STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 12, 2010
v	No. 286323 Wayne Circuit Court
DEANDRE ANGELO MULLINS, Defendant-Appellant.	LC No. 08-001477-FC

Before: Wilder, P.J., and O'Connell and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his conviction following a jury trial of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b (multiple variables), and one count of first-degree home invasion, MCL 750.110a(2). The trial court sentenced defendant to concurrent terms of 285 months to 60 years for the CSC I convictions, as well as a consecutive 141 months to 20 year term in prison for the first-degree home invasion conviction. We affirm.

Defendant first argues that the trial court abused its discretion in failing to inquire into his reasons for requesting substitute counsel and in failing to determine whether appointing substitute counsel would have unreasonably disrupted the judicial process. We review a trial court's decision regarding substitution of counsel for an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). An abuse of discretion occurs when a trial court's decision falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

As plaintiff concedes, the trial court erred in failing to hear defendant's claim and inquire with defendant as to why he wanted new counsel. *People v Ginther*, 390 Mich 436, 442; 212 NW2d 922 (1973). However, "[a] judge's failure to explore a defendant's claim that his assigned lawyer should be replaced does not necessarily require that a conviction following such error be set aside." *Id.* In *Ginther*, our Supreme Court did not reverse the trial court for failing to explore the defendant's request for substitute counsel "because the record [did] not show that the lawyer assigned to represent Ginther was in fact inattentive to his responsibilities." *Id.*; see also *People v Morgan*, 144 Mich App 399, 402; 375 NW2d 757 (1985) (concluding that reversal was not warranted where the trial court inquired as the defense counsel's preparedness and ability to work on the case). Here, as in *Morgan*, the trial court did inquire of defense counsel's level of preparedness and ability to work on the case. It also inquired of defendant's ability to assist in the case, as well as his understanding of it. Further, this was the second of back-to-back

trials, and defense counsel represented defendant in the first trial. Therefore, the trial court was already aware of defense counsel's abilities. Finally, there is no indication that defense counsel in this case was "inattentive to her responsibilities." *Ginther*, 390 Mich at 442.

Defendant also argues that that the trial court abused its discretion in failing to inquire directly of defendant whether he wanted to represent himself. Defendant has failed to properly present this issue by raising it in his statement of questions presented. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). In any event, we see no error where the court did inquire of defense counsel if defendant wished to represent himself, and defendant did not correct counsel's negative response.

Defendant also raises four unpreserved issues on appeal: (1) that the trial court erred in exercising insufficient caution in voir dire of the jury venire because jurors who had seen media coverage of this highly publicized case were not removed from the panel; (2) that a change of venue was warranted based on the pretrial publicity; (3) that he is entitled to a new trial based on prosecutorial misconduct; and (4) that he is entitled to a new trial because defense counsel was ineffective. We review these claims for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Reversal is warranted only if the error resulted in the conviction of an innocent defendant or the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002).

As to defendant's first argument—that the trial court erred in exercising insufficient caution in voir dire of the jury venire—defendant's argument is without merit. During voir dire, the prosecutor asked the entire prospective jury pool whether they had been exposed to any media coverage in the case, and reiterated the question each time new jurors were selected following challenges by the advocates. In each instance, none of the jurors responded in the affirmative. Further, the trial court instructed the jurors seated both before and after proofs that they must decide the case based only on the evidence admitted at trial, and before proofs cautioned against being exposed to news reports of the case because they can be misleading and do not meet the standards of admissibility imposed upon evidence presented at trial. Considering these instructions together, *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001), and mindful that juries are presumed to follow the whole of their instructions, *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998), defendant's substantial rights were not prejudiced by the process.

Defendant next argues that a change of venue was warranted based on the pretrial publicity in this case. We disagree. Generally, a defendant must be tried in the county where the crime is committed. MCL 600.8312; *People v Jendrzejewski*, 455 Mich 495, 499; 566 NW2d 530 (1997). However, a trial court may change venue to another county where justice so demands or a statute so provides. MCL 762.7; *Jendrzejewski*, 445 Mich at 499-500. "[I]t may be appropriate to change venue of a criminal trial when widespread media coverage and community interest have led to actual prejudice against the defendant." *People v Unger*, 278 Mich App 210, 254; 749 NW2d 272 (2008). "Community prejudice amounting to actual bias has been found where there was extensive highly inflammatory pretrial publicity that saturated the community to such an extent that the entire jury pool was tainted, and, much more infrequently, community bias has been implied from a high percentage of the venire who admit to a disqualifying prejudice." *Jendrzejewski*, 445 Mich at 500-501. Again, however, none of the

jurors were exposed to the pretrial media coverage. Therefore, the jury pool was not tainted and there was no need for a change of venue.[1]

Defendant also challenges the prosecutor's use during closing argument of a photograph of defendant that he alleges had the word guilty superimposed across his face. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Prosecutorial misconduct issues are decided on a case-by-case basis, and the reviewing court must examine the record and evaluate a prosecutor's remarks in context. *Thomas*, 260 Mich App at 454. The propriety of a prosecutor's conduct depends on all the facts of the case. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002).

Here, the prosecutor did nothing more than summarize the facts in evidence and ask the jury to find defendant guilty. A prosecutor is free to argue the evidence and all reasonable inferences arising from it as they relate to his or her theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). Further, a prosecutor is not required to make an argument in the blandest possible terms. *People v Fisher*, 449 Mich 441, 452; 537 NW2d 577 (1995). Even assuming that the word guilty was flashed over defendant's face in the prosecutor's closing power point presentation, this would merely have been a visualization of the prosecutor's assertion that the evidence adduced established defendant's guilt. Therefore, we conclude that there was no misconduct. Moreover, the trial court properly instructed the jury that the lawyers' statements and arguments were not evidence that could be considered during deliberations. *Graves*, 458 Mich at 486.

Finally, defendant claims that defense counsel's failure to object to the alleged prosecutorial misconduct in this case rendered her assistance ineffective. However, because no misconduct occurred, defense counsel cannot be faulted for failure to object. *Thomas*, 260 Mich App at 457.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Michael J. Talbot

[1] Defendant also implies that defense counsel was ineffective for failing to move for a change of venue. However, because a change of venue was not warranted in this case, defense counsel cannot be deemed ineffective for failing to move for same. *People v Thomas*, 260 Mich App 450, 457; 678 NW2d 631 (2004).