

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN THEOPHILS MORTON,

Defendant-Appellant.

UNPUBLISHED

February 1, 2002

No. 226952

Oakland Circuit Court

LC No. 99-168111-FC

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

MEMORANDUM.

Defendant was charged with first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a jury trial, he was convicted of second-degree murder, MCL 750.317, and felony-firearm, for which he was sentenced to prison terms of nineteen to thirty years and two years, respectively. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that he was deprived of a fair trial due to prosecutorial misconduct when the prosecutor questioned him about having been investigated for purchasing weapons. Claims of prosecutorial misconduct are decided on a case-by-case basis. This Court examines the record and evaluates the alleged improper remarks in context to determine whether the defendant was denied a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995).

A review of the record shows that the trial court sustained defendant's objection to the question at issue and instructed the jury to ignore it. Defendant thus already received his relief. *People v Miller (After Remand)*, 211 Mich App 30, 42-43; 535 NW2d 518 (1995). In addition, the court had instructed the jury at the outset of the case that the lawyers' questions were not evidence and they "should not think something's true just because one of the lawyers asked questions that assume or suggest that it's true," and repeated during final instructions that the lawyers' questions were not evidence and the jury should not accept anything the lawyers said that was not supported by the evidence or common sense and general knowledge. Those instructions plus the curative instruction were sufficient to dispel any unfair prejudice resulting from the question. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999); *People v Green*, 228 Mich App 684, 693; 580 NW2d 444 (1998). Accordingly, we find no basis for relief.

People v Lukity, 460 Mich 484, 495-496; 596 NW2d 607 (1999); *People v Anderson (After Remand)*, 446 Mich 392, 406; 521 NW2d 538 (1994).

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Brian K. Zahra