

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEROY S. PATTON,

Defendant-Appellant.

UNPUBLISHED

July 25, 2000

No. 212863

Wayne Circuit Court

Criminal Division

LC No. 97-009229

Before: O'Connell, P.J., and Kelly and Whitbeck, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to a term of ten to twenty years' imprisonment for the assault conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

The trial court instructed the jury on self-defense in accordance with CJI2d 7.15, 7.16 and 7.20. In so instructing the jury, the court was not required to relate the instructions to the evidence presented at trial. *People v Cooper*, 236 Mich App 643, 649-650; 601 NW2d 409 (1999). In this regard, the record indicates that defense counsel fully appraised the jury during closing argument of the evidence that allegedly supported defendant's claim of self-defense. No error occurred.

Next, we reject defendant's claim that he was denied a fair trial because of prosecutorial misconduct. Because defendant did not object to the challenged remarks at trial, appellate review of this issue is precluded unless the prosecutor's remarks were plainly erroneous and affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Contrary to defendants argument, the record indicates that the prosecutor did not engage in impermissible vouching, *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995), but rather, properly commented on the witness' credibility. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Also, it was proper for the prosecutor to attack the credibility of his own witness. MRE 607. The record also does not support defendant's claim that the prosecutor argued facts not in

evidence. Rather, the prosecutor was merely arguing the evidence and reasonable inferences drawn from that evidence as it related to his theory of the case, which was proper. *Bahoda, supra* at 282. Finally, the prosecutor did not deliberately falsify testimony when remarking that a witness had claimed that the victim spoke to defendant. While the witness indicated that no words were exchanged immediately before the shooting, she stated that the victim did say something to defendant earlier that evening. Accordingly, plain error has not been shown.

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael J. Kelly

/s/ William C. Whitbeck