

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH COLBERT,

Defendant-Appellant.

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UNPUBLISHED

August 23, 2002

No. 233225

Wayne Circuit Court

LC No. 99-003964-01

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a jury conviction of unarmed robbery, MCL 750.530, for which he was sentenced to five to fifteen years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was granted leave to appeal the trial court's denial of his motion for a mistrial. We review the trial court's ruling for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001).

"A motion for a mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant's ability to get a fair trial." *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995). 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 justify a mistrial absent some evidence that the prosecutor knew in advance that the witness would give the unresponsive testimony or 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).

Here, the prosecutor's questions were not in themselves improper. The officers' statements that defendant had been arrested on another charge were improper, but there is no claim or evidence implicating the prosecutor in their decision to offer the unresponsive statements and the other charge was never mentioned again, which weighs against declaration of a mistrial. *People v Griffin*, 235 Mich App 27, 37; 597 NW2d 176 (1999).

In addition, there was no dispute that defendant was guilty of a crime; defendant admitted in his closing statement that he was guilty of a larceny. The only issue for the jury to determine was whether he did anything to place the victim in fear when he demanded the money, thus raising the offense to unarmed robbery.

Because there was no evidence that the other offense was an assaultive crime or one involving the use of force or violence against another person, it did nothing to enhance the victim's credibility on the crucial element. See *Holly, supra* at 416. Accordingly, we conclude that the officers' statements were not so prejudicial as to deny defendant a fair trial and thus the trial court did not abuse its discretion in denying his motion for a mistrial.

Defendant has raised several other claims of error in a supplemental brief. The issues raised therein are not properly before this Court as they are beyond the scope of the order granting leave to appeal. *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 324-325; 503 NW2d 758 (1993). Further, we have examined defendant's claims and find them to be without merit. Defendant's waiver of counsel was unequivocal; advisory counsel did not impinge on defendant's Sixth Amendment right to self representation; the court's response to the jury's request for testimony was appropriate; the written communication with the jury was administrative, and no prejudice has been shown; and the court properly denied defendant's motion for a new trial.

Affirmed.

/s/ Helene N. White  
/s/ Janet T. Neff  
/s/ Kathleen Jansen