STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

        Plaintiff-Appellee,

v

ROBERT ALAN KENWABIKISE,

        Defendant-Appellant.

UNPUBLISHED
October 30, 2007

No.   269406
Allegan Circuit Court
LC No.   05-014316-FH

Before: Owens, P.J., and White and Murray, JJ.

MURRAY, J., (*concurring in part/dissenting in part*).

I concur in the majority opinion affirming defendant's conviction and sentences. My only disagreement with the majority opinion is its analysis of the prosecutorial misconduct issue. In my view, the prosecutor did not engage in misconduct because all of the arguments were either in response to defendant's theory of the case, went to defendant's credibility, or were merely statements regarding the context in which defendant's crime arose, but which were not made in the most blandest terms possible.

More than three decades ago our Court recognized that although a prosecutor must avoid "inflaming the prejudices of a jury . . . there is no requirement that he phrase his argument in the blandest of all possible terms." *People v Cowell*, 44 Mich App 623, 638-629; 205 NW2d 600 (1973). Prosecutors are free to "argue the evidence and all reasonable inferences from the evidence as it relates to [their] theory of the case," *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), and when it comes to statements made during closing arguments, we are required to read the remarks as a whole and evaluate those remarks "in light of defense arguments and the relationship they bear to the evidence admitted at trial." *People v Brown,* 267 Mich App 141, 152; 703 NW2d 230 (2005).

After review of the trial transcripts, it is my opinion that the prosecutor did not engage in misconduct when arguing to the jury that defendant's parole status had an implication in this case. Indeed, defendant himself informed the police officers at the scene that he was on parole, and defendant argued that his parole status is what caused the police to treat him in an inappropriate manner. Although it appears that the jury ultimately did not accept defendant's theory, defendant's parole status was nevertheless a relevant part of the circumstances that occurred between defendant and the police officers. In my view, and in context of the entire

case, the prosecutor was not arguing that defendant's parole status caused him to have an attitude with the police officers, which lead to him obstructing the police officers.

With respect to the prosecutors calling defendant a "punk" and a "jerk", although the prosecutor could have used better words to describe defendant and his conduct on the night in question, in my view the words are more appropriately viewed in the context of a prosecutor not utilizing the blandest terms. *Bahoda, supra*. Given that defendant was found drinking with minors, was obstructing the officers' investigation of the situation, and was instructing the minors to disobey police commands, the prosecutor's characterization of defendant may not have been the most blandest, but it certainly was arguable under the evidence, and was not prosecutorial misconduct.

Finally, the prosecutor's remarks that the jury should convict defendant to show minors that people cannot get away with obstructing police officers, was likewise not prosecutorial misconduct. Again, the prosecutor was arguing the facts in the context of the circumstances presented, i.e., defendant obstructing police officers, and instructing minors present to also interfere with the police officers' investigation and to disobey the lawful commands of the officers. An argument that this conduct in front of the minors should not be excused by the jury is not an argument for the jury to convict based on their civic duty. Rather, it was an argument that recognized the actual circumstances of this case, a case involving an adult drinking and smoking with underage minors and encouraging minors to disobey police officers' lawful commands. In simple terms, it was an argument made in light of the overall circumstances presented in this case.

/s/ Christopher M. Murray