

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERBERT GODBEE, JR.,

Defendant-Appellant.

UNPUBLISHED

July 27, 1999

No. 207242

Calhoun Circuit Court

LC No. 97-001952 FH

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,* JJ.

MEMORANDUM.

Defendant appeals by right from his jury trial convictions of one count of felonious assault, MCL 750.82; MSA 28.277, and two counts of resisting and obstructing an officer, MCL 750.479; MSA 28.747. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the prosecutor exceeded the bounds of permissible argument on rebuttal by accusing defense counsel of “slander” and using a “shameful” defense tactic found in “all the textbooks for defense attorneys” and in “a couple of highly publicized cases in the media.” Defendant contends that reversal is warranted because the prosecutor’s remarks had the effect of denigrating defense counsel, impermissibly vouching for the prosecution’s case and depriving defendant of his right to a fair trial. We disagree.

Prosecutorial remarks which might otherwise be improper may not require reversal when they address issues raised by defense counsel. *People v Duncan*, 402 Mich 1, 16; 260 NW2d 58 (1977); *People v Kennebrew*, 220 Mich App 601; 560 NW2d 354 (1996), lv den 456 Mich 885 (1997). The prosecutor’s remarks in this case are similar to the rebuttal argument at issue in *Kennebrew*, *supra*, where the prosecutor commented that defense attorneys often attack the thoroughness of the police investigation as a ploy to convert the case to one against the police. Although the prosecutor’s comments in *Kennebrew* could be interpreted as a general attack on the class of lawyers of which the defendant’s counsel was a member, the remarks, when viewed in full context, did not deny the

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

defendant a fair trial because they responded to defense counsel's argument that the police conducted a sloppy investigation followed by an incomplete interview of the defendant. *Kennebrew, supra* at 608.

Here, the prosecutor's challenged remarks were in response to defense counsel's argument suggesting that the police officer witnesses were testifying falsely in order to cover-up an excessive use of force by one or more of the officers. A review of the prosecutor's entire rebuttal argument shows that after making the initial remarks challenged by defendant, the prosecutor's remaining argument properly focused upon the evidence, in a legitimate effort to persuade the jury that defense counsel's police brutality and cover-up theory was unsupported by the evidence or common sense. Consequently, as in *Kennebrew, supra*, we do not find that defendant was denied a fair trial by the prosecutor's rebuttal argument. Furthermore, because we would reach this same conclusion even if defendant's counsel had timely objected to the prosecutor's remarks, we reject defendant's argument that defense counsel's failure to object constituted ineffective assistance of counsel.

Affirmed.

/s/ David H. Sawyer
/s/ Donald E. Holbrook, Jr.
/s/ William E. Collette