

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AUGUST JOSEPH GIORDANO,

Defendant-Appellant.

UNPUBLISHED
November 9, 1999

No. 209201
Macomb Circuit Court
LC No. 96-002981 FH

Before: Neff, P.J., and Murphy and J. B. Sullivan*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to six to twenty years' imprisonment. He appeals as of right. We affirm.

I

During an argument with his girlfriend, Carla McKinney, on October 19, 1996, defendant allegedly threw a thick-bottomed beverage glass, hitting McKinney in the head and causing severe injuries. The glass lacerated McKinney's eyelid and eyeball and cracked the orbital bone. Eventually, McKinney's right eye had to be removed to prevent a loss of vision in her left eye. According to the police, defendant stated that McKinney's injury occurred when defendant swiped his hand across a countertop in anger, and a glass flew and struck McKinney.

Defendant was initially bound over on a charge of felonious assault, MCL 750.82; MSA 28.277. Following a remand to district court, defendant was charged with assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and as a third-offense habitual offender, MCL 769.11; MSA 28.1083.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

II

Defendant first claims that he was denied his right to a fair trial when the prosecutor elicited testimony that defendant had a violent relationship with a former girlfriend, worked only if he had to, did not support his child, and was an alcoholic. We disagree.

The statement at issue was volunteered by McKinney's mother when the prosecutor questioned her on redirect concerning her cross-examination testimony that she did not approve of her daughter's relationship with defendant. Defendant objected to the testimony and the trial court sustained the objection. Defendant did not move for a mistrial. We find no error.

Prejudice warranting a new trial is not established merely because some inappropriate subject matter was mentioned before the jury. *People v Griffin*, 235 Mich App 27, 36-37; 597 NW2d 176 (1999). The prosecutor's question was proper because defendant raised the issue of the nature of defendant's relationship with McKinney on cross-examination and specifically asked whether there was any violence during the relationship. Defendant does not argue on appeal that the prosecutor expected McKinney to answer as she did. See *id.* at 37. Even if McKinney's answer mentioned inappropriate subjects, it did not have the effect of denying defendant a fair trial in light of the evidence presented.

III

Defendant also claims that his habitual offender sentence must be vacated because the prosecutor failed to timely file the notice of sentence enhancement. We find defendant's claim without merit.

After defendant was bound over to circuit court on the charge of felonious assault, the prosecutor moved to amend the information and remand to the district court for preliminary examination on a charge of assault with intent to do great bodily harm less than murder. The court granted the motion.

On May 19, 1997, a preliminary examination was held on the charge of assault with intent to do great bodily harm less than murder. Defendant waived arraignment on the new charge. An information charging assault with intent to do great bodily harm less than murder was filed on June 19, 1997. The prosecutor filed a notice of intent to enhance defendant's sentence on the basis of his status as a third-offense habitual offender on July 9, 1997.

Under MCL 769.13; MSA 28.1085, the prosecutor was required to file the notice of sentence enhancement within twenty-one days of filing the information on the underlying offense:

In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense. [MCL 769.13(1); MSA 28.1085(1).]

The underlying offense in this case was the assault with intent to do great bodily harm less than murder, the offense of which defendant was convicted. Because the notice of sentence enhancement was filed within twenty-one days of the information on the underlying offense, it was timely filed.

We find no merit in defendant's argument that the notice of sentence enhancement should have been filed within twenty-one days after filing the original information on the charge of felonious assault. The circuit court had authority to remand for preliminary examination on the charge of assault with intent to do great bodily harm less than murder. *People v Dunham*, 220 Mich App 268, 276; 559 NW2d 360 (1996). Following the preliminary examination on May 19, 1997, defendant was bound over to circuit court on the new charge. The notice of intent of sentence enhancement was filed July 9, 1997, within twenty-one days of the filing of the information on June 19, 1997, as required by MCL 769.13(1); MSA 28.1085(1). Defendant did not go to trial until nearly five months later. Defendant had ample notice of the new charge and the habitual offender enhancement. See *People v Ellis*, 224 Mich App 752, 754-755; 569 NW2d 917 (1997); *People v Johnson*, 197 Mich App 362, 363-364; 494 NW2d 873 (1992).

Affirmed.

/s/ Janet T. Neff

/s/ William B. Murphy

/s/ Joseph B. Sullivan