STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN S. LEITH,

Defendant-Appellant.

UNPUBLISHED
November 5, 1996

No. 180387
LC No. 93-001705-FC

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant was found guilty by a jury of one count of first-degree murder, MCL 750.316; MSA 28.548, two counts of assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent terms of life imprisonment without parole for the murder conviction and two to ten years' imprisonment on each assault conviction; these sentences are to be served consecutive to three concurrent terms of two years' imprisonment on the felony-firearm convictions. Defendant appeals as of right. We affirm.

Defendant's convictions and sentences arose out of the shooting death of Joseph Piasecki, the Superintendent for the Chelsea School District, and the woundings of Ronald Mead, the principal of Chelsea High School, and Phillip Jones, the grievance coordinator for the Chelsea Education Association.

Defendant argues that the trial court abused it discretion when it denied defendant's request for individual, sequestered voir dire in light of the extensive pretrial publicity to which this case was exposed. We disagree. A defendant who chooses trial by jury has an absolute right to a fair and impartial jury. *People v Tyburski*, 445 Mich 606, 618 (Mallett, J.), 671 (Brickley, J., dissenting); 518 NW2d 441 (1994); *People v Miller*, 411 Mich 321, 326; 307 NW2d 335 (1981). Voir dire is indispensable to a fair trial because it serves as the only mechanism and safeguard a defendant has for ensuring the right to an impartial jury. *Tyburski, supra*. Its purpose is to elicit enough information to allow the defendant to develop a rational basis for excluding potential jurors who are not impartial

through challenges for cause and the reasonable exercise of peremptory challenges. *Id.* In the presence of an extensive amount of pretrial publicity, a trial court should take special caution to conduct a thorough and conscientious voir dire designed to elicit sufficient information for the court to make its own assessment of bias and to guard against potential bias resulting from media exposure. *Id*. at 623 (Mallett, J.), 646 (Boyle, J., concurring). The presence of an extensive amount of pretrial publicity does not, however, entitle a defendant to individual, sequestered voir dire. *Id.* at 619 (Mallett, J.), 644-645 (Boyle, J., concurring). A trial court's decision with regard to the method of conducting voir dire is reviewed for an abuse of discretion. *Id*. at 619 (Mallett, J.), 669-670 (Brickley, J., dissenting).

In the present case, the trial court granted defendant's request for initial voir dire by questionnaire, using a form that defense counsel participated in preparing. Outside the presence of the venire members, the court then provided an opportunity for the dismissal for cause of venirepersons based on information revealed by the questionnaire. The court also employed private and individualized oral examination of some venirepersons when circumstances demonstrated the need for this method of voir dire. Finally, the venirepersons were subjected to additional oral voir dire by the court, by the prosecutor, and by defense counsel. On this record, the trial court did not abuse its discretion in the manner in which it conducted voir dire. The method of conducting voir dire employed by the trial court provided defendant with a reasonable opportunity to ascertain whether any of the venirepersons were subject to peremptory challenge or challenge for cause. It also provided the trial court with sufficient information to make an independent assessment of bias and to guard against potential bias resulting from media exposure.

Defendant next argues that the trial court abused its discretion when it denied his motion in limine and allowed the prosecutor to admit evidence of a gun collection and ammunition seized from defendant's home and automobile. Again, we disagree. The trial court correctly determined that evidence of defendant's gun collection was relevant. MRE 401, 402; *People v Davis*, 199 Mich App 502, 516-517; 503 NW2d 457 (1993). The evidence defendant sought to exclude established that he owned various rifles, shotguns, and handguns and that he had the ammunition to use any one of these firearms. From this group of readily available firearms, defendant chose a semi-automatic handgun that was easily concealed, had more firepower than his revolvers, was easier to reload than his revolvers, and had the ability to be fired more rapidly than his revolvers. Defendant's choice of firearm made it unlikely that its possession would be prematurely detected by others, ensured the element of surprise, and guaranteed that he could direct the most firepower at his intended victims in the shortest period of time. In this manner, defendant's choice of gun increased the likelihood that he would carry out his stated goal of killing Piasecki. Accordingly, the existence of the gun collection and defendant's specific choice of firearm from that collection made it more probable that his killing of Piasecki was planned and, hence, premeditated. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995); *Davis, supra* at 517.

The trial court also correctly determined that the probative value of the evidence was not substantially outweighed by its prejudicial effect. MRE 403. The nature and breadth of the gun collection was not such as to result in the jury giving the collection undue or preemptive weight. *People v Mills*, 450 Mich 61, 74-76; 537 NW2d 909 (1995), modified 450 Mich 1212; 539 NW2d 504

(1995). Moreover, any prejudicial effect that might have flowed from the disclosure of the existence of the collection was minimized by testimony of law enforcement authorities that the handguns were registered and that all of the firearms were legally owned, and by defendant's use of the collection as an example of compulsive behavior and thus to bolster his claim that his consumption of Prozac had an adverse effect on his already deteriorating mental health.

Defendant also argues that the trial court erroneously denied his request for a special instruction on involuntary intoxication and erroneously charged the jury with an involuntary intoxication instruction that was a modified version of CJI2d 7.10. We disagree. The argument defendant advances on appeal is not one of the arguments made below. Accordingly, defendant has failed to preserve his claimed error for appellate review. *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993). Nevertheless, we will review the claimed error for manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993).

We find no manifest injustice. The instruction given by the trial court accurately conveyed the law to the jury, *People v Caulley*, 197 Mich App 177, 184-190; 494 NW2d 853 (1992), and was consistent with defendant's theory of defense. Moreover, the special instruction sought by defendant was legally deficient. Contrary to defendant's belief, this Court did not conclude in *Caulley*, *supra* at 190, that, for purposes of involuntary intoxication, legal insanity may be shown without a concurrent showing of mental illness. The phraseology employed by this Court, when read in context, was meant to convey nothing more than that a person can be mentally ill without being found legally insane.

Finally, defendant argues that he was deprived of his right to a fair and impartial trial by prosecutorial misconduct. We disagree. A prosecutor may not intentionally inject inflammatory arguments with no apparent justification except to arouse prejudice. *People v Lee*, 212 Mich App 228, 247; 537 NW2d 233 (1995). The record reveals that the prosecutor did not advance any arguments that were calculated to inflame the passions of the jury. Instead, the challenged comments constituted a reasonable response to an argument advanced by defense counsel during closing argument, *People v Simon*, 174 Mich App 649, 655; 436 NW2d 695 (1989), and were proper comments on the evidence and reasonable inferences arising therefrom, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

We affirm.

/s/ Martin M. Doctoroff
/s/ Harold Hood
/s/ Richard A. Bandstra