

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DUANE JOHNSON,

Defendant-Appellant.

UNPUBLISHED

January 8, 2004

No. 239465

Jackson Circuit Court

LC No. 01-003551-FC

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for assault with intent to murder. MCL 750.83. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied a fair trial by prosecutorial misconduct. A defendant's opportunity for a fair trial can be jeopardized when the prosecutor interjects issues broader than the guilt or innocence of the accused. *People v Rice (On Remand)*, 235 Mich App 429, 438; 597 NW2d 843 (1999). A prosecutor may not suggest that defense counsel is intentionally attempting to mislead the jury. *People v Watson*, 245 Mich App 572, 592; 629 NW2d 411 (2001). However, prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). A miscarriage of justice will not be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction. *Watson, supra* at 586.

As to the comments to which defendant did not object, reversal is warranted only when a plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Schutte, supra* at 721. A preserved nonconstitutional error is not a ground for reversal unless, after an examination of the entire case, it affirmatively appears that it is more probable than not that the error was outcome determinative. The defendant bears the burden of demonstrating that such an error resulted in a miscarriage of justice. *People v Brownridge (On Remand)*, 237 Mich App 210, 216; 602 NW2d 584 (1999).

Given the overwhelming evidence of defendant's guilt, and his lack of a viable defense, the prosecutor's comments did not affect the outcome of the case. The majority of the

prosecutor's comments were fair comments on the evidence, or made in response to defense counsel's statements. There was no miscarriage of justice where any taint from the comments could have been eliminated by a curative instruction. *Watson, supra.*

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen