

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS E. ROSS,

Defendant-Appellant.

UNPUBLISHED

July 18, 1997

No. 188495

Oakland Circuit Court

LC No. 93-127886-FH

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant was sentenced to one day in Oakland County Jail, and a non-reporting one month term of probation. Defendant now appeals as of right. We affirm.

Defendant contends that the jury instructions regarding the charged offense were erroneous. The offense of carrying a concealed weapon requires the prosecution to prove beyond a reasonable doubt that defendant was “carry[ing] a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.” MCL 750.227(2); MSA 28.424(2). The law also sets forth persons who are exempt from the general CCW law. Specifically, the relevant language of the statute states that MCL 750.227; MSA 28.424 does not apply to “any person regularly employed by the state department of corrections, and authorized in writing by the director of the department of corrections to carry a concealed weapon while in the official performance of his or her duties or while going to or returning from those duties.” MCL 750.231; MSA 28.428

Defendant argues on appeal that the jury should have been instructed that he fell within an exemption to the general CCW statute by virtue of his status as a probation officer and that the only factual determination for the jury to make was whether he was performing job duties, or on his way to or from work, when he was stopped by the police for carrying a weapon. However, defendant did not

submit this request to the trial court prior to the court reading the instructions. In fact, defendant indicated to the court that he was satisfied with the jury instructions that were submitted at trial by himself and the prosecution. “A criminal defendant has the right to have a properly instructed jury consider the evidence against him.” *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995), modified 450 Mich 1212 (citing *People v Vaughn*, 447 Mich 217; 524 NW2d 217 (1994)). However, a trial court need not instruct the jury on the defendant’s theory of the case absent a specific request to do so by the defendant. *Id.* at 81.

Thus, we conclude that the court properly instructed the jury on the applicable law and defendant did not suffer manifest injustice as a result of these instructions.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Roman S. Gibbs