

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONARD WILCZYNSKI, JR.,

Defendant-Appellant.

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UNPUBLISHED

March 6, 1998

No. 174682

Macomb Circuit Court

LC No. 93-003044-FH

Before: Gage, P.J., and Reilly, and Jansen, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of stalking, MCL 750.411h; MSA 28.643(8), and sentenced to twelve months in the county jail. Defendant appeals as of right. We affirm.

Defendant's sole argument on appeal is that the trial court erred in denying his motion for a mistrial made after a police officer testified that other police officers had prior contact with defendant. Defendant contends that the officer's testimony violated a court ruling that barred any reference to defendant's prior bad acts or to his prior contact with the police. We disagree. The grant or denial of a motion for mistrial rests within the sound discretion of the trial court. An abuse of that discretion will be found only where the trial court's denial of the motion has deprived the defendant of a fair and impartial trial. *People v Manning*, 434 Mich 1, 7 (Boyle, J.), 21 (Brickley, J.); 450 NW2d 534 (1990); *People v McAlister*, 203 Mich App 495, 503; 513 NW2d 431 (1994).

The following exchange occurred during the prosecutor's direct examination of Fraser Police Sergeant James Jachick:

Q. Did you attempt to contact the suspect in this case?

A. Yes. I did.

Q. How was it that you were able to determine the identity of the alleged suspect?

A. She described the vehicle that he was driving and where it's parked and gave me a general area of where his apartment was or house that he lived with his mother.

Q. And, armed with this information, what did you do, Officer?

A. I was able to question other officers and they knew who the owner of that automobile was. *They had contact with him before.*

Defendant did not object to Jachick's testimony. However, at the close of the prosecution's proofs, defendant moved for a mistrial, arguing that Jachick's remark regarding defendant's prior contact with the officers denied defendant a fair trial because it was more prejudicial than probative and because it was made in violation of a prior court ruling. Defendant makes essentially the same argument on appeal. As an initial matter, we note that the record on appeal does not contain any written or oral order indicating that the court had barred evidence of defendant's prior bad acts or police contact. However, because the prosecutor did not dispute the existence of such a ruling at trial, we will assume that the court so ruled.

Generally, an unresponsive, volunteered answer that injects improper evidence into a trial is not grounds for a mistrial unless the prosecutor knows in advance that the witness will give the unresponsive testimony or the prosecutor conspired with or encouraged the witness to give that testimony. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). However, police witnesses have a special obligation not to venture into forbidden areas. *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983). When an unresponsive remark is volunteered by a police officer, this Court will scrutinize the statement in order to ensure that the officer has not ventured into a forbidden area that could prejudice the defense. *Id.* at 415.

In this case, the officer did not testify that defendant had committed prior bad acts, or prior incidents of stalking. Cf. *Holly*, *supra* at 414-416 (police officer testified that the defendant implicated himself in another robbery). Instead, as the trial court observed, the "contact" referred to could have come about for any number of "innocent" reasons and did not necessarily imply that defendant had engaged in any prior bad acts. Cf. *People v Von Everett*, 156 Mich App 615, 622; 402 NW2d 773 (1986) (holding that a police officer's single reference to the defendant's picture as a "mug shot" was not inherently prejudicial or intentionally interjected into the proceedings). Moreover, even if the testimony was somewhat prejudicial to defendant, it is unlikely that it was given undue weight by the jury. Jachick's remark was the only reference to defendant's prior contact with police made during the course of defendant's three-day trial. The testimony of the victim and several other witnesses that defendant slowly drove by the victim's residence several times a day, every day, likely carried more weight with the jury than the isolated reference to defendant's prior contact with police. Cf. *Holly*, *supra* at 416. Finally, defendant points out that the court did not issue a curative instruction to the jury. However, because defendant did not request such an instruction, he was not denied a fair trial as a result of the trial court's omission. For these reasons, we hold that the trial court did not err in denying defendant's motion for a mistrial. *McAlister*, *supra* at 503.

Affirmed.

/s/ Hilda R. Gage  
/s/ Maureen Pulte Reilly  
/s/ Kathleen Jansen