

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE MICHAEL HORTON,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 193754

Ottawa Circuit Court

LC No. 95-019095 FH

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

MEMORANDUM.

A jury convicted defendant, as charged, of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant received a sentence of thirty months' probation.¹ Defendant appeals as of right. We affirm.

Defendant argues that he was deprived of a fair trial by prosecutorial misconduct when the prosecutor injected into the proceedings during closing argument his personal belief in defendant's guilt. Defendant failed to object below to the statements he now challenges as improper. Accordingly, appellate review is precluded unless a curative instruction could not have eliminated the prejudicial effect or failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). A miscarriage of justice will not result absent review. The challenged statements, when reviewed in context, do not reflect any attempt by the prosecutor to inject his personal belief of, or to use the prestige of his office to vouch for, defendant's guilt. Instead, the statements constitute proper argument that the evidence establishes defendant's guilt beyond a reasonable doubt. *People v Erb*, 48 Mich App 622, 632; 211 NW2d 51 (1973).

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood

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

¹ Subsequent to the filing of this appeal, defendant pleaded guilty to violating the terms of his probation and was sentenced to three to fifteen years' imprisonment.