

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

STEVEN JOEL MEYER,

Defendant-Appellant.

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UNPUBLISHED  
September 30, 2003

No. 240600  
Kent Circuit Court  
LC No. 01-003894-FH

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

PER CURIAM.

Defendant appeals as of right his conviction of domestic assault, third offense, MCL 750.81(4), entered after a jury trial. We affirm.

Defendant was charged with two counts of felonious assault, MCL 750.82, in connection with allegations made by complainant, with whom he had had an on-and-off relationship. Prior to trial, the parties agreed that no reference would be made to defendant's two prior convictions for domestic assault unless the door was opened for such testimony. The prosecutor indicated that he had instructed his witnesses to refrain from referring to the convictions.

Complainant testified that defendant confronted her in a bar and told her that he was angry and wanted to speak with her. He held a fully opened knife and stated that he was angry and wanted to cut someone's throat. Complainant testified that she and defendant went to her residence, and that at one point defendant entered a room carrying a cigarette in one hand and a firecracker in the other hand. Complainant attempted to call the police, but defendant grabbed the telephone from her hand and threatened her. Complainant went to a neighbor's house and contacted the police.

Deputy Guernsey testified that he responded to a call regarding defendant and encountered defendant outside of the complainants residence. In response to a question regarding what defendant told him, Guernsey testified that defendant said that he and complainant had had an argument, and that he had been in trouble for domestic violence in the past. Defense counsel objected. The trial court sustained the objection, and told the jury to disregard the remark.

Defendant moved for a mistrial on the ground that his previous convictions for domestic assault were mentioned in contravention of the trial court's order. The prosecutor maintained

that Guernsey's answer was nonresponsive. The trial court denied the motion, noting that Guernsey did not actually reveal that defendant was convicted on the previous occasions. The trial court offered to give a special instruction or to allow defense counsel to recall Guernsey and clarify the matter. Defense counsel opted to make no further reference to the matter.

Police officers testified that defendant was cooperative and that he denied using a weapon or engaged in a physical confrontation with complainant. Two officers stated that complainant's wrist appeared to be swollen. Another officer found a knife in a box of defendant's belongings. He did not find any type of firecracker.

Defendant testified that he opened his knife at the bar to clean it. He indicated he was concerned that complainant was spending money on narcotics and wanted to speak with her about it, but that complainant did not want to talk. Defendant denied grabbing complainant, threatening her with a knife, or displaying a firecracker.

The jury convicted defendant of one count of domestic assault as a lesser included offense of felonious assault, and acquitted him of the second count of felonious assault. At sentencing, defense counsel explained that defendant failed to appear for the scheduled presentence interview because he was involved in an automobile accident. Counsel also noted that defendant maintained that he did not engage in a confrontation with complainant. Defendant objected to the scoring of Offense Variable (OV) 4, MCL 777.34, psychological injury to victim, at ten points on the ground that complainant had not sought psychological treatment. The trial court upheld the scoring on the ground that treatment was not a prerequisite to the scoring of OV 4 at ten points. The trial court sentenced defendant as a third habitual offender to three and one-half to fifteen years in prison, with credit for four days.

Defendant argues that the trial court abused its discretion by denying his motion for a mistrial. We disagree. We review the trial court's denial of a motion for a mistrial for an abuse of discretion. A mistrial should be granted only for an irregularity that results in prejudice to the defendant and impairs his ability to get a fair trial. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). Generally an unresponsive, volunteered answer that injects improper evidence into a trial is not a basis for granting a mistrial unless the prosecutor knows in advance that the witness will give the testimony. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). Police officers have a special duty to refrain from making prejudicial and irrelevant remarks during their testimony. This prohibition includes inadmissible statements that the defendant was previously arrested or charged with another crime. *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983). Such testimony, even if it is nonresponsive, may require reversal, *People v O'Brien*, 113 Mich App 183, 209; 317 NW2d 570 (1982), unless other evidence clearly establishes the defendant's guilt. *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

Nothing in the record demonstrates that the prosecutor knew in advance that Guernsey would repeat defendant's statement regarding his prior legal difficulties, or that the prosecutor conspired with or encouraged Guernsey to provide that testimony. *Hackney, supra*. Defendant concedes that Guernsey's remark was unresponsive. We conclude that even assuming that Guernsey's testimony constituted error, reversal is not required because the other evidence clearly demonstrated defendant's guilt. Complainant testified that defendant grabbed her and wrested the telephone from her hand. Deputy Hansen testified that complainant's wrist appeared

to be swollen. The jury was entitled to accept this testimony as credible, and to reject defendant's testimony that he and complainant did not have a physical confrontation. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). In light of the strength of the other evidence against defendant, *Snider, supra*, and in light of the fact that defendant declined an opportunity to have the trial court give the jury a cautionary instruction, *People v Lumsden*, 168 Mich App 286, 299; 423 NW2d 645 (1988), the trial court did not abuse its discretion by denying defendant's motion for a mistrial.

Defendant next argues that he is entitled to have a corrected presentence report prepared. We disagree. A presentence report must be prepared for the sentencing of each person convicted of a felony. MCL 771.14(1); MCR 6.425(A). A presentence report must include various information, including any statement the defendant wishes to make. MCR 6.425(A)(8). A defendant may not challenge the accuracy of a presentence report on appeal unless the issue was raised at or before sentencing or he demonstrates that the challenge was brought as soon as the inaccuracy could reasonably have been discovered. MCR 6.429(C); *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996). We review the trial court's response to a claim of inaccuracy for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003).

At sentencing defense counsel explained why defendant failed to appear for the presentence interview and noted that defendant maintained that he did not have a physical confrontation with complainant; however, counsel did not request that the report be amended to include these statements. MCR 6.425(A)(8). The trial court cannot be said to have abused its discretion by failing to respond to a request that was not made. *Spanke, supra*. Defendant did not raise challenges to the accuracy of the information pertaining to his prior record at the time of sentencing, and has not demonstrated that the challenge was brought as soon as the inaccuracy could reasonably have been discovered. MCR 6.429(C).

Finally, defendant's challenge to the scoring of OV 4 is without merit. A victim's receipt of psychological treatment is not a prerequisite to the scoring of OV 4 at ten points. MCL 777.34(2). Evidence supported the trial court's finding that complainant was extremely upset by the incident with defendant. The scoring of OV 4 at ten points was supported by some evidence; therefore, it must be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Affirmed.

/s/ Michael R. Smolenski  
/s/ William B. Murphy  
/s/ Kurtis T. Wilder