

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS ADOLPHUS,

Defendant-Appellant.

UNPUBLISHED

November 14, 2006

No. 265198

Wayne Circuit Court

LC No. 05-001130-01

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for second-degree murder, MCL 750.317. Defendant was sentenced to 18 to 30 years in prison. We affirm.

Defendant argues on appeal that the trial court abused its discretion when it denied his motion for a mistrial. We disagree. A trial court's decision to deny a motion for a mistrial is reviewed for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). An abuse of discretion exists when the decision made is not within the range of principled outcomes. *Malodano v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006); *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003).

In the absence of consent to a mistrial, a court may declare a mistrial only if justified by manifest necessity, i.e., the prejudicial effect could be removed in no other way. *People v Gonzales*, 193 Mich App 263, 266; 483 NW2d 458 (1992). A trial court is afforded considerable deference in its decision regarding the existence of manifest necessity. *People v Lett*, 466 Mich 206, 213; 644 NW2d 743 (2002); *People v Hicks*, 201 Mich App 197, 200; 506 NW2d 269 (1993), rev'd in part on other grounds 447 Mich 819 (1994); *People v Williams*, 85 Mich App 258, 264; 271 NW2d 191 (1978). Although there is no precise test for what constitutes manifest necessity, it generally exists when there are sufficiently compelling circumstances that would otherwise deprive the defendant of a fair trial, make its completion impossible, or amount to a miscarriage of justice. *People v Wells*, 238 Mich App 383, 390; 605 NW2d 374 (1999); *People v Tracey*, 221 Mich App 321; 561 NW2d 133 (1997).

A denial of a mistrial based upon juror misconduct is an abuse of discretion only if the misconduct was such that it affirmatively affected the impartiality of the jury or disqualified its members from exercising the powers of reason and judgment. *People v Messenger*, 221 Mich App 171, 175; 561 NW2d 463 (1997). A new trial will be denied if no substantial harm was

done to the defendant, even if the misconduct merits a rebuke from the trial court if brought to its notice. *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998).

Misconduct can be demonstrated with evidence pertaining to outside or extraneous influences, but cannot be demonstrated with evidence indicating matters which inhere in the verdict, such as juror thought processes and inter-juror inducements. *Messenger, supra* at 175. The defendant must prove that: (1) the jury was exposed to extraneous influences, and (2) these extraneous influences created a real and substantial possibility that they could have affected the jury's verdict. If the defendant establishes this initial burden, then the burden shifts to the people to demonstrate that this constitutional error was harmless beyond a reasonable doubt. The people may do so by proving that either the extraneous influence was duplicative of evidence produced at trial or the evidence of guilt was overwhelming. *People v Budzyn*, 456 Mich 77, 88-89; 566 NW2d 229 (1997). An inquiry into whether an error was harmless requires a focus on the nature of the error in light of the weight and strength of the other evidence. *Id.* at 106.

Defendant argues the jury's misconduct affected his right to a fair and impartial jury. We disagree. At the end of the closing arguments, the court instructed the jurors not to discuss the case among themselves or with anyone else unless they were in the jury room "all together." At defense counsel's request, the court cautioned the parties not to talk to any of the jurors, "even if it [had] nothing to do with the case." However, the next day, during deliberations, the court received a note from a juror stating that six other jurors were seen in the hallway talking and laughing with Agnes Keys, the victim's mother, and it would be unfair for that jury to pass a verdict. The trial court questioned the juror who wrote the note, the juror who passed the note, and another juror who witnessed the incident. The court found out that one of the prosecutors took Keys away from the jury. One of the jurors who were questioned stated that, in the elevator, the other jurors were "kind of laughing that they figured that they went too far," and one of the jurors said that the defense attorney went too far when he started to rub defendant's shoulders.

The defense attorney argued that when the jury violated the court order and talked to Keys, an appearance of impropriety was created, and moved for a mistrial. The court decided to call all the jurors and question them independently regarding whether they "can still be fair in this case." The jurors who talked to Keys or overheard the conversation claimed that they did not talk about the case; they stated that they talked about the casino, methods of playing and winning at the casino, and what happened to Keys when she gambled. All the jurors stated that they could render a fair verdict. On the basis of the content of the improper conversation and the jurors' answers, the court determined that the jury misconduct was harmless error. The court decided to caution the jury again that it may not speak with anyone involved in the case and allowed it to continue the deliberations.

The trial court's decision was not an abuse of discretion. Although the jury violated the trial court's instructions, the jury's conversation with Keys about the casino did not create a real and substantial possibility that it could have affected its verdict. The court promptly investigated every aspect of the matter and determined that the jury could render a fair and impartial verdict. The trial court carefully and reasonably handled the problem in light of the circumstances. There was no error, and no substantial harm was done to defendant. Defendant was not denied his right to a fair trial.

Moreover, even assuming, arguendo, that the conversation about the casino created a substantial possibility that it could have affected the jury's verdict, the error was harmless because the evidence of defendant's guilt was overwhelming. Three witnesses testified that defendant stabbed the victim, and Eloise Gregley testified that defendant tossed the knife, which had a little bit of blood on it, and asked her to put it back in the house. Accordingly, giving considerable deference to the trial court's decision, we conclude that the jury's misconduct did not create the manifest necessity that would justify the declaration of a mistrial.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio