

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILSON RIVERA,

Defendant-Appellant.

UNPUBLISHED

July 9, 1996

No. 181216

LC No. 93-010848

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Defendant appeals as of right his conviction following a jury trial of two counts of first-degree murder, MCL 750.316; MSA 28.548, and one count of felony firearm, MCL 750.227b; MSA 28.424(2). On appeal, defendant argues that various acts of prosecutorial misconduct and evidentiary errors committed by the trial court denied him a fair trial. We affirm.

On appeal, defendant makes various allegations that the prosecutor's conduct during trial was improper. First, defendant alleges that the prosecutor made an improper appeal to civic duty in her opening statement which denied defendant a fair trial. While it is questionable whether the prosecutor's statements constituted a civic duty argument, even if the prosecutor's statements were improper, reversal is not required. Defense counsel failed to make a timely objection to the prosecutor's alleged improper statements at trial. As a result, the issue was not properly preserved for appellate review and can only be reviewed for manifest injustice. *People v Lee*, 212 Mich App 228, 245; 537 NW2d 233 (1995); *People v Wise*, 134 Mich App 82, 105; 351 NW 2d 255 (1985). We find no manifest injustice where the alleged civic duty argument was an isolated incident occurring during opening statements and where the trial court instructed the jury that the attorney's opening statements are not evidence. See *People v Perry*, 213 Mich App 207, 213; 326 NW2d 451 (1982).

Next, defendant argues that the prosecutor interjected an inflammatory opinion into the trial when during her re-direct examination of Celedonio Mata she questioned him regarding the risks

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

generally faced by “snitches.” We disagree. During cross-examination, defense counsel characterized Mata as a snitch who was receiving substantial benefits from his testimony. Thus, the prosecutor’s questions on redirect were an appropriate attempt to rehabilitate Mata. See *People v Bahoda*, 448 Mich 261, 279-281; 531 NW2d 659 (1995).

Defendant also argues that the prosecutor made an improper appeal to the jury’s sympathies by urging the jurors to put themselves in Mata’s place. We disagree. Pursuant to Michigan law, it is clearly improper for the prosecutor to appeal to the jury to sympathize with the victim, *People v Dalessandro*, 165 Mich App 569, 581; 419 NW2d 609 (1988). However, that did not occur in this case because there was no appeal to sympathize with the victim but with the witness. Moreover, as previously discussed, the prosecutor’s actions were proper because they were done in an effort to rehabilitate Mata whom the defense characterized as an opportunistic snitch. See *Bahoda, supra* at 279-281.

Defendant further argues that the prosecutor made comments in her closing argument which went beyond the subject matter on which she was allowed to comment. We agree. However, this error does not require reversal. Defendant promptly objected to the prosecutor’s conduct and the trial court admonished her. Subsequently, the prosecutor altered her conduct and concluded her closing argument. Given the brief nature of the argument and the prompt corrective action taken, any prejudicial effect was eradicated. Thus, defendant was not denied a fair and impartial trial.

Defendant argues that the prosecutor improperly attacked defense counsel and thereby denied defendant a fair trial. We disagree. Although the prosecutor’s statements were arguably inappropriate attacks on defense counsel’s veracity, *Wise, supra* at 102, defendant objected and the trial court took prompt corrective action which neutralized any prejudice which the prosecutor’s statements may have caused.

Lastly, defendant argues that in closing the prosecutor inappropriately commented on defendant’s decision to exercise his right to remain silent. We disagree. Although it is improper for the prosecutor to comment on a defendant’s decision to exercise his right to remain silent and not to testify, *People v Bobo*, 390 Mich 355; 212 NW2d 190 (1973), after carefully reviewing the prosecutor’s statement, we find that it makes no reference either expressly or implicitly as to the fact that defendant remained silent and did not testify on his own behalf at trial. Therefore, we find no error.

On appeal, defendant also argues that the trial court erred in admitting into evidence the guns and ammunition which were confiscated at the time of his arrest; thus, defendant’s conviction must be reversed. We disagree. Under Michigan evidentiary rules, all relevant evidence is admissible. MRE 402. The credibility of Mata, the key prosecution witness who testified that he saw defendant the day before the killings with various weapons, was called into question during trial. Thus, the guns, which served to corroborate Mata’s testimony, were relevant to the issue of Mata’s credibility. See *People v Mills*, 450 Mich 61, 72; 537 NW2d 909 (1995). The magazines and ammunition, on the other hand, did not link defendant to the crime and were not relevant to any issue of consequence; therefore, the

trial court erred in admitting them into evidence. However, this error, does not require reversal. Evidentiary error is not grounds for reversal unless the error was prejudicial. MCR 2.613(A). The prejudicial effect of introducing the magazines and ammunition into evidence lies in the negative impact it will have on the jury's perception of defendant. In this case, however, because the trial court had already appropriately admitted evidence regarding various firearms which defendant had in his possession at the time of his arrest, the negative effect of erroneously admitting into evidence the ammunition for these weapons is substantially diminished. Thus, the trial court's admission of the magazines and various ammunition was harmless error.

Affirmed.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin