for each of the fourth-degree child abuse convictions, and 3 to 22 years and 6 months' imprisonment for discharge of a firearm in or at a building causing injury. Having reviewed Santiago's arguments asserted in his brief on appeal and supplemental brief on appeal, we affirm his convictions and sentences.

I. FACTUAL BACKGROUND

SE was in an "on and off" romantic relationship with Santiago. She described the relationship as "toxic" and testified it involved a lot of fighting and arguing, primarily about

money. Santiago lived with SE and her two young sons in SE's apartment[1] in Pontiac, but he stayed with his mother when he and SE were arguing. According to SE, in August 2023 relations between SE and Santiago were "the worst."

On August 28, 2023, the date of the shooting, SE and Santiago argued about money. He was unhappy that she paid her car payment because they did not have any money left afterward, and he wanted to buy shoes for his children who lived in California. He grabbed SE's cell phone out of her hand and threw it. Afterward, he knocked everything off her dresser, which scared her youngest son, who was standing at the end of her dresser. Santiago picked up her son because he started crying. SE told Santiago to give her son to her and told her son, "he doesn't give a f*ck about you[.]" Santiago responded, "[Y]ou're right, I don't give a f*ck about any of you." SE decided to leave her apartment for a while to get away from him. Santiago had her car keys because he had just driven her vehicle. She asked him for her keys, which he threw at her.

SE's two sons walked out of the apartment before her. She held the screen door open for them and shut the main door behind her. As she did so, she yelled to Santiago, "f*ck them kids," referring to his children in California. She then felt "indescribable pain" in her back and collapsed on the sidewalk. She had suffered a gunshot wound to her lower back. She had her cell phone in her hand and dialed 9-1-1, but Santiago came out of the apartment and ended the phone call before it went through. He was crying and told her that he did not mean to shoot her, and it would be faster if he drove her to the hospital. He helped her stand up and get into the car. He also helped her children get into the car and then went back inside the apartment. Shortly thereafter, he came out of the apartment and drove her to the hospital. She underwent surgery and remained in the hospital for five days.

SE told law enforcement officers at the hospital that she did not see who had shot her and did not know where the gunshot came from. At trial, however, she testified she had no doubt Santiago was the person who shot her. She also testified that the shooting was not the first time Santiago assaulted her. In February 2023, nearly seven months before the shooting, she and Santiago were fighting, and she called the police, who asked him to leave her apartment. He gathered his belongings and left but took some of her belongings with him, including her debit card, her ID, her laptop, and her PlayStation 4. She called the police and wrote out a statement regarding the missing items, but she also agreed to meet with Santiago to get her belongings back. She drove to Santiago's mother's house where he was staying and parked nearby. Santiago got into her car and returned her belongings, but they started arguing. He choked her, held a black gun to head, and told her to "stop f*cking playing with him." He then released her and got out of the car. She called 9-1-1 and wrote out a police statement but she and Santiago eventually reconciled, and he was not charged as a result of the incident.

SE told police officers that Santiago was the only person in the apartment at the time of the shooting. Santiago told the officers that he was upstairs in the apartment when he heard a loud noise. He ran downstairs, saw a bullet hole in the front door, and saw SE lying outside near the front door, bleeding from a gunshot wound. Santiago claimed he and SE were the only adults at

[1] SE's apartment appeared more like a townhouse. Each unit was a two-story, standalone unit, but the complex was an apartment complex.

the apartment at that time and that the bullet hole in the front door was caused when a bullet was fired into the apartment. When confronted with information that the bullet had been fired from inside the apartment, Santiago continued to maintain that he and SE were the only adults at the apartment when the shooting occurred. Santiago's defense at trial was that Kelly Millard, a prostitute who worked for him, was in the apartment at the time of the shooting and fired the gunshot that struck SE. He acknowledged that he never told the police about Millard before trial.

The jury convicted Santiago as previously stated. He now appeals by right.

II. SUFFICIENCY OF THE EVIDENCE

Santiago first argues that the evidence was insufficient to support his conviction of assault with intent to commit murder because, although the jury clearly disbelieved his defense that Millard shot SE, no evidence showed that he intended to kill her. We conclude that the evidence, viewed in the light most favorable to the prosecution, was sufficient for the jury to determine that Santiago intended to kill SE when he shot her.

This Court reviews de novo a challenge to the sufficiency of the evidence. *People v Solloway*, 316 Mich App 174, 180; 891 NW2d 255 (2016). We review the evidence in the light most favorable to the prosecution and determine whether it was sufficient for a rational trier of fact to conclude that the prosecution proved the essential elements of the crime beyond a reasonable doubt. *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018); *Solloway*, 316 Mich App at 180. We will not interfere with the jury's role of determining the credibility of the witnesses, and we must resolve all evidentiary conflicts in the prosecution's favor. *Id*. at 180-181. "It is for the trier of fact, *not the appellate court*, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *Oros*, 502 Mich at 239 (quotation marks and citation omitted). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *Id*. (quotation marks and citation omitted).

To establish the elements of assault with intent to commit murder, the prosecution must prove: "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010) (quotation marks and citation omitted). Because assault with intent to commit murder is a specific intent crime, the jury must determine that "there was an actual intent to kill." *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005). However, "because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *Ericksen*, 288 Mich App at 197 (brackets omitted).

The circumstantial evidence presented during trial, viewed in the light most favorable to the prosecution, was sufficient to prove that Santiago shot SE with an intent to kill her. SE testified that her relationship with Santiago was "toxic" and involved a lot of fighting and arguing. In August 2023, their relationship was "the worst," and she was miserable. On August 28, 2023, they fought about money because SE had paid her car payment, and Santiago wanted to use the money to buy shoes for his children in California. She testified that, although she was annoyed when Santiago then asked to borrow her car, she allowed him to use her vehicle. When he returned, he was angry and yelled at her, grabbed her phone out of her hand, and threw it. He also knocked

everything off her dresser and threw her car keys at her when she asked for them so she could leave the apartment. After SE told her younger son, "he doesn't give a f*ck about you," Santiago responded, "[Y]ou're right, I don't give a f*ck about any of you."

SE's sons walked out of the apartment, followed by SE. As she was shutting the main door, she yelled, "[F]*ck them kids," referring to Santiago's children in California. Almost immediately afterward, a bullet fired from inside the apartment struck her in her back. The bullet hole in the door was approximately four feet from the ground. SE tried to dial 9-1-1 on her phone, but Santiago took her phone out of her hand and told her he would drive her to the hospital. Although he was crying, apologized, and told her he did not mean to shoot her, JN, SE's then six-year-old son,[2] testified he did not believe that Santiago did not mean to shoot SE. JN testified, "I didn't believe him at all." After the shooting, Santiago went back into the apartment. Police later recovered a gun from a shoebox in a closet, used by Santiago. In addition, Santiago told JN not to tell anyone what happened.

During Santiago's police interview, Detective Adam Stoyek asked him whether the shooting had been an accident, but Santiago continued to deny that he was the shooter. Moreover, when asked at trial why he did not call 911 after SE was shot, he testified, "Because in the area that we live in, police get there first . . . ." Santiago also admitted at trial that he never told the police that Millard had been in the apartment when the shooting occurred despite knowing that he was the target of their investigation. Detective Stoyek testified that the morning of the first day of trial was the first time he heard the claim that Millard had been in the apartment when SE was shot.

Finally, SE testified that Santiago sometimes carried a gun and had previously held a gun to her head and choked her to the point that she could not breathe. That occurred while SE and Santiago were arguing in her car approximately six months before the shooting. On the day of the shooting, SE and Santiago were again arguing. The evidence was sufficient for a rational jury to conclude that Santiago intended to kill SE when he fired a gun approximately four feet above the ground through a door that SE had just exited. "Intent to kill may be inferred from all the facts in evidence, including use of a deadly weapon, taking aim at a victim, injury to the victim, evidence of flight and attempts to hide evidence." *People v Everett*, 318 Mich App 511, 531 n 10; 899 NW2d 94 (2017) (quotation marks and citation omitted). Because the evidence was sufficient for the jury to conclude that Santiago intended to kill SE when he shot her, his challenge to the sufficiency of the evidence lacks merit.

III. SENTENCING

Santiago next argues that his sentence for assault with intent to commit murder is disproportionate. Although the trial court sentenced Santiago at the top of the sentencing guidelines range for that offense, the sentence is proportionate to the offense and offender. He is therefore not entitled to resentencing.

[2] JN was six years old when the shooting occurred and seven years old when he testified.

When reviewing a sentence for reasonableness, we apply an abuse of discretion standard of review. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). We must determine "whether the trial court abused its discretion by violating the 'principle of proportionality' set forth in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), 'which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.' " *Id*. at 459-460. "The sentencing court abuses its discretion if the sentence imposed is disproportionate to the seriousness of the circumstances involving the offense and the offender." *People v Purdle*, 350 Mich App 446, 454-455; 32 NW3d 479 (2024).

A nonbinding presumption of proportionality applies to a sentence within the sentencing guidelines. *Id*. at 455. "Within that range, the sentence should be tailored to the particular circumstances of the case and offender," and the trial court must "exercise discretion in a way that ensures the individualized sentence conforms with the principle of proportionality." *People v Boykin*, 510 Mich 171, 183; 987 NW2d 58 (2022). "[T]he defendant bears the burden of demonstrating that their within-guidelines sentence is unreasonable or disproportionate[.]" *People v Posey (On Remand)*, 349 Mich App 199, 203; 27 NW3d 137 (2023). The "key test," however, "is not whether a sentence departs from or adheres to the guidelines range," but rather, "whether the sentence is proportionate to the seriousness of the matter." *Id*. at 204. "An appropriate sentence should give consideration to the reformation of the offender, the protection of society, the discipline of the offender, and the deterrence of others from committing the same offense." *Boykin*, 510 Mich at 183.

Santiago's sentencing guidelines were 171 months (14 years and 3 months) to 356 months (29 years and 8 months) after the habitual-offender enhancement. Regarding the enhancement, Santiago admitted that in 2019 he pleaded guilty to assault with a deadly weapon in California. He denied that he used a deadly weapon but admitted pleading guilty to that offense. He also admitted that the offense resulted in great bodily harm. The trial court noted that Santiago had been charged with a felony in 2012, but the charge had been dismissed. In addition, two felony charges were dismissed in May 2023. Santiago argues that his sentence was not tailored to him because the trial court focused only on the offense and not the offender, but the record belies that argument. The court recognized that although Santiago had only one prior felony, additional felonies had been dismissed. Moreover, a review of the presentence investigation report (PSIR) indicates that the three dismissed felony charges were all assaultive felonies, including a 2012 charge of inflicting "Corporal Injury on Spouse/Cohabitant" in California. Therefore, it appears that, similar to the instant case, the 2012 charge involved a domestic relationship.

The trial court also found SE's victim impact statement in the PSIR "quite compelling." In it, SE described JN's statements in the car as Santiago drove to the hospital after the shooting. JN repeatedly stated, "[T]ell me this is a dream" and "[M]y life is over[.]" SE also indicated that Santiago told JN to keep what he had done a secret. In addition, she described how her younger son's father was given temporary custody of the boy as she recovered from the shooting, and she had to fight to regain custody of her child. She further described how traumatic the event was, how close she came to having her children grow up without her, and her belief that if Santiago had "gotten away with what he did," "he would have done it to somebody else."

Further, a review of the record shows that the trial court considered the factors set forth in *Boykin*, 510 Mich at 183, including protecting society, disciplining Santiago, and deterring others

from committing similar conduct. The court also considered the circumstances of the offense and Santiago's individual circumstances. The court found particularly significant the egregious nature of Santiago's conduct and the fact that SE nearly died. We are mindful that not only was Santiago's conduct egregious with respect to SE, but also with respect to her young children. Santiago shot a firearm through a closed door and although the bullet went through the door approximately four feet from the ground, it struck SE in her lower back. The bullet easily could have instead struck one of SE's children, who exited the door immediately before SE. Therefore, considering all the relevant sentencing factors, we conclude that Santiago's sentence is proportionate and reasonable.

IV. VIOLATION OF SEQUESTRATION ORDER

Santiago first argues in his supplemental brief on appeal that the trial court erred by denying his motion for a mistrial after SE violated the court's sequestration order. We review for an abuse of discretion the trial court's denial of a motion for a mistrial. *People v Caddell*, 332 Mich App 27, 37; 955 NW2d 488 (2020). "An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes." *Id*. (quotation marks and citation omitted). We conclude that the trial court's decision to allow cross-examination about the violation instead of declaring a mistrial was not outside the range of principled outcomes.

On the morning of the second day of trial, defense counsel informed the trial court that SE violated the sequestration order by listening to Detective Stoyek's testimony while outside the courtroom the previous day. Counsel maintained that, according to Santiago's brother, SE "was leaning against the door listening through the crack in the door[.]" After hearing testimony from SE and viewing hallway security video footage, the trial court determined that SE "clearly violated the sequestration order." The court listed the remedies for such violations stated in *People v Meconi*, 277 Mich App 651, 654; 746 NW2d 881 (2008), and declined to exclude SE's testimony or grant a mistrial. Instead, the court noted that there had been no showing that SE's testimony would change based on what she heard, and it permitted cross-examination regarding the violation.

The purposes of sequestering a witness are to prevent the witness from coloring their testimony to conform to other testimony and to assist the fact-finder in evaluating the witness's credibility and forthrightness. *People v Roberts*, 292 Mich App 492, 505; 808 NW2d 290 (2011); *Meconi*, 277 Mich App at 654. There exist three remedies for violation of a sequestration order: "(1) holding the offending witness in contempt; (2) permitting cross-examination concerning the violation; and (3) precluding the witness from testifying." *Id*. (quotation marks and citation omitted). Because the "exclusion of a witness's testimony is an extreme remedy," it "should be sparingly used." *Id*.

In denying Santiago's motion for a mistrial, the trial court relied on *Meconi*, which identified the above three remedies for violation of a sequestration order. Notably, declaring a mistrial is not among the remedies. Santiago argues that allowing SE to be cross-examined about the violation was insufficient because SE heard his theory of the case when she violated the sequestration order and was able to conform her answers accordingly. Even if SE became aware of Santiago's theory of defense when she violated the sequestration order, it does not appear from the record that such knowledge affected her testimony. Santiago's theory was that Millard, rather than he, shot SE. SE testified that Santiago was the only person in the apartment at the time of the

shooting, which was consistent with what SE and Santiago told the police on the day of the shooting and consistent with what Santiago told the officers during his interrogation thereafter. SE's testimony was also consistent with that of her young son, JN. In fact, an issue raised during trial was why Santiago never told the police that Millard was in the apartment despite being aware that the police suspected him of committing the shooting. Detective Stoyek testified that the morning of the first day of trial was the first time he heard Santiago's claim that Millard had been in the apartment when the shooting occurred. Therefore, it does not appear from the record that SE's violation of the sequestration order, even if it allowed her to hear Santiago's defense theory, affected her testimony. Moreover, because Santiago's concern was that SE's violation of the sequestration order allowed her to hear his theory of defense, declaring a mistrial was not a suitable remedy since she would be aware of his theory of defense during his retrial. Accordingly, allowing cross-examination about the violation and what she was able to hear while listening at the door was an appropriate remedy, and the trial court did not abuse its discretion by denying Santiago's motion for a mistrial.

V. INEFFECTIVE ASSISTANCE OF COUNSEL

Santiago next contends his trial attorney rendered ineffective assistance of counsel by failing to pursue a defense regarding the absence of his DNA on the firearm found in SE's apartment and failing to call as a witness Oakland County Sheriff's Office Forensic Laboratory Analyst Siera Ramirez, who conducted the DNA testing. Because the record shows that trial counsel's decisions were likely strategic, considering Santiago's admission that he touched the firearm, his attorney's performance did not fall below an objective standard of reasonableness, and Santiago was not denied the effective assistance of counsel.

A defendant preserves a claim of ineffective assistance of counsel for this Court's review by moving for a new trial or a *Ginther*[3] hearing in the trial court, *People v Head*, 323 Mich App 526, 538-539; 917 NW2d 752 (2018), or by filing a motion to remand for a *Ginther* hearing in this Court, *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020). Because Santiago failed to move for a new trial, for a *Ginther* hearing, or to remand for a *Ginther* hearing, he failed to preserve his argument for this Court's review. "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *People v Spaulding*, 332 Mich App 638, 655-656; 957 NW2d 843 (2020) (quotation marks and citation omitted). This Court reviews constitutional questions de novo and reviews the trial court's factual findings, if any, for clear error. *Id*. at 656. Unpreserved claims of ineffective assistance of counsel are reviewed for errors apparent on the record. *Id*.

To establish an ineffective assistance of counsel claim, "a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *People v Haynes*, 338 Mich App 392, 429; 980 NW2d 66 (2021) (quotation marks and citation omitted). "Trial counsel's performance is deficient when it falls below an objective standard of professional reasonableness." *People v Hughes*, 339 Mich App 99, 105; 981 NW2d 182 (2021). A reviewing court must determine whether the acts or omissions alleged to constitute

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

ineffective assistance fell below the range of professionally competent assistance. *Id*. at 105-106. A defendant establishes a reasonable probability of a different outcome by showing "a probability sufficient to undermine confidence in the outcome." *Abcumby-Blair*, 335 Mich App at 228 (quotation marks and citation omitted).

Santiago contends that his attorney rendered ineffective assistance of counsel by failing to call Ramirez as a witness when she could have testified that his DNA was not on the firearm. He asserts that counsel's failure deprived him of a meritorious defense.[4] Santiago relies on Ramirez's laboratory report, which he attached as an exhibit to his motion to file a supplemental brief. Santiago did not, however, move to expand the record on appeal to include the exhibit, which was not filed in the lower court record. Without leave of this Court, a party may not expand the record on appeal to include documents not included in the original record. *People v Smith*, 351 Mich App 1, 32; 34 NW3d 593 (2024). We therefore decline to consider the laboratory report.

Santiago has failed to establish that he was denied the effective assistance of counsel. As Santiago acknowledges on appeal, Detective Stoyek testified that the firearm found in the apartment was swabbed for DNA, and DNA testing revealed that Santiago's DNA was not on the weapon. Therefore, the jury was advised of the DNA test results without Ramirez testifying. Santiago argues that the absence of his DNA on the firearm showed that he did not handle the weapon and could not have been the shooter. Santiago's own testimony, however, belies that argument. At trial, he admitted telling the detectives that he touched the gun, and he never denied touching the gun. Because he admitted handling the weapon, the jury could have reasonably concluded that Santiago touched the gun notwithstanding the DNA evidence, which likely carried little weight considering Santiago's admission. Given the admission, trial counsel's decision not to focus on the DNA evidence and call Ramirez to testify did not fall below an objective standard of reasonableness. "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy." *People v Muhammad*, 326 Mich App 40, 65; 931 NW2d 20 (2018) (quotation marks and citation omitted). Santiago has not overcome the presumption that his attorney's decisions regarding the DNA evidence constituted sound trial strategy. Considering the other DNA evidence presented, he has also failed to establish prejudice as a result of his attorney's decisions.

VI. PROSECUTORIAL ERROR

[4] To the extent Santiago contends that the failure to call a witness may constitute ineffective assistance of counsel only if the failure results in the denial of a meritorious defense, that argument is erroneous. As our Supreme Court explained in *People v Jurewicz*, 506 Mich 914 (2020), "a claim of ineffective assistance of counsel premised on the failure to call witnesses is analyzed under the same standard as all other claims of ineffective assistance of counsel, i.e., a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." (Quotation marks and citation omitted.)

Next, Santiago argues that the prosecutor engaged in conduct that constituted prosecutorial error,[5] including misrepresenting facts, coaching SE during her cross-examination, and shifting the burden of proof. Having reviewed the record, we conclude Santiago has failed to demonstrate that he was denied a fair and impartial trial based on alleged prosecutorial error.

We review claims of prosecutorial error "de novo to determine whether the defendant was denied a fair trial." *People v Dunigan*, 299 Mich App 579, 588; 831 NW2d 243 (2013). "The propriety of a prosecutor's remarks depends on all the facts of the case." *People v Dobek*, 274 Mich App 58, 64; 732 NW2d 546 (2007) (quotation marks and citation omitted). We review the entire record and examine the prosecutor's remarks in context. *People v Isrow*, 339 Mich App 522, 529; 984 NW2d 528 (2021). If the prosecutor represents to the jury during their opening statement that certain evidence will be presented, but the evidence is ultimately not presented, no error occurred if the prosecutor's claim was made in good faith. *People v Johnson*, 315 Mich App 163, 201; 889 NW2d 513 (2016). Regarding closing arguments, the prosecutor may not make factual statements that the evidence fails to support but is free to argue the evidence and reasonable inferences arising therefrom as it relates to their theory of the case. *Id*. In reviewing a claim of prosecutorial error, we review the record "to see whether the prosecutor committed errors during the course of trial that deprived defendant of a fair and impartial trial." *People v Cooper*, 309 Mich App 74, 88; 867 NW2d 452 (2015). Further, if a curative instruction could have alleviated the prejudicial effect of the alleged prosecutorial error, this Court cannot find error requiring reversal. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008).

Santiago argues that the prosecutor repeatedly told the jury that this case involves escalating domestic violence, but no evidence of escalating domestic violence was presented. Santiago contends that the evidence did not show violence, but rather, only verbal arguments except for the February 2023 incident. "A prosecutor may not make a factual statement to the jury that is not supported by the evidence." *Dobek*, 274 Mich App at 66. Santiago's argument is premised on the erroneous belief that domestic violence necessarily involves physical violence. Our Legislature has defined "domestic violence" to include:

> (i) Causing or attempting to cause physical or mental harm to a family or household member.
>
> (ii) Placing a family or household member in fear of physical or mental harm.
>
> (iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

[5] Although Santiago uses the term "prosecutorial misconduct," that term is more appropriately reserved for the rare instance when a prosecutor violates the rules of professional conduct or engages in illegal conduct. *People v Cooper*, 309 Mich App 74, 87-88; 867 NW2d 452 (2015). In the majority of cases, as in this case, the conduct complained of does not rise to that level and instead involves alleged error occurring during trial. *Id*. at 88.

> (iv) Engaging in activity toward a family or household member that would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested. [MCL 768.27b(6)(a).]

SE testified that her relationship with Santiago was "toxic" and involved "a lot of fighting and arguing." She maintained that their relationship was "the worst" in August 2023, and he treated her poorly. She testified that he sometimes had a gun on him while arguing with her, which scared her. By the time the shooting occurred, she was "pretty much done with the relationship" because she was not happy, and he had mistreated her for weeks, if not months. Shortly before the shooting occurred, Santiago grabbed her cell phone out of her hand and threw it, and he knocked everything off her dresser while yelling and swearing at her. SE also testified about an incident that occurred in February 2023 after she called the police, and Santiago left her apartment with some of her belongings. When she met with him in her vehicle to retrieve her items, he held a gun to her head and choked her to the point that she could not breathe and felt like she was going to pass out. She further testified that she rekindled her relationship with him after that incident because "he would make [her] feel bad for him, because he had nowhere else to go." She maintained that she did not realize it then, but "he was [her] abuser, and [she] wasn't strong enough to leave him alone . . . ." She testified that her relationship with Santiago was good for a while after they got back together but it grew increasingly worse in the weeks leading up to the shooting. Therefore, a review of the record shows that this case involves escalating domestic violence, as the prosecutor represented to the jury. Moreover, contrary to Santiago's argument, the prosecutor did not invent out of "whole cloth" his assertion that SE lacked the strength to leave Santiago and instead reconciled with him after the February incident. SE's testimony supported the prosecutor's assertion.

Santiago next argues that the prosecutor committed error by coaching SE during defense counsel's cross-examination of her. Santiago submits that the prosecutor and Detective Stoyek indicated to SE how to respond to questions by shaking or nodding their heads or otherwise making gestures. Although no video footage of the trial has been provided to confirm Santiago's assertion, the prosecutor concedes that such conduct occurred considering that the trial court admonished the prosecutor and Detective Stoyek. The record shows that the court instructed both the prosecutor and Detective Stoyek to stop gesturing while defense counsel questioned SE. Despite the admonishment, it appears the same conduct occurred the next day of trial. When defense counsel asked the court to again instruct the prosecutor to stop gesturing, the court indicated that the jury was aware of the prosecutor's "passion about his advocacy."

Santiago argues that the prosecutor's and Detective Stoyek's coaching and manipulation of SE's testimony was ongoing and continuous and disregarded his rights to a fair trial and to confront his accuser. Defense counsel did not request a curative instruction, however, which would have alleviated any prejudicial effect of the conduct. See *Unger*, 278 Mich App at 235. Accordingly, we cannot determine that error requiring reversal occurred. *Id*. Moreover, as the trial court indicated, the jurors were able to see what was happening, particularly after defense counsel raised the issue. They were therefore able to determine for themselves whether SE was being coached and, if so, to weigh that factor in assessing her credibility. In fact, defense counsel raised the issue during his closing argument.

Next, Santiago contends that the prosecutor misrepresented the facts by stating during his closing argument that the gun Santiago used during the February 2023 incident "conveniently was found in the Defendant's possession two months later." Santiago maintains that the statement was false because the shooting occurred six months later, and no evidence indicated the same gun was used. Again, "[a] prosecutor may not make a factual statement to the jury that is not supported by the evidence." *Dobek*, 274 Mich App at 66. It appears, however, that the prosecutor's reference to the same gun referred to the gun found at the motel in Waterford in April 2023 rather than the gun used during the shooting. SE testified that in February 2023, Santiago choked her and held a black handgun to her head. In April 2023, Waterford police retrieved a firearm from a motel, and Santiago was charged with weapons-related offenses regarding that weapon. Both the prosecutor and defense counsel referenced the police report from the Waterford incident while questioning witnesses. It is unclear from the record whether the gun retrieved from the motel room was the same gun Santiago used during the February 2023 incident, but the police reports regarding the incidents may suggest that it was. The police reports have not been provided to this Court. In any event, it does not appear that the prosecutor argued to the jury that the gun in Santiago's possession during the February 2023 incident was the gun used during the shooting.

Santiago next maintains that the prosecutor shifted the burden of proof during his rebuttal argument by stating that defense counsel "has no evidence." At the end of his closing argument, defense counsel stated, "I hope, I pray, I dream" for a not-guilty verdict. In response, during his rebuttal argument, the prosecutor stated, "First, let me say that counsel wants to hope and dream and pray for a not guilty [sic] because he has no evidence." Defense counsel immediately objected that the prosecutor was attempting to shift the burden of proof and stated, "I don't have to provide any evidence." The trial court sustained the objection. The prosecutor then argued that the jury should "go back and look at the evidence." Santiago correctly asserts that "a prosecutor may not comment on the defendant's failure to present evidence because it is an attempt to shift the burden of proof." *People v Fyda*, 288 Mich App 446, 464; 793 NW2d 712 (2010). A prosecutor may, however, argue from the facts that the defendant's testimony was not worthy of belief. *Dobek*, 274 Mich App at 67. Here, the prosecutor argued that the evidence did not support Santiago's theory of defense—that Millard, rather than Santiago, shot SE. To the extent that the prosecutor commented on Santiago's failure to present evidence that supported his theory of defense, the trial court sustained defense counsel's objection, and the trial court instructed the jury regarding the burden of proof, including that Santiago was "not required to prove his innocence or to do anything." "[J]urors are presumed to follow their instructions." *Unger*, 278 Mich App at 235.

Finally, Santiago contends that the prosecutor improperly asked the jury to sympathize with SE by characterizing her as an "innocent poor woman" who was "gunned down next to her children." The prosecutor may not "invite[] jurors to suspend their powers of judgment and decide the case on the basis of sympathy or civic duty." *People v Lane*, 308 Mich App 38, 66; 862 NW2d 446 (2014). The record shows that defense counsel immediately objected to the prosecutor's remark, and the prosecutor stated he would rephrase his argument. Moreover, the trial court instructed the jury to decide the case based on the evidence, not to let sympathy influence its decision, and that the attorneys' statements were not evidence. "Jurors are presumed to follow instructions, and instructions are presumed to cure most errors." *People v Petri*, 279 Mich App 407, 414; 760 NW2d 882 (2008).

VII. CUMULATIVE EFFECT OF ERRORS

Finally, Santiago argues that he is entitled to a new trial because of the cumulative effect of the individual errors that occurred. "The cumulative effect of several minor errors may warrant reversal even where individual errors in the case would not." *People v McLaughlin*, 258 Mich App 635, 649; 672 NW2d 860 (2003). "[T]he cumulative effect of the errors must undermine the confidence in the reliability of the verdict before a new trial is granted." *People v Lowrey*, 342 Mich App 99, 119; 993 NW2d 62 (2022). Here, Santiago has failed to establish that error occurred. Accordingly, there can be no cumulative effect of errors that undermines confidence in the reliability of the verdict.

Affirmed.

/s/ Anica Letica
/s/ Michelle M. Rick
/s/ Kristina Robinson Garrett