

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID LEE SCHRADER,

Defendant-Appellant.

UNPUBLISHED
February 16, 2006

No. 256397
Alpena Circuit Court
LC No. 03-005971-FH

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Defendant was convicted by a jury of assault with a dangerous weapon, MCL 750.82, and operating a motor vehicle while under the influence of a controlled substance, third offense, MCL 257.625(1) and (8)(c). Defendant appeals as of right. We affirm.

The prosecuting attorney presented evidence that defendant, after having consumed liquor, repeatedly rammed a pickup truck he was driving into another vehicle. On appeal, defendant argues that the trial court abused its discretion in allowing the chief prosecutor for the county to testify as a rebuttal witness, and that his trial was tainted by witness intimidation. We disagree with both assertions.

The defense called a witness, Kenneth Webb, who testified that he was the driver of the truck at the time of the incident in question, and that defendant was a passenger. Webb also testified that the trial prosecutor informed him before trial that if he testified that he was the driver, he would be charged with perjury. The trial prosecutor impeached this testimony by calling Dennis Grenkowicz, the Alpena County Prosecuting Attorney, who had initiated the prosecution of defendant. Defense counsel objected on the ground that Grenkowicz was too involved with the prosecution to participate as a witness. In allowing the witness, the trial court observed that Grenkowicz was not actually trying this case, and ruled that his administrative role in the matter could be brought out to show possible bias.

The trial prosecutor elicited from Grenkowicz that the latter had listened to a conversation on a speakerphone between herself and Webb. Grenkowicz's testimony included the following:

[Y]ou asked him who was driving, he said he was driving. Then you brought up the prior statement that he made to the police where at one point he said

[defendant] was driving. I believe he denied saying that to the police. And on at least three separate occasions you told him that his only obligation is simply to tell the truth, and that's all you wanted him to do.

On cross-examination, Grenkowicz confirmed that the trial prosecutor "did explain to Mr. Webb that testifying falsely . . . was a serious matter. It was a crime called perjury," but added that [i]t was not in . . . a threatening way, it was almost a maternal explanatory way."

"[I]t has been generally held or recognized that whether a defendant should be allowed to call a prosecuting attorney as a witness is a matter within the sound discretion of the trial judge." *People v Ulecki*, 152 Mich App 801, 809; 394 NW2d 114 (1986), citing 81 Am Jur 2d, Witnesses, § 99, p 144. We see no reason why a trial court should not likewise have discretion to allow the trial prosecutor actually trying the case to call her administrative superior as a rebuttal witness. As the trial court stated, Grenkowicz's role in initiating the prosecution went to the weight of his testimony, not its admissibility. That Grenkowicz had initiated the prosecution of defendant did not render him incompetent to testify as he did.

Defendant also mentions in passing that the defense did not have notice that Grenkowicz would testify, but cites no authority for the proposition that lack of notice in this instance rendered Grenkowicz's appearance error. Defendant further fails to address the issue of preservation, and the transcripts within the lower court record did not indicate that any such objection was raised. The lack of objection at trial restricts appellate review to ascertaining whether plain error affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Beyond that, defendant's failure to provide cogent argument or supporting authority constitutes abandonment of the issue on appeal. See *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993). Because defendant does not show how he suffered any prejudice from the lack of notice, no appellate relief is warranted for that reason.

Defendant argues that the evidence that Webb was admonished about the crime of perjury indicates that the trial prosecutor intimidated him by suggesting that he would be prosecuted for that crime if he testified that he, not defendant, was the driver involved with the incident in question. Again, defendant fails to address the question of preservation, and the transcripts do not indicate that any such objection was raised at trial. An unpreserved claim of witness intimidation is reviewed for plain error affecting substantial rights. *People v Layher*, 238 Mich App 573, 587 (1999), aff'd 464 Mich 756 (2001). See also *Carines, supra*.

Webb's trial testimony putting himself in the driver's seat when his and defendant's truck struck another vehicle indicates that no intimidation of the sort defendant alleges was effective. Moreover, "a prosecutor may inform a witness that false testimony could result in a perjury charge." *Layher, supra*, at 587. In this case, Grenkowicz' recollection of the discussions of perjury indicated that the trial prosecutor's tone when speaking to the witness was more "maternal" than threatening. The context of the discussion, coupled with the witness's persistence in his trial testimony exculpatory of defendant, indicates that this episode neither constituted plain error nor affected defendant's substantial rights.

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette