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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 09, 2026 11:45 AM
v	No. 373380 Clare Circuit Court
WILLIAM AUGUST KETNER, Defendant-Appellant.	LC No. 2023-007161-FH

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of delivering methamphetamine, MCL 333.7401(2)(b)(*i*); delivering fentanyl less than 50 grams, MCL 333.7401(2)(a)(*iv*); and maintaining a drug house, MCL 333.7405(1)(d). He was sentenced as a second-offense habitual offender, MCL 333.7413(1), to concurrent sentences of 72 months to 40 years' incarceration for the delivery of methamphetamine conviction, 12 months to 40 years' incarceration for the delivery of fentanyl conviction, and 37 days' incarceration for the conviction of maintaining a drug house. We affirm.

I. FACTUAL BACKGROUND

This case arises from two controlled purchases, each of methamphetamine and fentanyl, by a confidential informant (CI) working with the Michigan Intelligence Network Team ("MINT"). One purchase occurred in June 2022, and the other occurred in July 2022. During both purchases, the CI was equipped with a cell phone provided by law enforcement that allowed for covert video and audio recordings. Defendant was subsequently charged based on being the alleged seller in both controlled purchases, and his jury trial occurred in July 2024.

At trial, the jury heard testimony from Officer Sarah Cuthbertson, Officer Trent Vatter, and Detective Christopher Frayre about MINT's processes for controlled purchases, as well as evidence collection. Video recordings from both controlled purchases were played to the jury; however, the recording of the June 2022 purchase was difficult to understand. The CI also testified. On the second day of trial, defense counsel moved to allow one of defendant's witnesses, Estelle Norton, to appear and testify via Zoom because she was unable to secure transportation to

the courthouse. After hearing arguments, the trial court denied the motion because of the lack of notice to the prosecutor and the difficulty for the witness to testify, for example, about exhibits. The court also differentiated Norton's potential remote testimony from the testimony of the prosecution's witness, Brandon Haney, who the court had previously allowed to appear via Zoom. Norton did not testify, in person or otherwise.

At the close of the trial, the jury convicted defendant of delivering and manufacturing methamphetamine and fentanyl during the July 2022 purchase and maintaining a drug house but acquitted him of the June 2022 purchase. He was sentenced as outlined above.

This appeal followed.

II. VIDEO WITNESS TESTIMONY

Defendant first argues that the trial court denied his right to present a defense when it refused to allow Norton to testify by videoconference (i.e., through Zoom). We disagree.

We review preserved issues of constitutional law de novo. *People v Buie*, 491 Mich 294, 304; 817 NW2d 33 (2012). Additionally, a trial court's discretionary decisions, such as whether to allow remote testimony, are reviewed for an abuse of discretion. *Id*. at 319-320. However, "[w]hen a party raises a separate argument on appeal than the party raised before the trial court, the party must satisfy the standard for plain-error review." *People v Swenor*, 336 Mich App 550, 562; 971 NW2d 33 (2021). Although the trial court denied defendant's request to allow Norton to testify via Zoom, defendant did not base his request on his constitutional right to present a defense and made no arguments to that effect. Instead, he raises his constitutional challenge to the trial court's decision for the first time on appeal. As such, defendant's arguments are unpreserved, and we review them for plain error. To establish plain error, "three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

A criminal defendant is entitled to "a meaningful opportunity to present a defense." *People v King*, 297 Mich App 465, 473; 824 NW2d 258 (2012); see US Const Ams VI, XIV; Const 1963 art 1 § 13. "Although the right to present a defense is a fundamental element of due process, it is not an absolute right. The accused must still comply with established rules of procedure." *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984) (quotation marks and citation omitted). MCR 6.006(B)(4) provides that "the use of videoconferencing technology shall not be used in . . . jury trials . . . except in the discretion of the court after all parties have had notice and an opportunity to be heard on the use of videoconferencing technology."

When determining whether to allow the use of videoconferencing under MCR 6.006(A)(3), trial courts must consider the nonexhaustive list of factors contained in MCR 2.407(C).[1] Upon our

[1] MCL 2.407 was amended on June 30, 2026; however, the amendment does not affect the section of the rule pertinent to our analysis.

review of these factors as applied to the trial court's decision, the trial court did not plainly err when it denied defendant's request to allow Norton to testify via videoconferencing.

Here, in response to defendant's motion, the prosecutor argued that there were certain exhibits that only could be presented to Norton in person, and not over Zoom. The trial court agreed, finding that allowing Norton to testify by videoconferencing would create "difficulty" because of the inability to present exhibits to the witness, thus implicating MCR 2.407(C)(4).

Additionally, as provided in MCR 2.407(C)(11), the trial court considered the fact that defendant requested videoconference testimony the same day Norton was scheduled to testify in person. The timing of this request, even when described as an "emergency," also weighed in favor of the court's decision because, as the court reasoned, the sudden nature of the request provided no notice to the prosecutor. The timing and lack of notice also supported prejudice under MCR 2.407(C)(2).

Also, defense counsel had sent an e-mail to the prosecution to stipulate to allow Norton to testify remotely, but the prosecutor did not respond to the e-mail and later objected to the request. The fact that the prosecutor did not stipulate to Norton's remote appearance or waive personal appearance also weighed in favor of the court's decision under MCR 2.407(C)(10).

Moreover, the trial court reasonably found that defendant's request was meaningfully different from the prosecutor's request for Haney to testify remotely. The prosecutor had filed a written motion before trial to allow Haney to testify remotely because he lived in Arizona, requiring Haney to testify in person would have been expensive, and Haney was not going to testify to the veracity of the recordings. Instead, Haney, an employee of the company that provided the application used on the CI's phone to create recordings of the controlled buys, merely was expected to testify about how the recordings were made and accessed.

In comparison, defense counsel argued that Norton was going to testify about whether the CI, in her opinion, had a reputation for truthfulness, which meant exhibits would be needed on cross examination and the ability to assess credibility was important. While defendant's argument highlights that his physical liberty was at stake, which weighs against denying the motion under MCR 2.407(C)(6), the trial court found that it was defendant's responsibility "to help figure out a ride" for Norton, not the prosecutor's responsibility. Indeed, the prosecutor only had the duty to "provide notice of known witnesses and reasonable assistance to locate witnesses on defendant's request." *People v Burwick*, 450 Mich 281, 289; 537 NW2d 813 (1995). And, unlike Haney who lived in Arizona, Norton lived about two hours away from the court by car.

Any prejudice defendant alleges because Norton did not testify was mitigated by the trial court's jury instructions and the CI's testimony. On appeal, defendant argues that his defense was based entirely on a theory that the CI was lying when he testified that defendant sold him methamphetamine and fentanyl. But, because the CI testified, he was subject to cross-examination regarding how they both had been charged in an unrelated drug possession case and how the CI had received a favorable plea bargain in exchange for the CI's testimony against defendant. Accordingly, the trial court instructed the jury using M Crim JI 5.13, that it may consider a witness's plea agreement with the prosecution in assessing the witness's credibility, and whether such an agreement tends to show the witness's bias or self-interest in testifying. "Jurors are

presumed to follow their instructions, and jury instructions are presumed to cure most errors." *People v Zitka*, 335 Mich App 324, 348; 966 NW2d 786 (2020) (quotation marks and citation omitted).

The trial court's reasoning as to the factors outlined above sufficiently explains why it allowed testimony over Zoom from one witness but not another. Our consideration of the factors listed under MCR 2.407(C) do not change the result. Defendant's argument that the trial court violated his constitutional right to present a defense lacks merit because the court did not preclude the witness from testifying but rather denied his last-minute request for her to testify remotely. While defendants have the right to present a defense, this right is not absolute and is subject to court rules. *Hayes*, 421 Mich at 279. Therefore, the trial court properly considered the factors in MCR 2.407(C) and did not plainly err.

III. PROSECUTORIAL ERROR

Defendant next contends that the prosecutor erred[2] by asking some leading questions to some prosecution witnesses. We disagree.

A. LEADING QUESTIONS

Defendant identifies approximately a dozen questions the prosecution asked that he deems impermissibly leading. He preserved this issue as to some of the questions by objecting; however, the issue is not preserved with respect to those questions to which he did not object. We review preserved claims of prosecutorial error de novo to determine whether the identified conduct deprived the defendant of a fair trial. *People v Dunigan*, 299 Mich App 579, 588; 831 NW2d 243 (2013). Whether to allow leading questions is within the trial court's discretion, *People v Garland*, 152 Mich App 301, 309; 393 NW2d 896 (1986), and we review a trial court's decision to allow leading questions for an abuse of discretion. *In re Susser Estate*, 254 Mich App 232, 239; 657 NW2d 147 (2002). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Buie*, 491 Mich at 320 (citation omitted). Unpreserved claims of prosecutorial error are reviewed for plain error affecting defendant's substantial rights. *People v Thurmond*, 348 Mich App 715, 736; 20 NW3d 311 (2023) (citation omitted).

"A prosecutor commits error by 'abandon[ing] his or her responsibility to seek justice and, in doing so, den[ying] the defendant a fair and impartial trial.' " *Id*., quoting *People v Lane*, 308 Mich App 38, 62; 862 NW2d 446 (2014). Prosecutorial error infringes on a defendant's right to a fair trial if the conduct "so infected the trial with unfairness as to make the conviction a deprivation

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[2] Defendant uses the phrase "prosecutorial misconduct" rather than "prosecutorial error" in his brief on appeal. "Although 'prosecutorial misconduct' is a commonly accepted term of art, in criminal appeals, it is a misnomer when referring to allegations that do not involve violations of the rules of professional conduct or illegal activity. Less egregious conduct involving inadvertent or technical error should be deemed 'prosecutorial error.' " *People v Thurmond*, 348 Mich App 715, 735 n 6; 20 NW3d (2023) (citation omitted). Because defendant does not allege any illegality or violation of the rules of professional conduct, we refer to defendant's allegations as "prosecutorial error."

of liberty without due process of law." *People v Blackmon*, 280 Mich App 253, 269; 761 NW2d 172 (2008) (emphasis omitted).

Under MRE 611(d)(1), "[l]eading questions should not be used on direct examination except as necessary to develop a witness's testimony." A leading question is a question that "contain[s] its own presumptive answer." *People v Snyder*, 462 Mich 38, 43; 609 NW2d 831 (2000); see also *People v Hodge*, 141 Mich 312, 314; 104 NW 599 (1905). A question "intended to call attention to certain subjects about which testimony was desired" but that does not suggest the answer expected is not a leading question. *Hodge*, 141 Mich at 314. "In order to demonstrate that reversal is warranted for the prosecution asking leading questions, it is necessary to show some prejudice or patterns of eliciting inadmissible testimony." *People v Johnson*, 315 Mich App 163, 200; 889 NW2d 513 (2016) (quotation marks and citation omitted).

Defendant challenges two allegedly leading questions that the prosecutor asked Officer Vatter. The defense objected to both questions on relevancy grounds and the trial court sustained the objection. These two allegedly improper leading questions, therefore, were not objected to as being leading, they were not answered, and the court sustained defendant's objections, meaning they were not prosecutorial error.

Defendant also contends the prosecutor erred when she asked Officer Cuthbertson, without objection, (1) whether MINT reports are intentionally vague as a means to protect a CI's information from potential release during discovery; (2) whether some MINT reports released in discovery are given to defendants and have found their way to social media; and (3) whether a CI would be put in danger if identifying information were disseminated to a defendant. Officer Cuthbertson agreed in response to all three questions.

Contrary to defendant's argument, however, these questions were not leading: they were yes or no questions, but they did not necessarily suggest a desired answer. *Hodge*, 141 Mich at 314. While open-ended questions would be more effective, Officer Cuthbertson was free to answer these questions either way. Moreover, the prosecutor was simply asking Officer Cuthbertson questions to highlight the reasons law enforcement protects confidential informants' identities. Thus, the questions were for proper purposes such as developing, following up on, or clarifying a witness's testimony. See MRE 611(d)(1).

Next, defendant challenges the prosecutor's unobjected to questions to Officer Cuthbertson and Detective Frayre as to whether external documents, such as search warrants and notes, were retyped into MINT reports. Again, these questions were not necessarily leading in that they did not suggest a desired answer, and they were asked for the proper purpose of clarifying a witness's previous testimony. See MRE 611(d)(1).

Finally, defendant contends that the prosecutor impermissibly (but without objection) asked Detective Frayre (1) a leading question about the chain of custody of evidence being "well tracked," to which Detective Frayre agreed, and (2) unidentified leading questions about reports not including details that may reveal a CI's identity. The questions, however, simply clarified testimony based on answers previously given by Detective Frayre, and therefore it was not an abuse of discretion to allow them. MRE 611(d)(1). The questions also did not necessarily suggest a specific desired answer so as to be error to allow them. *Hodge*, 141 Mich at 314.

Ultimately, the questions defendant objects to on appeal (most of which he did not object to at the time) were not impermissible, leading questions that the trial court somehow erred in allowing such that it deprived the defendant of a fair trial. *Dunigan*, 299 Mich App at 588; *Thurmond*, 348 Mich App at 736. Defendant has failed to show any prejudicial effect and reversal is not warranted. *Johnson*, 315 Mich App at 200.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues in the alternative that defense counsel was ineffective for failing to object to the questions he identifies as problematic on appeal. We disagree.

Criminal defendants have a constitutional right to the effective assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20. To establish that defense counsel was ineffective, the defendant must show "(1) counsel's performance was below an objective standard of reasonableness under prevailing professional norms and (2) there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *People v Randolph*, 502 Mich 1, 9; 917 NW2d 249 (2018), citing *Strickland v Washington*, 466 US 668, 688; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

On appeal, defendant argues that his trial counsel's performance was ineffective because his attorney failed to object to certain prosecution questions, including one new question not previously mentioned on which the trial court sustained his objection, and that he was prejudiced by the failure to object. As discussed, the alleged questions constituting prosecutorial error were not necessarily error, the prosecutor could have rephrased the questions and elicited the same testimony, and so defendant has not shown that defense counsel's failure to object caused prejudice, particularly since he does not argue that any evidence was improperly admitted. Thus, defendant was not denied his right to effective assistance of counsel when defense counsel did not object to certain questions.

Affirmed.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense