

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICO MENEFEE,

Defendant-Appellant.

UNPUBLISHED
February 26, 2002

No. 226299
Wayne Circuit Court
LC No. 97-006537

Before: Neff, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for second-degree murder, MCL 750.317. We affirm.

On appeal, defendant first argues that he was denied a fair trial because the trial court failed to instruct the jury regarding the proper and limited use of alleged 404(b) evidence. We disagree. Because defendant neither requested such instruction nor objected to the jury instructions as given, we review for plain error that affected his substantial rights. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

During cross-examination of the victim's sister, a prosecution witness, defense counsel inquired as to the type of relationship that the witness had with defendant, apparently in an attempt to challenge the credibility of the witness by establishing bias. The following colloquy occurred:

Q. Okay. Were any of the -- was the altercation between yourself and Mr. Menefee, did it have anything to do with he and his wife?

A. Yes.

Q. All right. And again, it's fair to say that on the whole, you and Mr. Menefee did not get along, correct?

A. Not then, no.

On redirect examination, immediately following that exchange, the prosecution inquired:

Q. What was it about?

A. It was about Rico Menefee putting his hands on my sister and my nephew.

Defendant argues that this last statement was governed by MRE 404(b) and that the jury should have been instructed on the limited use of that testimony. However, this statement did not constitute impermissible 404(b) evidence but was merely an explanation for the poor relationship between the witness and defendant and was specifically invited by defense counsel questioning. A party waives review of the admission of evidence which he introduced, or which was made relevant by his own placement of a matter in issue. *People v Knapp*, 244 Mich App 361, 377-378; 624 NW2d 227 (2001); *People v Bates*, 91 Mich App 506, 510; 283 NW2d 785 (1979). Further, even if it was 404(b) evidence, it was incumbent on defendant to request a limiting instruction and he failed to do so. See MRE 105; *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Therefore, defendant failed to establish plain error affecting his substantial rights.

Next, defendant argues that he was denied a fair trial because the prosecutor improperly vouched for the credibility of a witness and gave his personal opinion regarding defendant's guilt during his rebuttal argument. We disagree. Defendant did not object to the remarks in the trial court; therefore, we review for plain error that affected his substantial rights. See *Carines*, *supra*; *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001); *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

When reviewing allegations of prosecutorial misconduct, this Court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context to determine whether the defendant received a fair and impartial trial. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). A prosecutor may not "vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness' truthfulness" and should not express a personal opinion regarding a defendant's guilt. *People v Bahoda*, 448 Mich 261, 276, 283; 531 NW2d 659 (1995). However, prosecutors are free to argue the evidence and all reasonable inferences as they relate to the theory of the case, including that a witness is credible or that another witness is not worthy of belief. *Id.* at 282; *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997).

In this case, the allegedly improper comments were in rebuttal to defendant's closing argument attack on the credibility of the only eyewitness. A prosecutor's responsive arguments must be considered in light of defense arguments. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997); *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). Here, the prosecutor referred the jury to the evidence and permissibly argued that all of the evidence supported the eyewitness' testimony and, thus, was worthy of belief. See *Bahoda*, *supra*. Consequently, defendant failed to establish plain error that affected his substantial rights. See *Carines*, *supra*.

Finally, defendant argues that the trial court improperly instructed the jury on the involuntary manslaughter offense. However, the record reveals that this issue was waived and any error extinguished because defense counsel affirmatively approved the involuntary manslaughter instruction. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Therefore, appellate review is precluded. *Id.* at 215-216.

Affirmed.

/s/ Janet T. Neff
/s/ Mark J. Cavanagh
/s/ Henry William Saad