

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EARL DARLING,

Defendant-Appellant.

UNPUBLISHED

June 15, 2004

No. 246798

Wayne Circuit Court

LC No. 02-007708

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of two to four years for the assault convictions, to be served consecutively to a mandatory two-year term for felony-firearm. Defendant appeals his convictions as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that he was denied a fair trial due to judicial bias and impartiality. Defendant did not raise any objection below and thus the issue has not been preserved for appeal. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Therefore, defendant must establish plain error that affected the outcome of the trial. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

We find no merit to the claim that the court acted improperly by failing “to inquire of the witnesses regarding the failure to preserve the weapon for fingerprints given what each officer claimed to have seen” and “interfered unreasonably with efforts by the defense to demonstrate that the failure to preserve the gun for fingerprints was a violation of standard operating procedure.” A review of the record shows that no police officers testified at trial and the issue of fingerprints was never raised. We note also that defendant admitted to being armed with a gun, but claimed that it was a toy gun and that he did not point it at either victim. Whether his fingerprints were recovered from the weapon would not tend to prove or disprove either claim.

Defendant also contends that the trial court acted improperly by questioning him about his testimony. We disagree. The court is permitted to question any witnesses called by the parties. MRE 614(b). The court may question witnesses to clarify their testimony or elicit additional relevant information, but must avoid assuming a prosecutorial role and “exercise

caution so that its questions will not be intimidating, argumentative, prejudicial, unfair, or partial.” *People v Sterling*, 154 Mich App 223, 228; 397 NW2d 182 (1986).

Defendant has not shown that the court’s questions to defendant were in any way improper. Given that a judge who conducts a nonjury trial “has the duty to weigh the testimony and assess the credibility of the witnesses,” *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982), and “must make specific findings of fact and state conclusions of law,” *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993), it was not improper for the court to seek clarification of defendant’s testimony so it could render a reasoned decision. The court’s questions could not have deprived defendant of “his state and federal constitutional rights to an impartial jury” because this case was not heard by a jury.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens