

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STERLING DESHONE BARNES,

Defendant-Appellant.

---

UNPUBLISHED

April 15, 2003

No. 235772

Saginaw Circuit Court

LC No. 01-019621-FH

Before: Talbot, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of unlawful possession with intent to deliver cocaine less than fifty grams, MCL 333.7401(2)(a)(iv), and felony-firearm, MCL 750.227b. Defendant was sentenced to seventy-six months to forty years’ imprisonment for the cocaine conviction and two years’ imprisonment for felony-firearm. We affirm.

Defendant’s first issue on appeal is that he was interrogated without being given *Miranda*<sup>1</sup> warnings and that he was denied effective assistance of counsel because his attorney did not move to suppress his statement. We disagree. A trial court’s factual findings are reviewed for clear error. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). Questions of law are reviewed de novo. *Id.* at 629-630.

*Miranda* warnings are procedural safeguards required to protect a defendant’s right against self-incrimination from the inherently compelling nature of custodial interrogation. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). *Miranda* warnings must be given to an individual before interrogation – that is, at the time he is in custody or otherwise deprived of his freedom of action in any significant way. *People v Armendarez*, 188 Mich App 61, 73; 468 NW2d 893 (1991). An interrogation is defined as a situation in which the police should know that their words or actions are reasonably likely to elicit an incriminating statement. *Rhode Island v Innis*, 446 US 291, 301; 100 S Ct 1682; 64 L Ed 2d 297 (1980); *People v Anderson*, 209 Mich App 527, 532; 531 NW2d 780 (1995).

*Miranda* warnings are required to protect individuals from making *incriminating* statements. *People v Hill*, 429 Mich 382, 395; 415 NW2d 193 (1987). Questions that do not

<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

substantively concern the offense charged fall outside of the *Miranda* parameters. *People v Scanlon*, 74 Mich App 186, 189; 253 NW2d 704 (1977). Moreover, a police officer may ask general questions on the scene to investigate the facts surrounding the crime without implicating *Miranda* rights. *People v Ish*, 252 Mich App 115, 118; 652 NW2d 257 (2002).

Although defendant was under arrest for driving with a suspended license at the time of the police officer's question, the question was not reasonably likely to elicit an incriminating statement. At the time, the gun and crack cocaine had not been found. It was not reasonably likely, based on the circumstances known to the police officer, that defendant's answer would be incriminating. *Hill, supra* at 395. The question asked did not constitute an interrogation; therefore, defense counsel was not ineffective for failing to move to suppress the statement. See *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994); *People v Shively*, 230 Mich App 626, 628; 584 NW2d 740 (1998).

Defendant's second issue on appeal is that the prosecutor made comments during closing argument that denigrated the defense and were not reasonable inferences from the evidence. We disagree. Generally, claims of prosecutorial misconduct are reviewed de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001).

Claims of prosecutorial misconduct are decided case by case, and the prosecutor's remarks are evaluated in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). As a general matter, prosecutors are given great latitude when making their arguments. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

A prosecutor's conduct must be evaluated in light of defense arguments and the evidence admitted at trial. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). During closing argument, the defense argued that defendant's former girlfriend's brother was the person who likely put the crack cocaine and gun in the car. This was also the theory advanced at trial. The prosecutor's comments were properly responsive to defendant's theory and arguments. *People v Kennebrew*, 220 Mich App 601, 607-608; 560 NW2d 354 (1996). Viewed in context, the prosecutor was merely advancing his position that the defense theory was dependent on testimony that did not comport with other evidence at trial and, for that reason, should be rejected. *People v Howard*, 226 Mich App 528, 544-545; 575 NW2d 16 (1997).

Additionally, a prosecutor may argue reasonable inferences from the facts, *People v Davis*, 57 Mich App 505, 513; 226 NW2d 540 (1975), and a prosecutor does not have to use bland terms when making his argument. *People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001). Moreover, a prosecutor may argue from the facts and evidence that a witness is not credible. *People v Viaene*, 119 Mich App 690, 697; 326 NW2d 607 (1982).

Indeed, the prosecutor's comments regarding defendant's former girlfriend were reasonable inferences from the facts. *Watson, supra* at 590. She testified that defendant was employed at the time of his arrest, contrary to defendant's testimony and the testimony of the restaurant manager where defendant was allegedly employed. Defendant's former girlfriend was also reluctant to provide information about her brother and gave evasive answers about him. Thus, the prosecutor could draw a reasonable inference from these facts and argue that

defendant's former girlfriend still cared for defendant and was trying to help him through her suspect testimony. *Id.*

Affirmed.

/s/ Michael J. Talbot  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell