

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL CLIFFORD SUNDBERG,

Defendant-Appellant.

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UNPUBLISHED

December 28, 2001

No. 224478

Wayne Circuit Court

Criminal Division

LC No. 99-002444

Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree criminal sexual conduct, MCL 750.520d(1)(b), and assault with intent to commit criminal sexual conduct involving sexual penetration, MCL 750.520g(1). The trial court sentenced defendant to a term of four to fifteen years' imprisonment for the third-degree CSC conviction and to a term of three to ten years' imprisonment for the assault conviction. Defendant appeals as of right. We affirm.

Defendant's convictions stem from an incident that occurred at 2:30 a.m. on September 6, 1998, on Bock Street in Garden City. The victim, then seventeen years old, was visiting a friend, sixteen-year-old Rachel Caldwell, at Caldwell's home on Bock Street. Defendant, then twenty-two years old, was Caldwell's next door neighbor. The victim, Caldwell, defendant, and some of defendant's friends were in front of defendant's parents' home on the night in question. At some point, defendant asked the victim if he could speak to her "in the back." He then took the victim to the garage behind the house. What occurred in that garage was a matter of dispute at trial. The victim claimed that defendant forcibly raped her in the garage. Conversely, defendant claimed that the victim consented to sexual relations with him.

On appeal, defendant claims that he was denied a fair trial based on alleged instances of prosecutorial misconduct. As defendant acknowledges, he did not object to the alleged instances of prosecutorial misconduct. As this Court explained in *People v Paquette*, 214 Mich App 336, 341-342; 543 NW2d 342 (1995):

Appellate review of alleged prosecutorial misconduct is foreclosed where the defendant fails to object or request a curative instruction, unless the misconduct was so egregious that no curative instruction could have removed the prejudice to the defendant or if manifest injustice would result from our failure to review the alleged misconduct.

We review claims of prosecutorial misconduct case by case, to determine whether the defendant received a fair and impartial trial, examining the allegedly improper remarks in context. *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001). Generally, prosecutors are accorded great latitude regarding their arguments and conduct. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). They are free to argue the evidence and all reasonable inferences from the evidence as it relates to their theory of the case. *Id.* There is no requirement that a prosecutor phrase his argument in the blandest of all possible terms. *People v Cowell*, 44 Mich App 623, 628-629; 205 NW2d 600 (1973). “The prosecutor is, after all, an advocate and he has not only the right but the duty to vigorously argue the people’s case.” *Id.* at 629. Furthermore, even impermissible comments do not require reversal when they are made in response to arguments previously raised by defense counsel. *People v Vaughn*, 200 Mich App 32, 39; 504 NW2d 2 (1993).

After reviewing the prosecutor’s remarks in context, we conclude that the challenged remarks were either proper comments on the evidence presented at trial or made in response to statements made by defense counsel during closing argument. Defendant has failed to show that a curative instruction could not have removed the alleged prejudice or that manifest injustice has resulted. *Paquette, supra* at 341-342.

Defendant also claims that that the cumulative effect of the alleged errors denied him a fair trial. The cumulative effect of a number of minor errors may in some cases amount to error requiring reversal. *People v Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999). However, “only actual errors are aggregated to determine their cumulative effect.” *People v Rice (On Remand)*, 235 Mich App 429, 448; 597 NW2d 843 (1999), quoting *Bahoda, supra* at 292 n 64. Because we find no actual errors in the present case, defendant’s claim of cumulative error must fail. *Rice, supra* at 447-448.

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot