

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY LAWRENCE BECKTEL,

Defendant-Appellant.

UNPUBLISHED

March 4, 2010

No. 289533

Washtenaw Circuit Court

LC No. 08-000347-FC

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to murder, MCL 750.83. The trial court sentenced defendant to 15 to 40 years in prison. Defendant appeals as of right. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The prosecuting attorney presented evidence that, in February 2008, in the City of Saline, defendant, in a drunken frenzy, stabbed the victim repeatedly with a knife, causing numerous wounds and copious loss of blood.

At the start of jury selection, the trial court admonished the prospective jurors that “[j]ury duty is one of the most serious duties that members of a free society are asked to perform,” and added, “[t]he Jury is an important part of this Court.” The court went on to swear the array to answer “truthfully, fully and honestly” all the questions they might be asked in the selection process. When the jury was selected and impaneled, however, the court administered no additional oath to the jurors. At the close of proofs, the trial court instructed the jury, incorrectly, that it had taken an oath to “return a true and just verdict based only on the evidence and my instructions on the law.” The court went on to instruct the jury on its duties, how to interpret the evidence, and the applicable law.

Defendant’s sole issue on appeal is whether the lack of an oath to return an honest verdict based on law and evidence, as should have been administered between jury selection and before trial, rendered his conviction invalid. We hold that it did.

We review a trial court’s conduct at trial for an abuse of discretion. See *People v Ramano*, 181 Mich App 204, 220; 448 NW2d 795 (1989). However, as defendant admits, neither party nor the court noted, or expressed concerns over, the failure of the court to put the

jurors under oath or affirmation concerning how they were to hear and decide the case. This issue thus comes to this Court as an unpreserved one.

A defendant pressing an unpreserved claim of error must show a plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Where plain error is shown, the reviewing court should reverse only when the defendant is actually innocent, or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 763-764.

MCL 768.14 decrees that jurors in criminal cases be sworn to “well and truly try, and true deliverance make, between the people of this state and the prisoner at bar, whom you shall have in charge, according to the evidence and the laws of this state” MCL 768.15 in turn authorizes use of secular affirmations, with references to the pains and penalties of perjury, in place of religious language.

MCR 2.511(H) prescribes an oath or affirmation whereby the jurors solemnly swear or affirm that they will “justly decide the questions submitted” and “render a true verdict . . . only on the evidence introduced and in accordance with the instructions of the court” MCR 6.412(F) in turn requires that jurors be sworn “[a]fter the jury is selected and before trial begins.”

In light of these authorities, there can be no doubt that the failure to administer an oath or affirmation concerning the jurors’ duties in deciding the case was plain error. Also, the case law makes plain that such error is of grave significance and is the sort of error that seriously affects the fairness, integrity, or public reputation of judicial proceedings. See *Carines*, 460 Mich at 763.

The required oath is not a mere “formality” which is required only by tradition. The oath represents a solemn promise on the part of each juror to do his duty according to the dictates of the law to see that justice is done. This duty is not just a final duty to render a verdict in accordance with the law, but the duty to act in accordance with the law at all stages of trial. The oath is administered to insure that the jurors pay attention to the evidence, observe the credibility and demeanor of the witnesses and conduct themselves at all times as befits one holding such an important position. The oath is designed to protect the fundamental right of trial by an impartial jury. [*People v Pribble*, 72 Mich App 219, 224; 249 NW2d 363 (1976).]

Accordingly, “[a]ll the authorities agree that the failure to take this oath . . . in substantially the form prescribed by law renders all the proceedings invalid” *Id.* at 225 (internal citation and quotation marks omitted).

In *People v Clemons*, 177 Mich App 523, 528; 442 NW2d 717 (1989), this Court held that the verdict in a criminal case was invalid because the jury was not properly impaneled and sworn in. That case concerned ten jurors who were properly sworn in for an earlier trial that ended in a mistrial, then immediately served in the retrial without being sworn in anew. *Id.* at 529. Because the earlier mistrial wholly voided the attendant proceedings, the earlier oath could not carry over to the new trial. *Id.* at 529-530. The holding in *Clemons* well underscores the

importance of having the jurors hear the entire case while under the most solemn oath or affirmation to decide the case honestly, on the basis of the evidence, and in accord with the law.

Plaintiff points out that the prospective jurors took an oath at the beginning of jury selection. However, that was an oath to answer truthfully the questions asked of them during the selection process. That was no substitute for the required oath or affirmation relating to their duties in hearing and deciding the case.

Because defendant was convicted on the basis of a verdict from a jury that never received the oath or affirmation that must be administered between jury selection and the start of trial, we must reverse that conviction in recognition of the need to preserve the fairness, integrity, and public reputation of our judicial proceedings. See *Carines*, 460 Mich at 763; *Clemons*, 177 Mich App at 529-530; *Pribble*, 72 Mich App at 225.

Because the failure to administer the oath to the impaneled jury rendered the proceedings, and result, wholly invalid, jeopardy did not attach. See *Pribble*, 72 Mich App at 229-230. Accordingly, retrial is not barred by principles of double jeopardy. *Id.* We therefore remand this case to the trial court for retrial.

Reversed and remanded. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray