

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD DARWIN PICKLE,

Defendant-Appellant.

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UNPUBLISHED

August 8, 2006

No. 260249

Bay Circuit Court

LC No. 04-010451-FH

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of domestic violence, MCL 750.81(4). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to serve 30 to 180 months in prison. Defendant appealed as of right. We affirm.

Defendant first argues that he was deprived of his constitutional right to appeal by the court reporter's failure to transcribe the contents of certain taped telephone conversations admitted into evidence below. We disagree. The recordings in issue are of a 911 call made by the complainant reporting the crime and several telephone conversations between defendant and the complainant while defendant was in jail awaiting trial.

Although defendant correctly notes that the "inability to obtain the transcripts of criminal proceedings may so impede a defendant's right of appeal that a new trial must be ordered," *People v Horton (After Remand)*, 105 Mich App 329, 331; 306 NW2d 500 (1981), in this case, defendant has failed to demonstrate that he was actually unable to obtain the relevant transcripts. Defendant merely asserts that the court reporter did not transcribe the recordings at the time they were played for the jury.<sup>1</sup> He does not assert that the recordings are no longer available for

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<sup>1</sup> We are aware of no statute or court rule requiring court reporters to transcribe the contents of audio exhibits at the time the exhibits are played for the jury. Rather, it is the responsibility of the party possessing an exhibit offered into evidence to file the exhibit with the trial court within 21 days after the claim of appeal is filed. See MCR 7.210(C).

transcription, or that the court or prosecutor failed to provide him with copies of the recordings.<sup>2</sup> Therefore, there is no error to review.

Defendant next contends that there was no evidence that the complainant was a battered woman under the definition established by *People v Christel*, 449 Mich 578, 588; 337 NW2d 194 (1995). Specifically, defendant argues that there must be evidence of at least two incidents of battering before complainant could be considered a battered woman. Therefore, he further argues, the expert testimony concerning battered women was not relevant or helpful under the facts of this case. We disagree.

Defendant's assertion that there must be evidence of two incidents of abuse to establish that the complainant was battered is derived from the following passage in *Christel*:

“[I]n order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.” [*Id.*, quoting Walker, *The Battered Woman* (New York: Harper & Row, 1979), p XV.]

Before the trial court, the prosecutor represented that the recording of the July 24, 2004 telephone call between the complainant and defendant included an acknowledgment by defendant that he had hit the complainant in the past. Along with the charged offense, this evidence would be sufficient to establish that the complainant was battered at least twice. Hence, defendant's claim of error on this basis is without merit.

Additionally, the challenged testimony was relevant to explain why the complainant testified that she did not remember what happened to her on the day she was injured, after having reported to the 911 operator soon after the assault that defendant “beat the shit out of me.” The expert testimony provided an explanation for the change in story that goes beyond the knowledge and understanding of the average juror, i.e., that the complainant's statement on the 911 call was true and that her subsequent equivocation was consistent with battered woman syndrome. See *Id.* at 596.

Third, defendant argues that the trial court erred in using impeachment evidence admitted at trial when scoring the sentencing guidelines. Again, we disagree. MRE 1101(b)(3) provides that the rules of evidence do not apply at sentencing, with the exception of certain privileges. Further, it is well established that an appellate court will not disturb scoring decisions for which there is any evidence in support. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Under this authority, a sentencing court is not limited on the type of evidence it may

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<sup>2</sup> We note that the recording of the 911 call was transcribed at defendant's preliminary examination.

consider when scoring the sentencing guidelines. Thus, defendant's claim or error is without merit.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot