

STATE OF MICHIGAN
COURT OF APPEALS

In re ANTHONY JOSEPH PRUETT, Minor

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY JOSEPH PRUETT,

Defendant-Appellant.

UNPUBLISHED

December 28, 1999

No. 216161

Berrien Probate Court

LC No. 98-0350-DL-N

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5). Defendant appeals by right. We affirm.

Defendant first argues that the trial court abused its discretion by admitting evidence of threats that defendant made in violation of MRE 404(b). Defendant failed to preserve this issue by making a timely objection specifying the same ground asserted below. *Tringali v Lal*, 164 Mich App 299, 306; 416 NW2d 117 (1987). At trial, defendant objected on relevancy grounds. We will review an unpreserved, nonconstitutional issue if there was error, the error was plain and the error affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), citing *United States v Olano*, 507 US 725; 113 S Ct 1770; 123 L Ed 2d 508 (1993). An error affects substantial rights if it impacted the outcome of the lower court proceedings. *People v Grant*, 445 Mich 535, 552-553; 520 NW2d 123 (1994).

Review of this issue is unnecessary because the erroneous admission of the threat evidence did not affect defendant's substantial rights. The testimony about defendant's threats of retaliation was brief and nonspecific to the incident on trial, the witness, when asked by the court, stated that defendant did not threaten him regarding his testimony at trial, and the testimony at issue was cumulative to that of the victim's.

Second, defendant argues that the prosecutor failed to give notice of other bad acts as required by MRE 404(b)(2) before eliciting testimony about threats defendant made and before eliciting not only a witness' testimony about other alleged victims but also the victim's testimony about other alleged victims. We disagree.

With regard to the testimony about threats made by defendant and the witness' testimony about other alleged victims, defendant failed to timely and specifically object to the prosecutor's failure to file notice pursuant to MRE 404(b)(2). *Tringali, supra* at 306. Again, we will review an unpreserved, nonconstitutional issue if there was error, the error was plain and the error affected substantial rights. *Carines, supra* at 463.

Review of the testimony about threats made by defendant is unnecessary given the general nature of the testimony and because the prosecutor's failure to provide reasonable notice did not affect defendant's substantial rights. Furthermore, review of the witness' testimony about other alleged victims is unnecessary because there was no plain error. The notice requirement of MRE 404(b)(2) only applies to "other acts" evidence that the prosecutor intends to introduce at trial. *People v VanderVliet*, 444 Mich 52, 89; 508 NW2d 114 (1993), modified 445 Mich 1205; 520 NW2d 338 (1994). The record indicates that the prosecutor did not intend to elicit the testimony about other alleged victims. Instead, the testimony was volunteered information pursuant to a proper question, and the prosecutor took steps to prevent the witness from discussing the other women who allegedly claimed defendant assaulted them too. In the context of determining whether a mistrial should have been granted, this Court has held that unresponsive volunteered answers to proper questions are not grounds for a mistrial because the prosecutor can not and does not expect the improper response. *People v Griffin*, 235 Mich App 27, 36-37; 597 NW2d 176 (1999). Therefore, review of this issue is unnecessary.

The third instance of alleged error concerns the victim's testimony about other alleged victims. Determining whether the prosecutor complied with the court rules is a question of law that we review de novo. See *Bennett v Weitz*, 220 Mich App 295, 299; 559 NW2d 354 (1996).

Again, the notice requirement of MRE 404(b)(2) applies to "other acts" evidence that the prosecutor intends to introduce at trial. *VanderVliet, supra*. The prosecutor did not intend to impermissibly elicit other acts in violation of MRE 404(B)(2). Instead, the testimony was volunteered information pursuant to a proper question. Furthermore, the testimony was immediately followed by a curative instruction from the trial court. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 513 NW2d 431 (1994). Because the prosecutor did not intend to elicit the testimony about other alleged victims, and the trial court immediately instructed the jurors to disregard the evidence, there was no error.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

I concur in result only.

/s/ Joel P. Hoekstra