

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN J. SZYMANSKI,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 178117

LC No. 92-121960

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of felonious assault, MCL 750.82; MSA 28.277, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to two concurrent terms of one day to four years' imprisonment for the felonious assault convictions and two terms of two years' imprisonment for the felony-firearm convictions. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred when it instructed the jury that it was immaterial whether the offense of negligent discharge of a firearm, MCL 752.861; MSA 28.436(21), was a felony. Jury instructions are to be read as a whole rather than extracted piecemeal to establish error. Even if somewhat imperfect, there is no error if the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995).

We find no error requiring reversal. Defendant argues that the jury was sympathetic to defendant, and, had the trial court informed it that negligent use of a firearm is a misdemeanor, might have convicted him of that offense. However, we find defendant's argument to be flawed. Felonious assault, by its name, is obviously a felony. Thus, the jury would hardly have convicted defendant of felonious assault if it had wanted to convict defendant of a misdemeanor only. Moreover, conviction of felony-firearm may be read as an implicit finding that the defendant did commit the felony. *People v*

* Circuit judge, sitting on the Court of Appeals by assignment.

Lewis, 415 Mich 443, 452; 330 NW2d 16 (1982); *People v Bonham*, 182 Mich App 130, 136; 451 NW2d 530 (1989).

Defendant also asserts that the prosecutor denied him a fair trial when he vouched for the lack of credibility of defendant and his wife. However, defendant failed to object to the prosecutor's comments at trial. Accordingly, our review is limited to whether a miscarriage of justice will occur upon a failure to review the issue or if a cautionary instruction could not have cured the prejudicial effect of the alleged improper comments. *People v Lee*, 212 Mich 228, 245; 537 NW2d 233 (1995).

We conclude that failure to review this issue will not lead to a miscarriage of justice. A prosecutor is free to relate the facts adduced at trial to the prosecution's theory of the case and to argue the evidence and all reasonable inferences arising from it to the jury. The prosecutor need not state the inferences in the blandest possible terms. *People v Johnson*, 187 Mich App 621, 625; 468 NW2d 307 (1991). A prosecuting attorney has the right to comment upon the testimony in a case, to argue that a witness is not worthy of belief, and to contend that the defendant is lying. *People v Sharbnaw*, 174 Mich App 94, 100; 435 NW2d 772 (1989). Contrary to defendant's assertions on appeal, the prosecutor did not suggest that he had some special knowledge, unknown to the jury, concerning the witnesses' truthfulness. See *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). Rather, the prosecutor's remarks constituted permissible comments on the evidence presented at trial.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros