

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL EARL YOUNG,

Defendant-Appellant.

UNPUBLISHED

April 18, 1997

No. 180491

Saginaw Circuit Court

LC No. 94-008764-FC

Before: Marilyn Kelly, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder and possession of a firearm during the commission of a felony. MCL 750.316(1)(b); MSA 28.548(1)(b), MCL 750.227b; MSA 28.424(2). The case involves an armed robbery and murder of a Seven-Eleven store clerk..

On appeal, defendant argues that evidence of defendant's fantasized flight from jail was erroneously admitted at trial, that a change of venue should have been granted and that there was prosecutorial misconduct. We affirm.

Defendant first claims that the trial court erred by admitting testimony about his plans to escape from custody before trial. He maintains that his escape plans were not specific in detail and that their prejudicial effect on the jury outweighed their probativeness. We disagree. Evidence of flight, such as attempts to escape from custody, generally are admissible as indicative of consciousness of guilt. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Reversal on an issue involving evidentiary decisions under MRE 401 and MRE 403 is warranted only if the trial court abused its discretion. We will not reverse a trial court's admission of a defendant's escape plans where the plans showed an intent to escape, even though not specific in detail. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

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

Defendant also argues that the escape plans should not have been admitted because, in addition to evidencing consciousness of guilt, they tended to show a propensity to murder. His escape plan involved killing three guards. We disagree. Testimony regarding criminal actions connected with an attempted escape is admissible, because the actions are contemporaneous with the attempted escape. Therefore, the trial court did not abuse its discretion by admitting the evidence. *Coleman, supra* at 5.

Defendant next argues that the trial court erred by denying his motions for a change of venue. Again, we disagree. To be entitled to a change of venue, a defendant must show that there is (1) a pattern of strong community feeling against him and that the publicity is so extensive and inflammatory that jurors could not remain impartial when exposed to it; or (2) the jury was actually prejudiced or the atmosphere surrounding the trial was such as would create a probability of prejudice. *People v Passeno*, 195 Mich App 91, 98; 489 NW2d 152 (1992). The existence of pretrial publicity, standing alone, does not necessitate a change of venue. *Id.*

Here, when defendant moved for a change of venue, he argued only that his motions should be granted because of negative pretrial publicity. Because defendant failed to establish that the pretrial publicity precluded an impartial jury from being chosen, the trial court did not abuse its discretion by denying his motion.

Defendant next argues that he was denied a fair trial because the prosecutor repeatedly asked defendant whether the prosecutor's witnesses were lying. We disagree. A prosecutor should not ask a defendant to comment on the truthfulness of prosecution witnesses, because the defendant's opinion of their credibility is not probative. However, in this case, the error was not prejudicial. *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985). The object of the prosecutor's questioning was to discredit defendant, not to bolster the prosecution's witnesses. *Id.* Moreover, defendant's trial counsel did not raise the objection urged on appeal. We find that any prejudice could have been cured by a timely cautionary instruction. *Id.* at 18. Thus, defendant was not denied a fair trial.

Finally, defendant argues that, because the prosecutor's questioning was improper, he should not have been able to comment at closing upon the improper evidence. We disagree. Although the questioning had been improper, the prosecutor was entitled to argue that, if defendant's story was to be believed, all of the prosecutor's witnesses would have to be liars. *People v Lee*, 212 Mich App 228, 255; 537 NW2d 233 (1995).

Affirmed.

/s/ Marilyn Kelly
/s/ Kathleen Jansen
/s/ Meyer Warshawsky