

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON P. VANBUREN,

Defendant-Appellant.

UNPUBLISHED
September 2, 1997

No. 189813
Oakland Circuit Court
LC No. 94-133758 FH

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant was convicted by jury of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3), and sentenced to three years' probation. Defendant appeals as of right. We affirm.

Defendant argues that he was deprived of a fair trial by improper remarks made by the prosecutor during closing argument. Defendant failed to object below to these now-challenged remarks. Accordingly, appellate review is precluded unless a curative instruction could not have eliminated the prejudicial effect or the failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Assuming arguendo that any or all of the remarks were improper, there is nothing inherent in the nature of the remarks that render them so inflammatory or prejudicial that a timely requested curative instruction could not have eliminated their prejudicial effect. We hasten to note, however, that these remarks appear to have been legitimate arguments based on the evidence. See *People v Bahoda*, 448 Mich 261; 531 NW2d 659 (1995).

Defendant also argues that the trial court erred when it failed to sua sponte give the jury curative instructions in response to the prosecutor's alleged improper remarks. No manifest injustice arose from the court's failure to give the instructions, assuming arguendo misconduct on the part of the prosecutor, because defendant sustained no prejudice from any such omission where the jury acquitted defendant of two additional charges of CSC-II and convicted defendant of the only CSC-II offense to which he admitted in a statement he gave to law enforcement authorities. *People v Coles*, 417 Mich 523, 553;

* Circuit judge, sitting on the Court of Appeals by assignment.

339 NW2d 440 (1983), overruled in part on other grounds *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Finally, for the same reason, defendant has failed to carry his burden of establishing ineffective assistance of counsel. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994); *People v Messenger*, 221 Mich App 171, 181; ___ NW2d ___ (1997).

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood