

STATE OF MAINE

v.

SCOTT N. THERRIEN

Submitted on Briefs July 8, 2009

Decided August 4, 2009

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Scott N. Therrien appeals from an order of the Superior Court (Kennebec County, *Murphy, J.*) denying his motion for a mistrial for alleged prosecutorial misconduct in closing argument at trial. The jury found Therrien guilty of operating under the influence (Class C), 29-A M.R.S. § 2411(1-A)(B)(2) (2008), and the court found him guilty of operating a vehicle in violation of a condition or restriction on his license (Class E), 29-A M.R.S. § 1251(1)(B) (2008).

The prosecutor did not engage in misconduct when he commented that Therrien failed to tell the trooper who served him the summons that he was not the driver of the car; Therrien did not object to either the trooper's testimony or the curative instruction, and we therefore review for obvious error. *See State v. Roberts*, 2008 ME 112, ¶¶ 45-47, 951 A.2d 803, 816-17. The court did not err and therefore did not abuse its discretion in denying Therrien's motion for a mistrial on this issue. *See State v. Rollins*, 2008 ME 189, ¶ 9, 961 A.2d 546, 549.

Therrien objected to the prosecutor's comment characterizing a witness's identification testimony as "honest." We review for harmless error. *State v. Clark*, 2008 ME 136, ¶ 7, 954 A.2d 1066, 1069. It is improper for a prosecutor, who is

“cloaked with the authority of the State,” to comment on the credibility of a witness. *State v. Schmidt*, 2008 ME 151, ¶ 16, 957 A.2d 80, 85 (quotation marks omitted). However, the court’s curative instruction sufficiently addressed the issue. *See State v. Allen*, 2006 ME 20, ¶ 24, 892 A.2d 447, 455. Therefore the court did not err or abuse its discretion in denying Therrien’s motion for a mistrial on this issue. *See Rollins*, 2008 ME 189, ¶ 9, 961 A.2d at 549.

The entry is:

Judgment affirmed.

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