

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRACY DUANE LAUTNER,

Defendant-Appellant.

UNPUBLISHED

December 29, 2005

No. 257355

Kalkaska Circuit Court

LC No. 03-002373-FC

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

SCHUETTE, J. (*concurring in part and dissenting in part*).

I concur in the decision reached by my esteemed colleagues Judges Smolenski and Borrello in affirming the decision of the trial court. However, I disagree with the majority's perspective that the questioning of defendant by the prosecuting attorney was inappropriate. Defendant chose to testify on his own behalf. From my perspective, the prosecutor was attempting to discern whether or not defendant understood or acknowledged the wrongfulness of his actions during this crime spree. The prosecutor did not directly comment on defendant's ultimate disposition if the jury were to find him not guilty by reason of insanity. See *People v Staggs*, 85 Mich App 304, 310-311; 271 NW2d 211 (1978). The prosecutor's line of questioning did not constitute misconduct nor can I characterize the questions as improper. Cf. *People v Wallace*, 160 Mich App 1, 7-8; 408 NW2d 87 (1987) (concluding that the prosecutor's comments during closing arguments that defendant will be sent to the Forensic Center and then released if he is not determined to be mentally ill and that "more and more people [are] getting off because of [the insanity defense]" to be improper). The majority does conclude that the prosecutor's questions while improper, were harmless. Therefore, while I refrain from joining the section of the majority's opinion that concludes that the prosecutor's questions were improper, I join all other aspects of the majority opinion and affirm defendant's convictions.

/s/ Bill Schuette