

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD LAYMOND FLYNN,

Defendant-Appellant.

UNPUBLISHED

December 19, 1997

No. 195966

Wexford Circuit Court

LC No. 95-004760 FC

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

PER CURIAM.

This appeal as of right follows defendant's conviction by jury of third-degree criminal sexual conduct, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), and resultant sentencing to a term of imprisonment of six to fifteen years. We affirm.

The trial court correctly excluded testimony by defendant speculating that the victim's claim of sexual assault was the product of an elaborate fabrication put in motion by defendant's former wife. Defendant's speculation did not constitute relevant evidence admissible pursuant to MRE 401. *People v Mills*, 450 Mich 61, 66-68; 537 NW2d 909, modified on other grounds 450 Mich 1212 (1995); *People v Diaz*, 98 Mich App 675, 684; 296 NW2d 337 (1980).

Defendant failed to object below to remarks advanced by the prosecutor during closing argument which defendant now claims were improper. Accordingly, appellate review is precluded unless an objection could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Neither situation is present here. Viewing the prosecutor's remarks in the context in which they were made, *People v LeGrone*, 205 Mich App 77, 82-83; 517 NW2d 270 (1994), the remarks constitute proper argument that the evidence demonstrates that defendant is not worthy of belief, *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996).

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

The extensive instructions given by the trial court were sufficient to cure any prejudice arising from the prosecutor's question about defendant having "a lot of talks with police officers," particularly where defendant first volunteered that he had had "a lot of bad experiences" with the police over the past few years. Accordingly, the trial court's actions rendered any error harmless. *People v Mateo*, 453 Mich 203; 551 NW2d 891 (1996).

The trial court properly considered prior uncharged instances of sexual molestation of the victim by defendant when fashioning defendant's sentence, where the court provided defendant with an opportunity to challenge the accuracy of the information and where defendant declined to take advantage of that opportunity. *People v Ewing (After Remand)*, 435 Mich 443, 446 (Brickley, J.), 473-474 (Boyle, J.); 458 NW2d 880 (1990).

Defendant's six-year minimum sentence, which exceeds the guidelines recommendation by one year, does not violate the principle of proportionality in light of the uncharged incidents of sexual molestation and the circumstances surrounding those incidents.

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber