

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY DEWAYNE TIPPETT,

Defendant-Appellant.

UNPUBLISHED

August 9, 1996

No. 179523

LC No. 93-013381

Before: Reilly, P.J., and Cavanagh, and R.C. Anderson,* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). Defendant was sentenced to six to fifteen years of imprisonment with credit for three days served. We affirm.

Upon close scrutiny of the evidence presented at trial, we find that the trial court did not abuse its discretion in denying defendant's motion for a new trial on the ground that his conviction was against the great weight of the evidence. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993).

Defendant contends that he was denied a fair trial by the trial court's fining of defense counsel in the presence of the jury. Because defendant did not preserve this issue by objecting at trial, review is foreclosed unless manifest injustice would result from the failure to review. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Because the trial court's exercise of control over the trial proceedings did not belittle counsel or indicate judicial bias, we find that no manifest injustice would result from the failure to further review this issue. *Id.*

Defendant next argues that he was denied a fair trial by the prosecutor's denigration of defense counsel during the prosecutor's rebuttal argument. By not objecting at trial, defendant failed to preserve this issue. *People v Gonzalez*, 178 Mich App 526, 535; 444 NW2d 228 (1990). We find that no

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

miscarriage of justice would result from the failure to review this issue because any prejudicial effect could have been cured by a cautionary instruction. *Id.*

Defendant contends that he was denied a fair trial by the trial judge's questioning of defense expert Dr. Malcolm Williamson. Because defendant failed to preserve this issue by objecting at trial, we will review it only if manifest injustice would result from the failure to do so. *Paquette, supra*. Such review is particularly appropriate where, as here, the objection must be made to the trial judge himself concerning his own conduct. *People v Collier*, 168 Mich App 687, 697; 425 NW2d 118 (1988). Upon review of the exchange between the trial court and the witness, we conclude that the court's questioning of the witness was not prejudicial to defendant and that defendant was not denied a fair trial. The trial court elicited relevant information pertaining to Dr. Williamson's qualifications as an expert-- a determination that is committed to the trial court's discretion. *People v Fowler*, 193 Mich App 358, 362; 483 NW2d 626 (1992). The court's line of questioning did not cross the line of judicial impartiality. *People v Weathersby*, 204 Mich App 98, 109-11; 514 NW2d 493 (1994).

Defendant next argues that he was denied a fair trial by the prosecutor's vouching for complainant's credibility during the prosecutor's rebuttal argument. By not objecting during the prosecutor's rebuttal argument, defendant failed to preserve this issue. *Gonzalez, supra* at 535. We find that no miscarriage of justice would result from the failure to review this issue because the prosecutor was commenting on the evidence and defendant's theory of the case. Although the remarks were obviously sarcastic, we do not agree with defendant that the prosecutor vouched for the complainant's credibility or improperly appealed to the jurors' sympathy for the complainant. Furthermore, any prejudicial effect could have been cured by a cautionary instruction. *Id.*

Defendant contends that the trial court abused its discretion by permitting two officers to sit at the prosecution table. We disagree. The trial court does not abuse its discretion in permitting, over an objection, an investigating officer or officer-in-charge to sit next to the prosecutor during trial. *People v Hayden*, 125 Mich App 650, 659; 337 NW2d 258 (1983), citing *People v Burns*, 67 Mich 537; 35 NW 154 (1887). Because the officers involved in the investigation were from different police departments and could provide assistance to the prosecutor, we find that the trial court did not abuse its discretion in permitting both of them to sit at counsel table.

Finally, we reject defendant's attempt in a single sentence to incorporate by reference "all the arguments raised in his motion for a new trial . . ." To the extent that these issues were properly raised and briefed in defendant's supplemental brief, they have been addressed in the preceding discussion.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Mark J. Cavanagh
/s/ Robert C. Anderson