

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD LLOYD PULLIAN,

Defendant-Appellant.

UNPUBLISHED

December 11, 2003

No. 239912

Kent Circuit Court

LC No. 00-005978-FH

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for assault with intent to do great bodily harm less than murder. MCL 750.84. Defendant was sentenced to five to thirty years' imprisonment for his conviction. We affirm.

Defendant contends he is entitled to a new trial because the prosecutor improperly elicited rebuttal testimony from two police officers and improperly introduced evidence of a prior conviction of a defense witness. But defendant did not preserve either of these issues for our review because he failed to make a timely objection on the proper grounds. Because this issue is unpreserved, defendant must demonstrate a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Plain error affects substantive rights where the error affected the outcome of the proceedings. *Id.* We find no outcome-determinative error in the record requiring reversal.

We first address defendant's argument that the prosecutor elicited improper rebuttal testimony from Kentwood Police Officers Glen Culburt and Brandon Armstrong. "Rebuttal testimony may be used to 'contradict, repel, explain or disprove evidence produced by the other party and tending to directly weaken or impeach the same.'" *People v Kelly*, 423 Mich 261, 281; 378 NW2d 365 (1985), quoting *People v DeLano*, 318 Mich 557, 570; 28 NW2d 909 (1947). In this case, we find that Officer Culburt's rebuttal testimony was proper because it directly contradicted Nancy Spates' testimony that she did not believe Joshua Spates was in any danger from defendant and that he was in complete control of the situation. We also find that Officer Armstrong's rebuttal testimony was proper because it contradicted defendant's testimony that he never intended to harm Joshua. Moreover, any error regarding the rebuttal testimony was not outcome-determinative to this case because the evidence against defendant was overwhelming. *Carines*, *supra*, 763. Three separate eyewitnesses all described the event in

which defendant repeatedly struck Joshua Spates with a leather belt, held him up from the floor while choking him and told Joshua to “say goodbye to his mom.”

Finally, this Court agrees with defendant that the prosecutor improperly questioned Nancy Spates regarding her prior conviction. However, it was not an outcome-determinative error requiring reversal because of the overwhelming evidence against defendant.

Therefore, in the light of this overwhelming evidence against defendant, we are persuaded that any error that may have occurred in the rebuttal evidence or in the introduction of a witness’ prior conviction, did not affect defendant’s substantial rights.

Affirmed.

/s/ Michael R. Smolenski

/s/ David H. Sawyer

/s/ Stephen L. Borrello