

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ROBERT NEWTON,

Defendant-Appellant.

UNPUBLISHED
February 12, 2008

No. 276429
Wayne Circuit Court
LC No. 06-010654-01

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury convictions for felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that he suffered prejudice when, prior to jury selection, counsel was given juror information forms that did not match the pool of jurors in the courtroom. Defendant appears to contend that this violated MCR 2.510(C)(2), which provides that attorneys “must be given a reasonable opportunity to examine [juror’s personal history] questionnaires before being called on to challenge for cause.” He also appears to maintain that the trial court violated his due process right to a fair and impartial jury because he was improperly subjected to an “anonymous jury.” See US Const, Am VI and Am XIV.

Prior to the beginning of jury voir dire, defense counsel approached the trial court and raised what appeared to be a claim that he did not receive the correct juror questionnaires. The trial court held a conference off the record to discuss the issue; immediately thereafter, the court clerk drew prospective juror names and questioning began. Counsel did not renew any objection pertaining to juror information. Thus, defendant has failed to preserve his claims of error, because trial counsel failed to specifically raise a constitutional claim, or to maintain that defendant was entitled to relief due to the prosecutor’s failure to adhere to MCR 2.510(C)(2). *People v Aldrich*, 246 Mich App 101, 116; 631 NW2d 67 (2001). We review unpreserved constitutional issues for plain error affecting a defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). A plain error merits reversal only when a defendant is actually innocent, or “the error seriously affect[ed] the fairness, integrity, or public reputation of the judicial proceedings.” *Id.* at 773.

Notwithstanding defendant's assertions to the contrary, defendant was not improperly subjected to an "anonymous jury." "An 'anonymous jury' is one in which certain information is withheld from the parties, presumably for the safety of the jurors or to prevent harassment by the public." *People v Williams*, 241 Mich App 519, 522; 616 NW2d 710 (2000). "[T]he use of an 'anonymous jury' may promote the safety of prospective jurors, but at a potential expense to two interests of the defendant: (1) the defendant's interest in being able to conduct a meaningful examination of the jury and (2) the defendant's interest in maintaining the presumption of innocence." *Id.* at 522-523. "In order to successfully challenge the use of an 'anonymous jury,' the record must reflect that the parties have had information withheld from them, thus preventing meaningful voir dire, or that the presumption of innocence has been compromised." *Id.* at 523.

The trial transcript indicates that numbers were used to identify the jurors, but this occurred after defendant was furnished the names of potential jurors. These names were also read to the public during the proceedings. Among other personal questions, the trial court asked the potential jurors about their occupations, marital status, and whether they had been jurors, or had been involved in previous criminal proceedings, either as a victim or a defendant. Defendant cannot show that the trial court prevented counsel from eliciting any other information during voir dire that would have been pertinent to choosing an impartial jury. This jury was not "anonymous." Defendant thus cannot show that he suffered a due process violation here.

Nor can defendant show outcome determinative error here in the apparent failure of the trial court to furnish defense counsel with the correct juror questionnaire forms prior to voir dire. The standard juror personal history questionnaire, adopted by SCAO,¹ requests information about marital, employment, and criminal history status, whether the juror has been a victim, a witness, or a plaintiff or defendant in a criminal or civil suit, and whether the juror or a family member has ever been involved in a serious traffic accident, and whether alcohol was involved. The trial court elicited much of this information during its general questioning. Defendant has not stated how any other information requested on the form that was not discussed at trial, such as whether the prospective jurors had ever been office holders, was germane to his case or his inability to properly challenge the jurors for cause. Defendant cannot show that he suffered prejudice by counsel's inability to review the correct juror information forms prior to jury selection.

Defendant next argues that he was denied his right to allocute prior to the trial court's imposition of sentence. Defendant did not raise this claim of error below. Thus, we review it for plain error. *Carines, supra* at 763-764. MCR 6.425(E)(1)(c) provides that, at sentencing, the trial court must give "the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence." The trial court has the discretion to allow others to speak, but need not do so. See *People v Lawson*, 172 Mich App 498, 500-501 432 NW2d 354 (1988). The trial court specifically inquired if defendant wanted to make a statement, and defendant declined to do so.

¹ See MCR 2.510(A).

Under the circumstances, defendant cannot show that he was not provided an opportunity to speak on his own behalf.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra