

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID J. STARNES,

Defendant-Appellant.

UNPUBLISHED

August 20, 2002

No. 232670

Wayne Circuit Court

LC No. 99-003982

Before: White, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant was convicted by a jury of carrying a concealed weapon (CCW), MCL 750.227, and sentenced to time served. He appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Two City of Westland police officers responded to a radio run regarding malicious destruction of property and a subject carrying a handgun. Upon coming into contact with the officers, defendant told the officers that he was carrying a handgun on his person. The officers searched defendant, found a weapon in his jacket's inside left pocket, and arrested him.

Defendant filed motions pre-trial, including a motion to dismiss on the ground that the CCW statute was unconstitutionally overbroad, and that he had a constitutional right to keep and bear arms. The trial court ruled that the statute was constitutional and that the Legislature could place reasonable restrictions on handguns, including licensing, and granted the prosecution's request for a ruling limiting defendant, who was proceeding in propria persona, from arguing to the jury that he had a constitutional right to bear arms.

Defendant argues he was denied a fair trial by two instances of prosecutorial misconduct. First, he argues that the prosecutor placed the prestige of her office in front of the jury and bolstered the credibility of her witnesses by arguing in closing that the police officers had had no prior contact with defendant and therefore had no axes to grind, bad blood, or history.

Because defendant did not object to the challenged conduct, our review is for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Green*, 228 Mich App 684, 692-693; 580 NW2d 444 (1998). Improper bolstering of the credibility of prosecution witnesses may constitute prosecutorial misconduct.

People v Malone, 180 Mich App 347, 361; 447 NW2d 157 (1989). However, prosecutors are free to argue the evidence and all reasonable inferences arising from the evidence as they relate to the theory of the case. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

The challenged prosecutorial comments were framed in terms of evidence introduced at trial, and did not suggest that the prosecutor had any special knowledge regarding the officers' credibility. Defendant has failed to show plain error affecting his substantial rights.

Defendant also argues that the prosecutor committed misconduct by requesting that the trial court bar defendant from arguing to the jury that he had a constitutional right to bear arms. Defendant argues that the prosecutor's motion, which was granted, precluded the jurors from considering all issues in the case and therefore denied him a fair trial.

Defendant has cited no authority to support his position. It is not prosecutorial misconduct for a prosecutor to request that the trial court rule on an issue of law and that defendant then abide by the court's ruling. See *People v Curry*, 175 Mich App 33, 43-44; 437 NW2d 310 (1989).

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Peter D.O'Connell