

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL JAMES LATHAM,

Defendant-Appellant.

---

UNPUBLISHED

December 19, 2006

No. 263851

Kent Circuit Court

LC No. 04-004341-FH

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of assaulting a prison employee, MCL 750.197c. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent terms of 30 months' to 15 years' imprisonment. His sentences were to be served consecutively to the sentence imposed for a 1998 conviction for the delivery or manufacture of a controlled substance. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arose following an altercation between defendant and three corrections officers at the Grand Rapids Corrections Center. The incident occurred after an officer discovered that defendant had violated a rule prohibiting residents from covering the window located in the door to each room. The officer requested the assistance of two other officers when defendant resisted the officer's entry into his room. A physical altercation ensued after the three officers were met with resistance after gaining entry into defendant's room. Defendant was charged with assaulting all three officers, but was only convicted for the assault of two officers.

On appeal, defendant first raises a claim of instructional error, which we review de novo. *People v Fennell*, 260 Mich App 261, 264; 677 NW2d 66 (2004); *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). We review jury instructions in their entirety to determine if reversal is required. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995).

At trial, defendant objected to a proposed jury instruction regarding the lack of a right to privacy at a correctional facility. The trial court overruled defendant's objection and indicated that it was an appropriate instruction of the law. The trial court instructed the jury as follows:

You are instructed as a matter of law that a person who is confined in a correctional facility following a conviction and sentence in a prior case does not have an expectation of privacy in his person or personal belongings within the facility. As a result, correctional personnel are able to enter such a person's room or cell without notice, warning, or probable cause, and a resident or occupant of such a room or cell has no right to resist with force the effort by correctional personnel from entering. The right of correctional personnel to enter a room or cell does not, however, create a right to assault persons who are detained at a correctional facility. If you were to find that correctional personnel assaulted a resident or prisoner without justification, that resident or prisoner would be authorized to use reasonable force to defend himself against such an assault.

Defendant argues that the instruction precluded the jury from fairly evaluating the defense theory that he did not intend to assault the officers; rather, he only intended to protect and defend his right to privacy. A criminal defendant is entitled to have a properly instructed jury consider the evidence against him. *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000). For that reason, “[j]ury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them.” *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

Defendant argues that the jury should have decided whether defendant had a right to privacy in his room. This argument is without merit. This Court has held that an inmate does not have a reasonable expectation of privacy in his prison cell, *People v Herndon*, 246 Mich App 371, 397; 633 NW2d 376 (2001); *People v Phillips*, 219 Mich App 159, 161; 555 NW2d 742 (1996), or a halfway house or residential center, *People v Kesi*, 167 Mich App 698, 700; 423 NW2d 365 (1988). See also *Hudson v Palmer*, 468 US 517, 525-526; 104 S Ct 3194; 82 L Ed 2d 393 (1984) (holding that a prisoner has no constitutional right to privacy under the Fourth Amendment). Thus, it was not a proper issue for the jury's consideration.<sup>1</sup>

Defendant argues that the jury instruction implicitly bolstered the prosecution witnesses' testimony and ordered the jury to disregard his defense. Defendant has misstated the defense theory asserted at trial. Defendant did not argue that he had a right to privacy in his room; rather, he argued that in spite of his lack of an expectation of privacy, he was not guilty of the charges against him because he acted in self-defense. The jury instruction did not remove this issue from the jury's consideration. Rather, it demonstrated that if assaulted by corrections personnel, a

---

<sup>1</sup> To the extent that defendant's argument is made outside the constitutional realm, there was no testimony that correctional policies and procedures provided male residents with privacy rights and protections. Rather, the undisputed testimony revealed that male residents had no expectation of privacy, that staff members and corrections officers had keys that could be used for immediate entry into rooms, and that personal “patdowns” and room searches were regularly conducted, which could be done at any time, with residents being required to comply with the search. Defendant was not denied a fair trial nor prejudiced by the instruction, and reversal is unwarranted.

defendant could permissibly act in self-defense, despite a lack of an expectation of privacy. We find no error.

Next, defendant argues that the prosecutor committed misconduct requiring reversal during her closing argument. We review unpreserved claims of prosecutorial misconduct for plain error affecting substantial rights. *People v McLaughlin*, 258 Mich App 635, 645; 672 NW2d 860 (2003).

Prosecutorial misconduct is decided case by case, and this Court must consider the relevant part of the record and examine the prosecutor's remarks in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). The propriety of a prosecutor's remarks depends on all of the facts of the case. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). The prosecutor's comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *Id.* "[P]rosecutors are accorded great latitude regarding their arguments and conduct." *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (citation omitted).

During her closing argument, the prosecutor argued that defendant admitted that he was aware of the rules at the Grand Rapids Corrections Center, and that he chose to break those rules, in part, by having "a crack pipe in his possession" and by refusing to allow corrections officers to enter his room. Defendant challenges the prosecutor's comment about the crack pipe.

The prosecutor's inference that defendant admitted to possessing a crack pipe was reasonable in light of the evidence presented at trial. The evidence demonstrated that although defendant did not state that he possessed a "crack pipe," he admitted that he possessed a glass flask and that he had recently tested positive for cocaine use. Officer Pate testified that during the altercation, he witnessed defendant attempting to light the glass flask and smoke its contents. Detective Sergeant Sybesma testified that this type of item is commonly used for smoking illegal substances. Thus, it was reasonable to infer from the evidence that the glass flask, which belonged to defendant, was used to smoke an illegal substance such as crack cocaine. Prosecutors need not confine their arguments to the blandest of all possible terms. *People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001). The prosecutor's statement was within the latitude of permissible argument and did not constitute plain error.

Further, even if the prosecutor's statement was improper, this Court will reverse for improper remarks by the prosecutor only if a curative instruction could not have eliminated the prejudicial effect of the improper remarks. *People v Green*, 228 Mich App 684, 693; 580 NW2d 444 (1998). The trial court instructed the jury that statements and arguments made by the attorneys are not evidence. Because jurors are presumed to follow their instructions, the trial court's instruction to the jury that statements and arguments made by attorneys are not evidence eliminated any possible unfair prejudice. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998); *People v Houston*, 261 Mich App 463, 469-470; 683 NW2d 192 (2004), *aff'd* 473 Mich 399; 702 NW2d 530 (2005); *Green, supra* at 693. Defendant has not established that he was denied a fair and impartial trial.

Defendant next argues that he was denied the effective assistance of counsel because his trial counsel failed to object to the prosecutor's statement about the crack pipe. This argument is without merit. Because defense counsel need not "make a meritless motion or a futile objection," defendant's trial counsel was not ineffective in failing to object to the prosecutor's remarks. *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).

Affirmed.

/s/ William B. Murphy  
/s/ Michael R. Smolenski  
/s/ Kirsten Frank Kelly