

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH LAMARK SPRINGFIELD,

Defendant-Appellant.

UNPUBLISHED

December 18, 2001

No. 226575

Oakland Circuit Court

LC No. 98-163641-FH

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Defendant appeals as of right from jury convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced as an habitual offender, second offense, MCL 769.10, to prison terms of two to six years and two years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that he was denied a fair trial due to prosecutorial misconduct as a result of the prosecutor's improper injection of inadmissible character evidence. Claims of prosecutorial misconduct are decided on a case-by-case basis. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). This Court examines the record and evaluates the alleged improper remarks in context to determine whether the defendant was denied a fair and impartial trial. *Id.*

The prosecutor's opening statement constituted fair comment on her theory of the case and the evidence to be presented. *People v Moss*, 70 Mich App 18, 32; 245 NW2d 389 (1976) (Kelly, J., concurring), *aff'd sub nom People v Tilley*, 405 Mich 38 (1979). Even if the statement was improper, the court's instruction that opening statements and closing arguments are not evidence was sufficient to dispel any prejudice. *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995). Therefore, defendant has failed to establish that this unpreserved issue entitles him to relief. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

In response to a proper question, a police officer volunteered that defendant had been arrested for another episode of domestic violence. Defendant also failed to preserve this issue by

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

objecting on the same ground asserted on appeal. *People v Aguwa*, 245 Mich App 1, 6; 626 NW2d 176 (2001).

An unresponsive answer to a proper question is not usually error, *People v Measles*, 59 Mich App 641, 643; 230 NW2d 10 (1975), and does not provide a basis for relief absent some evidence that the prosecutor conspired with or encouraged the witness to give the testimony at issue. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). However, this Court will scrutinize unresponsive remarks made by police officers, who have a special obligation not to venture into forbidden areas. *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983). Although the officer's remark was prejudicial, defendant did not object but requested a cautionary instruction and the court later instructed the jury that it was not to consider the evidence for any purpose. By accepting a cautionary instruction, defendant received his relief. *People v Miller (After Remand)*, 211 Mich App 30, 42-43; 535 NW2d 518 (1995).

Finally, defendant claims error with respect to the introduction of expert testimony on battered woman syndrome. Defendant failed to preserve this issue by objecting to the testimony below. MRE 103(a)(1); *People v Welch*, 226 Mich App 461, 464; 574 NW2d 682 (1997). In any event, there was no error. Because the victim recanted her original statements to the police and claimed that she herself was responsible for her injury, expert testimony regarding the generalities or characteristics of battered woman syndrome was admissible in rebuttal. *People v Christel*, 449 Mich 578, 592-593; 537 NW2d 194 (1995); *People v Daoust*, 228 Mich App 1, 10-11; 577 NW2d 179 (1998).

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post