

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY LEE MORTON,

Defendant-Appellant.

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UNPUBLISHED

December 21, 2004

No. 249962

Oakland Circuit Court

LC No. 03-189313-FH

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Defendant was charged with and convicted of assaulting, resisting and obstructing a police officer, MCL 750.81d(1), and second-degree retail fraud, MCL 750.356d. He was sentenced to eighteen months to fifteen years in prison for the assaulting, resisting and obstructing a police officer conviction, and 112 days in jail for the second-degree retail fraud conviction. He appeals as of right, requesting that certain language be stricken from his presentence report. We affirm the trial court's order denying defendant's motion to correct the presentence report. This case is being decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

On March 4, 2003, defendant was seen fleeing a CVS store subsequent to an alarm going off. Officer Witte and CVS loss prevention officer, Moner, attempted to detain defendant. Witte and Moner surrounded defendant and while Witte attempted to handcuff defendant, he was elbowed by defendant's flailing arms. In addition, defendant was found responsible for officer Witte's knee injury. Defendant claims that the trial court abused its discretion by refusing to delete the following language from the presentence report: "the officer was knocked off balance and struck his right knee on the bumper of a car."

**II. STANDARD OF REVIEW**

When reviewing a sentencing court's response to a claim of inaccuracy in a presentence report, this Court reviews for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). "An abuse of discretion is found when the trial court's decision is so grossly contrary to fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, or when an unprejudiced person, considering the facts on which

the trial court acted, would say that there was no justification or excuse for the ruling.” *People v Callon*, 256 Mich App 312, 326; 662 NW2d 501 (2003).

Once a defendant challenges the contents of the presentence report, the prosecutor must prove by a preponderance of the evidence that the facts are as asserted. *People v Ratkov (On Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993). If the court finds the challenged information to be inaccurate, the defendant is entitled to have the information stricken from the report. *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993). If the record provides insufficient evidence upon which to base a decision, the court may order the presentation of further proofs. *Ratkov, supra*, 201 Mich App 126. A court may consider all record evidence before it, including, but not limited to, testimony taken at a preliminary examination or trial. *Id.* at 125. Sentencing and presentence reports have a very broad scope. When judges deal with sentencing, there exists no requirement that the facts that form the basis of their sentencing decisions are found by the trier of fact. *Id.*

### III. ANALYSIS

Defendant is not entitled to have the contested statement stricken from the presentence report because, on remand, the trial judge did not abuse his discretion when he found the contested statement to be accurate. Defendant presented Miller’s testimony that Witte bumped his right knee on the bumper when he was going around the car and that defendant did not cause Witte’s injury. This testimony tended to show that the contested statement was inaccurate. However, the prosecutor presented evidence that Miller had a somewhat limited view of the incident, that in Miller’s police report he stated that Witte bumped his knee while he was trying to detain defendant, and that, at the preliminary examination, Witte testified that he “smashed” his knee into the corner of the bumper because of defendant’s resistance during the handcuffing process. Since this evidence tended to show that the contested statement is accurate, we conclude that the trial judge did not abuse his discretion when he found that the prosecutor proved that the contested statement was accurate by a preponderance of the evidence.

Affirmed.

/s/ Patrick M. Meter  
/s/ Kurtis T. Wilder  
/s/ Bill Schuette