

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20120357

State of North Dakota,

Plaintiff-Appellee,

- vs -

Kawo Otis Flah

Defendant-Appellant

APPEAL FROM THE CRIMINAL JUDGMENT
SOUTH CENTRAL JUDICIAL DISTRICT
BURLEIGH COUNTY CR. NO. 08-2012-CR-767
THE HONORABLE BRUCE A. ROMANICK, PRESIDING

PETITION FOR REHEARING

BENJAMIN C. PULKRABEK

ATTORNEY FOR APPELLANT

402 FIRST STREET NW
MANDAN, NORTH DAKOTA 58554
(701)663-1929
N.D. BAR BOARD ID NO. 02908

TABLE OF CONTENTS

Table of Contents i

Table of Cases ii

Statutes iii

Statement of the Issue ¶1

Nature of the Case ¶2

Statement of the Facts ¶3

Argument ¶5

Issue Presented:

ISSUE I: Is it improper for a prosecutor in her closing argument to vouch for the truth and veracity of police officers? ¶1, 4

Conclusion ¶8

Certificate of Service ¶9

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES
TABLE OF CASES

City of Williston v. Hegstad, 1997 ND 56, 562 NW2d 91 [13]	¶5, 6
U.S. v. Azure, 801 F2d at 341	¶5
<u>United States v. Barnard</u> , 490 F.2d 907, 912 (9 th Cir. 1973), <u>cert. denied</u> , 416 U.S. 959, 94 S.Ct. 1976, 40 L.Ed.2d 310 (1974).	¶5
<u>Homan v. United States</u> , 279 F.2d 767, 772 (8 th Cir.), <u>cert. denied</u> , 364 U.S. 866, 81 S. Ct. 110, 5 L.Ed.2d 88 (1960).	¶5

STATEMENT OF THE ISSUE

[¶1] ISSUE I: Is it improper for a prosecutor in her closing argument to vouch for the truth and veracity of police officers?

NATURE OF THE CASE

[¶2] This is a petition to rehear the opinion in the above-entitled matter that was filed on February 26, 2013.

STATEMENT OF FACTS

[¶3] Appellant, Kawo Flah is petitioning for a rehearing of the North Dakota Supreme Courts ruling affirming the decision of the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce A. Romanick.

ISSUE

[¶4] **Is it improper for a prosecutor in her closing argument to vouch for the truth and veracity of police officers?**

ARGUMENT

[¶5] In the State's closing argument the prosecutor said:

“Now ladies and gentlemen as the Judge stated , when weighing the credibility of witnesses you can take into account there interest in the outcome of the case. What do Officer Hocher and Detective Grensteiner have to gain? Nothing. They're still employed. They have no reason to lie about what was said or what wasn't said at that residence that night. Yes, the Defendant's girlfriend was charged and she pled. Detective Grensteiner also told you its very common for more that one person to use the same pipe and to be charged with using the same pipe. Who has an interest in the outcome of the case”?

[¶6] This statement informs the jury that police officers don't lie and that the officers still have their jobs. Mr. Flah claims such statement is reversible error and relies on *City of Williston v. Hegstad*, 1997 ND 56, 562 NW2d 91 [13].

The prosecutor's argument the police officers' "job was to tell the truth" was not confined to the evidence. The jury may have relied on the prosecutor's opinion about the officers' "job" and "surrender[ed] their own common sense in weighing testimony.". *Azure*, 801 F.2d at 341, quoting *United States v. Barnard*, 490 F.2d 907, 912 (9th Cir. 1973), cert.

denied, 416 U.S. 959, 94 S.Ct. 1976, 40 L.Ed.2d 310 (1974). The prosecutor's argument may have ““ so bolster[ed] the officers’] testimony as artificially to increase its probative strength with the jury.” Azure, 801 F.2d at 341, quoting Homan v. United States, 279 F.2d 767, 772 (8th Cir.), cert. denied, 364 U.S. 866, 81 S.Ct. 110, 5 L.Ed.2d 88 (1960).

[¶7] Therefore in the prosecutor's above statement made during her closing argument is improper.

CONCLUSION

[¶8] In the case now before the court the prosecutor in her closing argument vouched for the truth of the police officers. A prosecutor's vouching for the truth of police officers in closing argument is reversible error according to Hegstad. Therefore Mr. Flah is entitled to a rehearing.

Dated this 5th day of March, 2013.

/s/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek, ID #02908

CERTIFICATE OF SERVICE BY MAIL

[¶9] The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

That on March 5, 2013, she served, by e-mail and mail a copy of the following:

APPELLANT'S PETITION FOR REHEARING

to: e-mail

Dawn Deitz
Burleigh County State's Attorney's Office
dmdeitz@nd.gov

Mailed to:

Kawo Otis Flah
Bur. Co. Detention Center
P.O. Box 1416
Bismarck, ND 58502-1416

The undersigned further certifies that on March 5, 2013, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANT'S PETITION FOR REHEARING.

_ /s/ Sharon Renfrow _____
Sharon Renfrow, Legal Assistant to
Benjamin C. Pulkrabek