STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 19, 2000
v	No. 213326 Oakland Circuit Court
JOHN R. HARRIS, JR., Defendant-Appellant.	LC No. 97-156960-FC

Before: Smolenski, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant appeals as of right from his convictions of first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227(b); MSA 28.424(2). Defendant was sentenced to natural life without parole for the murder conviction, to be served consecutively to a two-year sentence for the felony-firearm conviction. We affirm.

Defendant raises several claims of prosecutorial misconduct, none of which we find warrant reversal. This Court examines prosecutorial remarks in context to determine whether defendant was denied a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 267; 531 NW2d 659 (1995); *People v Rice*, 235 Mich App 429, 435; 597 NW2d 843 (1999).

First, defendant argues that the prosecution engaged in a pattern or strategy of leading witnesses on direct examination. We disagree. "Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony." MRE 611(c)(1). Although leading questions are generally not permitted on direct examination, contrary to defendant's contention, we do not find that the prosecution's leading questions rose to a highly prejudicial level or that the questions deprived defendant of a fair trial. *Bahoda, supra* at 267. Nor did the prosecution's leading questions show a pattern of attempting to reveal highly prejudicial information to the jury. *People v Foster*, 68 Mich App 276, 281-282; 242 NW2d 553 (1976). Cf. *People v Askar*, 8 Mich App 95, 103-104; 153 NW2d 888 (1967). In all of the instances cited by defendant, defense counsel's objections to the leading questions were sustained and the prosecution either abandoned the question or rephrased the question prior to receiving an answer from the witness. *Foster, supra* at 281-282. Accordingly, we find no error warranting reversal.

Second, defendant argues that the prosecution committed misconduct when it referred to the shotgun used to kill the victim as "the murder weapon" and referred to the entire incident as "the murder." We disagree. Defendant failed to object to the challenged remarks at trial. Appellate review of prosecutorial misconduct is foreclosed when the defendant fails to object or request a curative instruction at trial, unless the misconduct was so egregious that no objection or curative instruction could have removed the prejudice, or if manifest injustice would result from the failure to review the claim. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999); *People v Buck*, 197 Mich App 404; 496 NW2d 321 (1992).

After reviewing the record, we conclude that the prosecution's use of the words "murder weapon" and "murder" was not improper. Defendant admitted to the psychiatrists that he killed the victim,[1] and it was undisputed that a shotgun was used to accomplish the unlawful killing. Therefore, the prosecutor's use of these terms during trial did not constitute an inappropriate or inaccurate characterization of the weapon or the incident. Nor are we convinced that the prosecutor's isolated use of these terms was an attempt to inflame the jury with no apparent justification except to arouse prejudice. See *People v Lee*, 212 Mich App 228, 247; 537 NW2d 233 (1995). In any event, any prejudice caused by the prosecutor's use of the words could have been cured by a timely instruction. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Further, during its charge to the jury, the trial court instructed the jury not to consider arguments and questions of the attorneys during deliberations because they are not evidence. Accordingly, we find no error.

Third, defendant argues that the prosecution engaged in misconduct by denigrating defendant's expert witness. We disagree. Because defendant did not object at trial to the alleged denigration of defendant's expert witness by the prosecution, we only review this issue if an instruction could not have cured the prejudicial effect or where failure to consider the issue would result in manifest injustice. *Stanaway, supra* at 687; *Noble, supra* at 660.

Viewed in context, we are not convinced that the prosecution's questioning of the expert witness about the definition of criminal responsibility in Michigan was an improper, personal attack on the witness. Rather, the prosecution's line of questioning simply tested the expert's familiarity with the definition of her diagnosis, which is an entirely permissible inquiry. *People v Howard*, 226 Mich App 528, 545-546; 515 NW2d 16 (1997). Nor do we find that the prosecution's reference to Dr. Van Horn as "so powerful, so all knowing, that your opinion is the Gospel," when he refused to acknowledge the possibility that there was a reason other than insanity for defendant's behavior, warrants reversal. Rather, the prosecutor was merely advancing his position that there may be another explanation for defendant's behavior, other than insanity. While the prosecution's remark to Dr. Van Horn on cross-examination may be characterized as disrespectful or irreverent, we conclude that the remarks did not deny defendant a fair trial in light of defendant's failure to object to the statement and request a curative instruction, and the trial court's general instruction to the jury that the arguments and questions

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[1] Random House Webster's College Dictionary (1997) defines "murder" as "the unlawful killing of a person, esp. when deliberate or premeditated."

of the attorneys were not evidence and should not be considered during deliberations. *Howard, supra* at 545. Therefore, we find no manifest injustice.

Defendant's final allegation of prosecutorial misconduct is that the prosecution engaged in misconduct when it referred to the defense theory of the case as "ridiculous," "a sham" and "a fraud attempting to be perpetrated upon you [the jury]." We disagree. Once again, defendant's failure to object below limits our review on appeal. We only review this unpreserved allegation of prosecutorial misconduct if a curative instruction would not remedy the prejudice to defendant or unless manifest injustice would result from failure to review the issue. *Stanaway, supra* at 687; *Noble, supra* at 600.

The evidence in this case revealed that defendant admitted to the three psychiatrists that he killed the victim, but that he told the psychiatrists that he only intended to strike the victim in the head with the gun, not kill him. The prosecutor argued during closing arguments that, based on the evidence introduced at trial, the story defendant told the psychiatrists was not credible and that defendant should not be believed. This was an appropriate argument. "A prosecutor may argue from the facts that a witness, including the defendant, is not worthy of belief . . . and is not required to state inferences and conclusions in the blandest possible terms." *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Here, the prosecution was simply arguing that defendant's story, as related to the psychiatrists, was not credible. The prosecution's remarks on the issue of defendant's credibility were entirely appropriate. Accordingly, we find no error.

Affirmed.

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter