

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY CARNEY,

Defendant-Appellant.

UNPUBLISHED

March 22, 2002

No. 226947

Muskegon Circuit Court

LC No. 99-044092-FH

Before: Meter, P.J., and Markey and Owens, JJ.

PER CURIAM.

Defendant appeals by right from his conviction by a jury of assault of a prison employee, MCL 750.197c. The trial court sentenced him as a third-offense habitual offender, MCL 769.11, to 43 months to 8 years' imprisonment. We affirm.

Defendant argues that the trial court erred by failing to grant his motion for a mistrial after a juror allegedly observed him in handcuffs. We review for an abuse of discretion a trial court's decision to deny a motion for a mistrial. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). An abuse of discretion occurred if an unprejudiced person, considering the facts on which the trial court acted, would find no justification for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

“[W]here a jury inadvertently sees a shackled defendant, there must be some showing that prejudice resulted” for reversal to be warranted. *People v Moore*, 164 Mich App 378, 385; 417 NW2d 508 (1987), remanded on other grounds 433 Mich 851 (1989). Here, the trial court ruled that any prejudice was minimal to none, because the nature of the charged crime had already informed the jury that defendant was a prisoner. We agree and hold that the trial court did not abuse its discretion in denying defendant's motion for mistrial.

Next, defendant argues that the prosecutor committed misconduct requiring reversal by questioning defendant's credibility during closing arguments. However, defendant did not object below to the comments he now challenges on appeal. Accordingly, we review this issue for plain error. *People v Schultz*, 246 Mich App 695, 709; 635 NW2d 491 (2001). Reversal is warranted only if a clear or obvious error occurred that likely affected the outcome of the case. *Id.*

A prosecutor in closing arguments may argue that, based on the facts, a witness is not worthy of belief. *People v Avant*, 235 Mich App 499, 512; 597 NW2d 864 (1999). Moreover, a prosecutor need not confine arguments to the blandest possible terms. *People v Marji*, 180 Mich App 525, 538; 447 NW2d 835 (1989), remanded on other grounds sub nom *People v Thomas*, 439 Mich 896; 478 NW2d 445 (1991). Finally, we note that the trial court in the instant case specifically instructed the jurors that it was their role to determine the witnesses' credibility and that the attorneys' statements and arguments were not evidence. Under these circumstances, no clear or obvious error occurred that likely affected the outcome of the case.¹

Affirmed.

/s/ Patrick M. Meter

/s/ Jane E. Markey

/s/ Donald S. Owens

¹ Additionally, a curative instruction could have cured any prejudicial effect resulting from the prosecutor's comments, and the comments did not result in miscarriage of justice. See *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).