STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD JOSEPH RODRIGUEZ,

Defendant-Appellant.

UNPUBLISHED
March 18, 1997

No. 183425
LC No. 93-014267

Before: Bandstra, P.J., and Neff and M. E. Dodge,* JJ.

PER CURIAM.

Defendant was convicted by a jury of felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to one to four years' imprisonment for the assault conviction and to two years consecutive imprisonment for the felony-firearm conviction. He appeals as of right. We reverse.

I

Defendant first argues that the trial court abused its discretion when it precluded him from mentioning the defense of insanity during voir dire or opening statement. We agree. Defendant filed a timely notice of his intent to assert an insanity defense, obtained a report from an independent examiner, and provided a copy of the report to the prosecutor well before the trial on this matter began. On the day of trial, however, the prosecutor for the first time objected to the report, arguing that it did not satisfy MCL 768.20a; MSA 28.1043(1). The court agreed, and ruled that defendant could not use the report or his expert's testimony until the report was amended to comply with the statute. In addition, the court precluded defendant from mentioning the insanity defense during voir dire and in his opening statement.

After the first prosecution witness testified, defendant presented an amended report to the court, and the court ruled that defendant could proceed with the insanity defense. Thus, while defendant was

* Circuit judge, sitting on the Court of Appeals by assignment.

able to present an insanity defense, he was not able to voir dire the potential jurors on this subject. This was an abuse of discretion.

A defendant who chooses a jury trial has an absolute right to a fair and impartial jury. *People v Tyburski*, 445 Mich 606, 618; 518 NW2d 441 (1994). The purpose of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially. *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). While the scope of voir dire is within the discretion of the trial court, the court may not restrict the scope of voir dire in a manner that prevents the development of a factual basis for the exercise of peremptory challenges. *People v Mumford*, 183 Mich App 149, 155; 455 NW2d 51 (1990).

We find that the trial court's decision in the present case denied defendant the opportunity to develop a factual basis to intelligently exercise his peremptory challenges. It is easy to imagine a potential juror who has antagonistic feelings toward or is skeptical about the mental health professions. Therefore, once the court ruled that defendant could file an amended report, it also had an obligation to allow defendant to question the potential jurors about this matter. Precluding defendant from doing so was erroneous. Defendant is entitled to a new trial.

II

Because defendant must be retried, we need address only those issues that may arise again on retrial.

A

Defendant argues that the trial court erred when it ruled that his statement to police was voluntary. Whether a defendant's confession is voluntary is a question of law. *People v Bender*, 208 Mich App 221, 226-227; 527 NW2d 66 (1994), aff'd 452 Mich 594; 551 NW2d 71 (1996). We review the trial court's decision on this matter by examining the entire record, giving ample deference to the trial court's superior position in viewing the evidence. Thus, we will not reverse the trial court's factual findings unless they are clearly erroneous. *Id.*

At the suppression hearing, the officer who took defendant's statement testified that before the interview he informed defendant of his constitutional rights and obtained a signed waiver form. Defendant did not appear to be drunk or inebriated, and the officer did not withhold food or restroom privileges, nor did he promise defendant anything in exchange for his statement. Defendant, on the other hand, testified that when he was brought to the police station the night before he was highly intoxicated and placed on suicide watch. This meant that police took his clothes and gave him a "padded suicide prevention gown" to wear. In addition, defendant testified that the jail was extremely cold, and that he had to sleep on a steel bunk with no blanket or pillow. By the time he gave his statement the next morning, defendant "just wanted to get my clothes so I could stop shaking, and just wanted to get outside and call somebody."

The trial court found that defendant was on a suicide watch and "may have been cold and uncomfortable" because of the suicide prevention gown. Additionally, the court found that defendant "may not have gotten any sleep or as much rest as most prisoners normally get." On the other hand, the court found that there were "no real threats or coercion" used to get defendant to make the statement. The court concluded the statement was voluntary.

We find the trial court's factual findings to be supported by the record and its conclusion to be correct. Defendant's complaints relate primarily to issues common to all criminal defendants such as uncomfortable surroundings and apprehension. Further, sleep deprivation due to uncomfortable sleeping accommodations does not necessarily render a statement involuntary, especially where there is no indication that the defendant's statement was the product of deliberate sleep deprivation or intentional police conduct. *People v Young*, 212 Mich App 630, 635; 538 NW2d 456 (1995). Accordingly, we conclude the trial court properly found defendant's statement to the police to be admissible.

B

Defendant also argues that he was denied a fair trial when the trial court allowed the prosecutor to elicit testimony from defendant's expert that he was paid for his services. We disagree.

The bias or interest of a witness is always a relevant subject of inquiry on cross-examination. See *People v Morton*, 213 Mich App 331, 334-335; 539 NW2d 771 (1995). Inquiry into the fee paid to an expert witness can constitute error when raised for the first time in closing argument and when injected into the proceedings to distract the jury from the real issues. *People v Tyson*, 423 Mich 357; 377 NW2d 738 (1985). The prosecutor's inquiry in this case, however, was not raised for the first time in her closing, she elicited the information regarding the fee while cross-examining the witness. Further, the manner in which the issue was raised did not distract the jury with overblown hyperbole, but merely presented a relevant piece of evidence, i.e. the witness' potential bias. We find this type of argument to be proper. *People v Miller*, 182 Mich App 482, 486; 453 NW2d 269 (1990).

Reversed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Michael E. Dodge