

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

June 25, 1996

Plaintiff-Appellee,

v

No. 184020

LC No. 94-009 861 FC 4

DONALD WAYNE CURRY,

Defendant-Appellant.

Before: Hoekstra, P.J., and Michael J. Kelly and J.M. Graves, Jr.,* JJ.

MEMORANDUM.

Defendant was convicted by a jury of assault with intent to commit murder, MCL 750.83; MSA 28.278, felony-firearm, MCL 750.227b; MSA 28.424(2), and pleaded guilty to habitual offender, second, MCL 769.10; MSA 28.1082. Defendant was sentenced to nine years to thirty years as a habitual offender second, consecutive to a two-year term on the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant and the victim were neighbors and became involved in a dispute the night before the shooting at a neighborhood party. The victim was running into his house when he was shot and wounded by defendant.

Defendant's claim of prosecutorial misconduct denying him a fair trial relies on argument to the jury that "the people can't conceive of a clearer case ever existing and that's why you--as jurors, must come back after your deliberation [and] pronounce what we all know to be true that he was guilty by a guilty verdict." Objection was not made at trial to this argument and it is not preserved. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). A review of the record reveals that manifest injustice would not occur as a result of this Court's refusal to address the issue and we decline to do so. In any event the argument is without merit. The prosecutor may state his belief in the defendant's guilt based on evidence produced at trial. *People v Swartz*, 171 Mich App 364, 370; 429 NW2d 905 (1988); *People v LeGrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994).

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

Defendant's second claim is improper rebuttal. The rebuttal testimony of the police officers at the close of defendant's case was not the subject of objection by counsel and the issue is not preserved. MRE 103(a)(I); *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *Temple v Kelel Distributing Co.*, 183 Mich App 326, 329; 450 NW2d 610 (1990). When a party fails to object to rebuttal evidence the issue is reviewed only to prevent manifest injustice. *People v Kelly*, 423 Mich 261, 281; 378 NW2d 365 (1985). The rebuttal testimony of the officers contradicted the testimony of defense witnesses. It was relevant and material to the case since defendant claimed he acted in self defense. We find no implication of manifest injustice and decline to review this claim also.

Defendant has filed a so-called supplemental pro per brief on appeal raising the issues of sufficiency of the evidence and ineffective assistance of counsel which we have considered and find without merit.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly

/s/ James M. Graves, Jr.