

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY L. MINER,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 190221

Oakland Circuit Court

LC Nos. 95-138891;

95-138893

Before: Corrigan, C.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of one count of second-degree criminal sexual conduct, MCL 750.520c(1)(b); MSA 28.788(3)(1)(b), and one count of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). The trial court sentenced defendant to serve concurrent terms of 3 1/2 to 15 years' imprisonment. We affirm.

Defendant contends that prosecutorial misconduct denied him a fair trial. Defendant failed to object to all but one of the instances of alleged misconduct at trial. We will not review these unpreserved allegations of misconduct, because the misconduct was not so egregious that timely requested curative instructions could not have eliminated the potential for prejudice to defendant, and manifest injustice will not result from our refusal to review the alleged misconduct. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Moreover, when defendant did object to one instance of alleged misconduct arising from the prosecutor's cross-examination of the complainant's mother, the trial court sustained the objection, thus eliminating the potential for prejudice stemming from the prosecutor's line of questioning. Defendant was not denied a fair and impartial trial on the basis of prosecutorial misconduct. See *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996).

Defendant also argues that the cumulative effect of the instances of alleged prosecutorial misconduct denied him a fair trial. After reviewing the cumulative effect of any actual instances of

improper conduct by the prosecutor, we find that defendant was not denied a fair trial. Therefore, reversal is not warranted. *People v Bahoda*, 448 Mich 261, 292 n 64; 531 NW2d 659 (1995).

Defendant next argues that we should reverse his convictions because the complainant destroyed a journal that she kept during the time defendant sexually abused her. Although a conviction may be reversed when evidence is lost or destroyed through actions of the police or the prosecution, *People v Till*, 115 Mich App 788, 799; 323 NW2d 14 (1982); *People v Albert*, 89 Mich App 350, 352; 280 NW2d 583 (1979); *People v Amison*, 70 Mich App 70, 79; 245 NW2d 405 (1976), there is no indication that the police or the prosecutor were involved in the destruction of the journal. Defendant's argument fails.

Defendant next asserts that he was denied the effective assistance of counsel at trial. Because defendant failed to move for a new trial or an evidentiary hearing on this basis, our review of this issue is limited to the record. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996), lv pending. Upon review of the record, we determine that defendant received effective, albeit imperfect, assistance of counsel at trial. Reversal of his valid convictions is not warranted.

Next, defendant argues that the trial court committed reversible error in denying his request to instruct the jury that it could infer that the journal destroyed by complainant would have contained evidence unfavorable to the prosecution and favorable to the defense. Defendant did not allege any bad faith on the part of the police or the prosecutor in the destruction of this evidence, so the trial court was not required to give the requested instruction. *People v Davis*, 199 Mich App 502, 514-515; 503 NW2d 457 (1993).

Finally, defendant argues that the cumulative effect of all of the errors denied him a fair trial. We do not find that any actual errors at defendant's trial had the effect of denying him a fair trial.

Affirmed.

/s/ Maura D. Corrigan
/s/ Michael J. Kelly
/s/ Joel P. Hoekstra