

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY D. SCOTT,

Defendant-Appellant.

UNPUBLISHED
December 18, 2001

No. 229328
Wayne Circuit Court
LC No. 97-502315

Before: White, P.J., and Talbot and E.R. Post*, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of third-degree fleeing and eluding a police officer, MCL 750.479a(3). The trial court sentenced him to three years' probation, with the first seven months to be served in jail. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of two police officers' attempt to stop defendant for exceeding the posted speed limit. Defendant's theory was that the police were trying to stop another vehicle. In his closing argument, defense counsel noted that the officers were never close enough to the car they were following to read its license plate. In her rebuttal, the prosecutor responded that "the officer testified to you that he is obligated to be careful for children, pedestrians . . . another motorist." She was cut off by defense counsel's objection when she continued, "we have heard most recently about cases where the police are in pursuit – ." After the jurors were instructed to disregard the remark, the prosecutor stated, "we are obligated with protecting of [sic] those in our community. And in this particular case, that is what the officers were focused on. They were not focused on – ." At this point, the trial court interrupted the prosecutor and instructed the jurors to decide the case on the facts and that it was not their job to protect the community.

On appeal, defendant contends that the prosecutor's remarks amounted to prosecutorial misconduct. We disagree. Issues of prosecutorial misconduct are decided case by case, with the reviewing court examining the pertinent portion of the record and evaluating the prosecutor's remarks in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). The test is whether the defendant was denied a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995).

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

A defendant's opportunity for a fair trial can be jeopardized when the prosecutor injects issues broader than the guilt or innocence of the accused. *People v Rice (On Remand)*, 235 Mich App 429, 438; 597 NW2d 843 (1999). Thus, the prosecutor may not urge the jurors to convict the defendant as part of their civic duty. *Bahoda, supra* at 282. Here, taken in context, it appears that the prosecutor was trying to explain why the officers did not engage in a high-speed chase and hence why they never got close enough to read defendant's license plate. As such, the remarks did not inject broader social or civic duty issues and did not result in an unfair trial.

To the extent that the prosecutor may have been trying to argue that the jury should convict defendant out of a sense of obligation to protect citizens from the perils of high-speed police chases, the argument could be construed as an improper civic duty argument. However, defendant objected to the remark and the trial court gave a thorough cautionary instruction that cured any prejudice by specifically reminding the jurors that their role was to judge the case on the facts and not to protect the community. In light of this instruction, defendant was not denied a fair trial.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post