

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT D. HARRIS,

Defendant-Appellant.

UNPUBLISHED

January 13, 1998

No. 196722

Recorder's Court

LC No. 95-010152

Before: Gage, P.J., and Murphy and Reilly

MEMORANDUM.

Defendant appeals by right his jury convictions of manslaughter with a motor vehicle, MCL 750.321e; MSA 28.553, and reckless driving, MCL 257.626; MSA 9.2326. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The sole issue raised on appeal is a contention that the prosecutor deprived defendant of a fair trial by using a visual aid, a chart, during closing argument, which featured certain portions of what was anticipated, correctly, would be the trial court's instructions, particularly those concerning "gross negligence." Defendant contends that he was deprived of a fair trial because the prosecutor emphasized the principal charges at the expense of lesser included offenses on which the trial court also instructed the jury. This argument is without merit. While it is well established that a court may not give undue prominence to certain of its instructions at the expense of others, *People v Murray*, 72 Mich 10, 15-16; 40 NW 29 (1888), by its terms this jurisprudential principle applies only to the instructions as given by the trial judge. A prosecutor, like defense counsel, is free during closing to emphasize any particular theory of the case which is based on the evidence, and is under no obligation to give equal prominence to other theories. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

Defendant contends that, even if it was permissible for the prosecutor to use such a visual aid, federal precedent requires a limiting instruction. *United States v Gazie*, 786 F2d 1166 (CA 6, 1996). Even in federal court, however, that principle applies only when the demonstrative aid is given to the jury during its deliberations or admitted as evidence, neither of which occurred in the present case. Furthermore, there was no request for a limiting instruction and the jury was instructed by the trial judge

in this case to accept only the court's instructions on the law, and that "if a lawyer says something differently about the law, follow what I say." Defendant has failed to establish that in any pertinent respect he was deprived of a fair trial by the prosecutor's closing argument.

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly