

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL JAY JENSEN,

Defendant-Appellant.

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UNPUBLISHED

June 25, 2009

No. 283510

Montcalm Circuit Court

LC No. 07-009100-FH

Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

M. J. KELLY, J. (*concurring*).

I concur with the majority opinion affirming defendant's conviction. However, I write separately to comment on what I believe was the clear and deliberate attempt by the prosecutor to insert prejudicial information into the trial.

In his opening statement, the prosecutor told the jury that defendant "later consented to Trooper Ryan's offer of a polygraph examination regarding the case" but that the examination was never conducted and that he made a "verbal admission" to the "polygraph operator." Then, after Lt. Edwards testified that his expertise was in "conducting interviews in a forensic science capacity," the prosecutor asked him, "How long have you been a forensic scientist assigned to do polygraph examinations?"

The references to the polygraph were clearly inappropriate and it is plain to me that they were made to bolster Lt. Edwards' credibility or to suggest that defendant must be guilty because, when faced with a polygraph examination, defendant broke down and confessed to the examiner. Fortunately, defendant's trial counsel made a timely objection and the trial judge crafted a very thorough curative instruction that overcame the prejudice occasioned by these remarks. Nevertheless, I feel compelled to write separately to emphasize that this Court does not condone the use of such tactics; these tactics serve no useful purpose—they only taint the trial and undermine the public's confidence in the fairness and integrity of our criminal justice system. And, although it did not warrant relief under the facts of this case, under different circumstances, this sort of gamesmanship could easily have resulted in a new trial. These tactics should not be employed in the future.

/s/ Michael J. Kelly