STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM DELBERT EMERICK,

Defendant-Appellant.

UNPUBLISHED
April 11, 1997

No. 185454
Macomb Circuit Court
LC No. 94-001313

Before: Holbrook, Jr., P.J., and White and A.T. Davis, Jr.*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316(1)(a); MSA 28.548(1)(a), assault with intent to commit murder, MCL 750.83; MSA 28.278, and two counts of possession of a firearm during the time of commission of a felony, MCL 750.227b(1); MSA 28.424(2)(1). He appeals as of right and we affirm.

Defendant first argues that the trial court did not properly determine whether a witness, Lori McVicar, violated a sequestration order because the court did not question the deputy sheriff who was present at the time the alleged violation was raised by defense counsel. We disagree. A trial court may order that potential witnesses be sequestered either at the request of a party or on its own motion. MRE 615; *People v Jehnsen*, 183 Mich App 305, 308; 454 NW2d 250 (1990). If a witness violates the sequestration order, the court has discretion to exclude the witnesses' testimony. *People v Nixten*, 160 Mich App 203, 209; 408 NW2d 77 (1987).

Contrary to defendant's assertion, the trial court did make a record regarding whether the sequestration order was violated by questioning McVicar. McVicar stated that she was not in the courtroom during the testimony of Melinda Pratt and that she was not accompanied by any other person while waiting in the conference room during Pratt's testimony. Defendant does not point to any authority to indicate that the trial court was required to question the deputy sheriff who was alerted by counsel to the potential violation. The record indicates that the trial court considered McVicar's testimony that she did not see or hear Melinda Pratt while Pratt was testifying and found her to be

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

credible. See *People v Young*, 212 Mich App 630, 634; 538 NW2d 456 (1995). Accordingly, we find no error requiring reversal.

Defendant next argues that the court abused its discretion in refusing to comply with the jury's request during deliberation to read the testimony of the victim. We disagree. Because the court was permitted to order the jury to deliberate further, it properly told them that a transcript was not available and that they should use their collective memories to recall the victim's testimony. MCR 6.414(H); *People v Crowell*, 186 Mich App 505, 508; 465 NW2d 10 (1990); *People v Harvey*, 121 Mich App 681, 687; 329 NW2d 456 (1982). Moreover, the court did not foreclose the possibility of reading the witness' testimony at a later time. Although the court stated that the testimony would be re-read if it became "absolutely necessary," it did not prohibit the jury from later requesting the testimony if they needed it. Rather, the court stated that the testimony "can and will be re-read for you." In fact, the jury reached a verdict the day following their request after deliberating for approximately an additional six hours. Accordingly, the trial court did not abuse its discretion in refusing the jury's request to have the testimony re-read because the court did not foreclose the possibility of reading the testimony to the jury later if necessary. *Id.*

In a separate brief, filed in propria persona, defendant raises numerous other allegations of error. The focus of defendant's arguments is whether sufficient admissible evidence was presented to establish his specific intent to commit murder. Even disregarding the contents of the answering machine tape and defendant's own testimony, overwhelming evidence was presented during the prosecution's case-in-chief that defendant was extremely angry over his wife's relationship with Mr. Tinsley, that he threatened to kill them on various occasions, that he attempted to hire a friend to kill them, and that he premeditated the shootings well in advance. Moreover, although defendant may have been consumed with anger toward his wife and Mr. Tinsley, there is no competent evidence that he committed the shootings while temporarily insane. After reviewing the record, we conclude that defendant's claims of ineffective assistance of counsel, prosecutorial misconduct, instructional error, and insufficiency of evidence must fail for lack of outcome determinative prejudice. See, e.g., *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *People v Launsburry*, 217 Mich App 358, 361-362; 551 NW2d 460 (1996).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ Alton T. Davis, Jr.