

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS LAVELL KELLY,

Defendant-Appellant.

UNPUBLISHED

June 24, 2004

No. 246228

Wayne Circuit Court

LC No. 02-005841

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

COOPER, J. (*concurring*).

Although I concur in the majority decision to affirm defendant's convictions, I find it necessary to comment upon the improper conduct on the part of the prosecutor. The prosecutor spent an inordinate amount of time talking about the *possible* content of defense counsel's closing argument. The prosecutor's comments were excessive and troublesome in light of the fact that they were made in the initial closing argument, rather than in rebuttal to the closing argument of defense counsel. The trial court obviously found these comments excessive, as it sustained defendant's contemporaneous objections.

The prosecutor also misstated the law regarding self-defense, and continued to misstate the law following a sustained objection. In rebuttal, the prosecutor argued facts not in evidence, referred to the defense theory as a red herring, and alleged that defense counsel failed to explain away damaging evidence. The prosecutor's continuous improper remarks and arguments showed a lack of concern for proper trial decorum.

If it were not for the strong evidence against defendant, I would vote to reverse. However, in light of the standard outlined in *People v Cornell*,¹ I am compelled to vote to affirm.

/s/ Jessica R. Cooper

¹ *People v Cornell*, 466 Mich 335, 361-366; 646 NW2d 127 (2002).