

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN PAUL VIAU,

Defendant-Appellant.

UNPUBLISHED
February 23, 2010

No. 287303
Ontonagon Circuit Court
LC Nos. 08-000007-FH
08-000008-FH

Before: K.F. Kelly, P.J., and Jansen and Zahra, JJ.

K. F. Kelly, P.J. (*concurring.*)

I concur in the result to affirm. Even assuming, as the majority finds, that defendant's statement to Jason Clinesmith that he would "like to take a bat to the blanking Prosecutor" was improperly admitted, any err was harmless. As noted by the majority, weight of the other evidence adduced was overwhelming and defendant fails to establish that the complained of error resulted in the conviction of an actually innocent defendant or seriously compromised the fairness, integrity, or public reputation of the judicial proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

/s/ Kirsten Frank Kelly