

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RYAN DAVID REMPP,

Defendant-Appellant.

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UNPUBLISHED

November 24, 2009

No. 285698

Montcalm Circuit Court

LC No. 07-009730-FJ

Before: Meter, P.J., and Murphy, C.J., and Zahra, J.

PER CURIAM.

A jury convicted defendant of fourth-degree fleeing and eluding, MCL 257.602a(2). He was sentenced to four months in jail and two years' probation. He appeals as of right. We affirm.

I. Basic Facts and Proceedings

On September 29, 2007, defendant, then 17 years old, was riding a motorcycle on M-46. James Reamsma, a police officer, testified that he was in a marked patrol car on that day, and was parked on the opposite side of the highway. Reamsma testified that he first clocked a 1993 Oldsmobile traveling at 64 miles per hour, which was above the speed limit. He then observed defendant driving a motorcycle at 98 miles per hour. The central issue at trial was whether defendant knew he was being pursued and whether he ignored Reamsma's order to pull over.

Police Officer James Reamsma testified that he accelerated from his parked position and, as he made a U-turn, activated the flashing lights on his patrol car. He did not have the siren on. He testified that defendant "de-accelerated very, very quickly," that he "braked, very, very hard" as he approached the intersection of M-46 and Vickeryville Road, and that defendant "almost came to a complete stop" and "was hardly moving at that point." Reamsma stated the following:

The motorcycle then, proceeded to turn north bound on Vickeryville and as I said was almost at a stop, maybe five miles an hour, he was hardly even moving at that point. And the driver of the motorcycle, turned and looked over his shoulder like this, he was wearing a full face helmet, looked directly at my patrol car. I was approaching Vickeryville and 46, had my flashing lights on, he looked directly at me and then accelerated sharply, and proceeded north bound on Vickeryville road.

Reamsma pursued and observed that “the motorcycle was accelerating sharply.” It turned right, making skid marks, eventually turned on to a private driveway and traveled about 210 feet before sliding on its side and crashing.

Defendant admitted that he was speeding. However, he claimed he never looked back, that he never saw any police lights or emergency lights coming behind him, and that he did not know the officer was behind him. The occupants of the Oldsmobile testified that the lights were not activated until after defendant turned north onto Vickeryville Road. Reamsma then testified on rebuttal that he was close behind defendant at the intersection and saw the patrol car’s headlights reflected off the motorcycle.

The judge permitted a juror to ask the following questions:

*Q.* Where was the defendant when you turned your lights on? Your emergency lights, overhead lights?

*A.* The defendant had completed his pass of the car he was actually just in the front of the car [Oldsmobile] and I was on 46, so there would have been the motorcycle, the car and then my – I was proceeding westbound on 46 with my emergency lights on.

*Q.* Before he turned?

*A.* Before he turned. Yes sir.

*Q.* Then how did you figure out your headlights reflecting when, between the emergency lights?

*A.* The motorcycle as I stated before, braked sharply and I think he was attempting to make the turn.

Another juror asked the following:

*Q.* I am wondering if you were that close to him, how did you lose him in just that short strip of space?

*A.* I was at that time I was still on the brakes trying to slow down, because the vehicles had slowed down and I had still been accelerating quite rapidly to try and close the distance. I was getting on the brakes really hard as the vehicle turned the corner. He accelerated rapidly and I turned the corner I did observe him going north bound and then his taillights just disappeared and I knew that he had turned off at some point and that is when, just within a matter of a few seconds there I observed the tracks where he had slid around the corner and made the right turn. So I observed his taillights going north bound, I was behind him and then they just disappeared and I knew he had turned off into the woods someplace.

During closing arguments, defense counsel stated the following:

Mr. Richardson, you asked a good question, you asked how are you able to see reflection of the bike if you are five or six car lengths behind. Consistent with what [the occupants of the Oldsmobile] said, that at the point that [defendant] turned on to Vickeryville road the officer was still behind them. How was he able to see the reflection if he is still around a ninety degree corner and the motorcycle is already headed up the – up Vickeryville? Ms. Sias you asked a good question as well, if he was that close, if the motorcycle slowed to five miles per hour how did you lose him? You went an eighth of a mile, how did he vanish into thin air? It's more consistent with what we heard [the Oldsmobile occupants] say, is that the officer, you know this happened real fast, the officer was parked next to the edge of the road, he had to do a u-turn, there was a delay in him turning his lights on, [defendant] went flying around the corner, then the officer's behind him, his lights come on [defendant] is already headed up Vickeryville road. That is how the officer lost him, you are on to it, exactly.

The prosecutor stated the following during the rebuttal argument:

I watch CSI a lot and one thing I learned from CSI about a case like this, the energy available to a motorcycle based upon a mass or its weight is great. A lot of power, little bit of weight. You can accelerate like mad on a motorcycle, even if I have only see it on TV. . . .

The fact of the matter is, [defendant], slowed his motorcycle to five miles an hour, knew he was being pursued by a police officer, with lights on, took advantage of the – his advantage of the motorcycle's advantage of mass to energy ratio and ripped up Vickeryville road away from that cop. . . .

## II. Prosecutorial Misconduct

### A. Standard of Review

Generally, we review claims of prosecutorial misconduct de novo to determine whether the defendant was denied a fair and impartial trial. *People v Cox*, 268 Mich App 440, 450-451; 709 NW2d 152 (2005). However, defendant did not object to the statements. Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting the defendant's substantial rights. *People v Rodriguez*, 251 Mich App 10, 32; 650 NW2d 96 (2002). The plain error rule requires that the error: 1) must have occurred, 2) must be clear and obvious, and 3) must have affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.*

### B. Analysis

Defendant claims that the prosecution's statements amount to expert witness testimony and that defendant's due process rights were violated because he was not afforded the opportunity to cross-examine. *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 502; 421 NW2d 213 (1988).

However, defense counsel, in his opening statement, referred to the motorcycle as “a crotch rocket,” stating that it was a fast motorcycle. Further, the statement about motorcycles and their ability to accelerate was supported by Reamsma’s testimony that the motorcycle did in fact accelerate quickly. Even without hearing the prosecutor’s closing argument, the jury could have deduced that defendant’s motorcycle had the ability to accelerate quickly based on record evidence, i.e., Reamsma’s testimony and defendant’s admission that he was traveling at high speeds. Accordingly, the prosecutor’s statements did not assert facts not in evidence and, in any event, did not affect the outcome of trial.

### III. Equal Protection

#### A. Standard of Review

Unpreserved constitutional issues are reviewed for plain error. *Carines, supra*, 460 Mich 763. Questions regarding the constitutionality of a statute are reviewed de novo. *People v White*, 212 Mich App 298, 304; 536 NW2d 876 (1995).

#### B. Analysis

Defendant argues that his equal protection rights were violated because similarly situated defendants may be treated differently under the Holmes Youthful Trainee Act (“HYTA”) based on how a prosecutor chooses to charge an offender.

Under the HYTA, if a person classified as a youthful trainee pleads guilty to an offense, instead of being charged and convicted of a crime, the person can be sentenced to probation or custodial supervision, or be granted a work or education release. MCL 762.11, 762.13. Defendants who are convicted of a “traffic offense” are ineligible for HYTA status. MCL 62.11(2)(c). A traffic offense is a violation of the Michigan vehicle code, MCL 257.1 to 257.923 or a violation of a similar local ordinance. MCL 762.11(4)(b). Defendants who are convicted under a motor vehicle violation under the penal code, however, remain eligible for HYTA status, as penal code traffic violations are not mentioned in the HYTA.

Equal protection of the law is guaranteed by both the federal and Michigan constitutions, US Const, Am XIV; Const 1963, art 1, § 2; *Brinkley v Brinkley*, 277 Mich App 23, 35; 742 NW2d 629 (2007). The purpose of the equal protection guarantee is to secure every person against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution. *Village of Willowbrook v Olech*, 528 US 562, 564; 120 S Ct 1073, 1074-1075; 145 L Ed 2d 1060, 1063 (2000). “Unless the alleged discrimination involves a suspect class or impinges on the exercise of a fundamental right, a contested statute is evaluated under the rational basis test.” *People v Haynes*, 256 Mich App 341, 345; 664 NW2d 225 (2003).

This Court has held that the disparate treatment of criminal offenders does not impinge on an individual’s fundamental rights, *People v Sadows*, 283 Mich App 65, 65; 768 NW2d 93 (2009); *Haynes, supra*, 256 Mich App 345. Therefore, the rational basis test applies. The law must be rationally related to a legitimate government objective, and the person challenging the validity of the law must demonstrate that it is arbitrary and wholly unrelated to its objective. *Goldstone v Bloomfield Twp Pub Library*, 479 Mich 554, 569; 737 NW2d 476 (2007). Under

the rational basis test, a statute will ordinarily be sustained if it can be said to advance a legitimate governmental interest, even if the law seems to be unwise or works to the disadvantage of a particular group, or if the rationale seems to be tenuous. A legislative classification may not be set aside if any set of facts may reasonably be conceived to justify it. *Westlake Transportation, Inc v Public Service Comm*, 255 Mich App 589, 617; 662 NW2d 784 (2003).

Defendant argues that it is a violation of equal protection to treat an offender differently based on whether he pleads guilty to an offense or exercises his right to a trial by jury. However, a state may enact statutes that encourage guilty pleas without violating, or even implicating, equal protection concerns. See *Corbitt v New Jersey*, 439 US 212, 223, 225-226; 99 S Ct 492; 58 L Ed 2d 466 (1978).”

Defendant also argues that the HYTA makes an irrational distinction between traffic offenses under the penal code and those under the motor vehicle code. It is true that the offense of fleeing and eluding in the vehicle code, MCL 257.602a(1) and the penal code, MCL 750.479a(1), are very similar. However, this Court has already determined that the HYTA “should not be struck down because it permits youthful trainee status for serious offenses under the Criminal Code, but denies such status for charges of less serious traffic offenses under the Vehicle Code.” *People v Martinez*, 211 Mich App 147, 151; 535 NW2d 236 (1995). Thus, the HYTA does not violate equal protection. Moreover, “[p]rosecuting attorneys have discretion in Michigan to choose under which of the several potentially applicable statutes a prosecution will be instituted.” *People v Evans*, 94 Mich App 4, 6; 287 NW2d 608 (1979).

Affirmed.

/s/ Patrick M. Meter  
/s/ William B. Murphy  
/s/ Brian K. Zahra