

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN W. TRAYLOR,

Defendant-Appellant.

UNPUBLISHED

June 15, 2004

No. 245496

Wayne Circuit Court

LC No. 01-009461

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to murder, MCL 750.83, possession of a firearm during the commission of a felony, MCL 750.227b, and carrying a concealed weapon in a vehicle, MCL 750.227(2). He was sentenced to concurrent prison terms of seven-and-a-half to fifteen years for the assault conviction and one to five years on the concealed weapon conviction, to be served consecutively to the mandatory two-year term for felony-firearm. 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 denied a fair trial due to prosecutorial misconduct in the form of improper rebuttal argument. 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).

Defendant first contends that the prosecutor's rebuttal argument was not restricted to issues raised in defense counsel's closing argument as required by MCR 6.414(E). We disagree. A review of the record shows that defense counsel remarked on defendant's fear for his safety, implied that defendant did not follow the victim because he did not know where he was, and argued that defendant did not flee from the police but properly stopped in response to their signal. The prosecutor's rebuttal argument addressed these issues. He argued that if defendant had really been in fear for his safety, he would have called the police or at least stopped at the station to report the incident. Instead, defendant followed the victim and when the victim stopped to talk to the police, defendant threw away his gun and kept on going, which conduct was inconsistent with a claim of fear for one's safety. Such argument was proper rebuttal.

Defendant also contends that the prosecutor drew improper inferences from the evidence by arguing that it would have been reasonable for defendant to contact the police if he had been

in fear for his safety. We disagree. The prosecutor did not argue that one could infer from the evidence that defendant would have contacted the police had he been in fear for his safety. Rather, he argued that defendant's claim that he was in fear for his safety was implausible in part because he did not contact the police as a reasonable person might have done. The prosecutor may comment on the testimony in a case and argue from the facts that the defendant or another witness is not worthy of belief or is lying. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997); *People v Gilbert*, 183 Mich App 741, 745-746; 455 NW2d 731 (1990).

Finally, defendant contends that the prosecutor improperly injected questions broader than defendant's guilt or innocence into the case by asking the jurors what they would do in defendant's place. We disagree. When determining the facts and assessing witness credibility, the jurors are permitted to utilize their own common sense, general knowledge, and everyday experience and consider the reasonableness of the witness' testimony. *People v Schmidt*, 196 Mich App 104, 108; 492 NW2d 509 (1992); CJI2d 3.5(5); CJI2d 3.6(2), (3)(h). The prosecutor did not merely ask the jurors what they would do if attacked and in fear for their safety but asked the question and then answered it for them, arguing that it would be reasonable to call the police. This was but part of the prosecutor's overall argument that defendant's conduct was not consistent with his testimony that he was in fear for his safety and thus his explanation for his actions was not plausible.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray