STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 22, 2002
V	Nos. 228032, 228033 Wayne Circuit Court
FRANCHOT PRATHER, Defendant-Appellant.	LC Nos. 99-007281 99-007235

Before: O'Connell, P.J., and White and Cooper, JJ.

PER CURIAM.

Defendant was convicted in two separate bench trials of one count of unarmed robbery, MCL 750.530, (No. 228032), and of three counts of felonious assault, MCL 750.82, and one count of felony-firearm, MCL 750.227b(1), (No. 228033). Defendant was sentenced to six to fifteen years' imprisonment for the unarmed robbery, two to four years' for each of the felonious assaults, and a consecutive two-year sentence on the felony-firearm count. We affirm.

In No. 228032, defendant argues that the evidence at trial was insufficient to convict him of unarmed robbery. We disagree. Review of the sufficiency of the evidence in a criminal case is de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). When reviewing an appeal based on insufficiency of the evidence, this Court must determine whether sufficient evidence was presented to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The facts in evidence, including factual conflicts, are viewed in a light most favorable to the prosecution. *Id.*

Unarmed robbery is defined in MCL 750.530 as follows:

> Any person who shall, by force and violence, or by assault or putting in fear, feloniously rob, steal and take from the person of another, or in his presence, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 15 years.

The evidence at trial was sufficient to establish that an assault with force and violence took place. There was testimony that defendant kicked open the complainant's bedroom door, awoke him by kicking him, summoned him to the living room where he repeatedly punched him, threw a bottle at him, and punched him again after the complainant fell to a kneeling position.

The testimony supported that when, about fifteen minutes later, defendant approached the complainant and demanded money, the complainant was in fear of defendant, and gave defendant the money because he was afraid. Thus, whatever defendant's intent in initiating the assault, there was sufficient evidence that the stealing or taking was accomplished by violence or fear. Thus, there was sufficient evidence to convict defendant of unarmed robbery.

In No. 228033, defendant argues that the trial court erred in denying his motion for mistrial after the erroneous admission of testimony regarding defendant's alleged prior bad acts. This Court reviews a trial court's decision to deny a motion for mistrial for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). We find no reversible error.

The first two items of challenged testimony were nonresponsive, volunteered answers to proper questions. A voluntary and unresponsive statement does not ordinarily constitute error. *People v Kelsey*, 303 Mich 715, 717; 7 NW2d 120 (1942). This type of testimony is not cause for granting a mistrial. *People v Yarbrough*, 86 Mich App 105, 108; 272 NW2d 345 (1978). Instead, the grant or denial of a motion for a mistrial is within the sound discretion of the trial court, and absent a showing of prejudice, reversal is not warranted. *People v Wells*, 238 Mich App 383, 390; 605 NW2d 374 (1999). The trial court's ruling must be so grossly in error that it deprives the defendant of a fair trial or amounts to a miscarriage of justice. *Id*. In this case, when the challenged testimony is viewed in context, it is apparent that defendant was not deprived of a fair and impartial trial. There was ample evidence of defendant's guilt, and this trial ended as a bench trial, which effectively removed the effect of any potential prejudice.

The third item of testimony challenged by defendant referred to his arrest earlier on the same day the complainant filed a police report against him leading to the instant case. Pursuant to MRE 404(b), evidence of other crimes or wrongs "is not admissible to prove the character of a person in order to show action in conformity therewith." *People v Knapp*, 244 Mich App 361, 377; 624 NW2d 227 (2001). However, other acts evidence may be admissible "for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material." MRE 404(b). Other acts evidence must be offered for a proper purpose under the rule, the evidence must be relevant, and its probative value must not be substantially outweighed by unfair prejudice. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401.

This testimony was relevant and admissible to explain why the complainant, defendant's girlfriend, did not report the assaults until almost two weeks later, when defendant was arrested after a different incident. MRE 404(b); *VanderVliet, supra* at 55. Further, the probative value of the evidence at issue was not outweighed by the danger of unfair prejudice because the case was decided by the judge, not a jury. Judges are routinely exposed to evidence that is potentially prejudicial or inadmissible yet, in the absence of proof to the contrary, it is presumed that they will follow the law. *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971). The trial court did not err in denying defendant's request for a mistrial.

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Jessica R. Cooper