

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD PADGETT,

Defendant-Appellant.

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UNPUBLISHED

September 22, 1998

No. 200529

Oakland Circuit Court

LC No. 96-143993 FH

Before: Whitbeck, P.J., and McDonald and T. G. Hicks\*, JJ.

MEMORANDUM.

Defendant was convicted of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), and sentenced to three to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

Defendant now claims that the prosecutor engaged in misconduct when, in closing argument, she questioned defendant's alibi witnesses about their exculpatory evidence and attacked their credibility for failing to come forward. However, defendant has abandoned these claims because he has not provided citation to supportive authority. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995). Nevertheless, the line of questioning pursued and the arguments advanced by the prosecutor were proper. *People v Phillips*, 217 Mich App 489, 492-496; 552 NW2d 487 (1996); *People v Martinez*, 190 Mich App 442, 446; 476 NW2d 641 (1991). Moreover, because the arguments advanced were proper, the trial court did not err when it refused defendant's request for a "curative" instruction.

Defendant argues that his constitutional right to remain silent was impermissibly infringed upon when the prosecutor questioned him regarding his failure to inform the police of his alibi defense and then commented upon that failure during closing argument. Defendant did not object below on the ground now raised on appeal. Accordingly, appellate review is foreclosed absent manifest injustice. *People v Davis*, 191 Mich App 29, 30; 477 NW2d 438 (1991). Manifest injustice is not present on the instant record. The silence the prosecutor referred to is not constitutionally protected silence.

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

Where a criminal defendant has not remained silent after being advised of his *Miranda* rights, a prosecutor generally may question the defendant at trial concerning his failure to inform the police of the existence of a defense. *Davis, supra*, 34-37.

Finally, defendant has failed to rebut the presumption of proportionality that attends a sentence falling within the sentencing guidelines range. *People v Harrington*, 194 Mich App 424, 431; 487 NW2d 479 (1992).

Affirmed.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks