

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLEN JAY RHYNDRESS,

Defendant-Appellant.

---

UNPUBLISHED

October 9, 2008

No. 278811

Otsego Circuit Court

LC No. 06-003664-FH

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of larceny in a building, MCL 750.360, and was sentenced as a fourth habitual offender, MCL 769.12, to one-and-a-half to fifteen years' imprisonment. Defendant appeals as of right. We affirm defendant's conviction and sentence, but remand for a determination by the trial court that a corrected version of the presentence investigation report (PSIR) is on file with the Department of Corrections. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first asserts that the trial court violated his due process right to an impartial jury by permitting the jurors to submit questions for witnesses during the trial. Because defendant did not object to either the court's instruction that allowed the jurors to ask questions or to any specific questions submitted by the jury, this issue is unpreserved. Accordingly, we review the issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

During trial, the trial court instructed the jurors that they may submit questions in writing at the conclusion of the attorneys' questioning of each witness. The trial court indicated it would review each question for compliance with evidentiary rules before it asked the witness the question.

In *People v Heard*, 388 Mich 182, 187; 200 NW2d 73 (1972), our Supreme Court held that "[t]he practice of permitting questions to witnesses propounded by jurors should rest in the sound discretion of the trial court." Despite defendant's assertion that "[a]s a matter of law reform, this practice should stop," this Court is bound by the Supreme Court's decision in *Heard*. See *Paige v Sterling Hts*, 476 Mich 495, 524; 720 NW2d 219 (2006).

Furthermore, defendant has failed to demonstrate that plain error occurred in this case. The jury submitted questions to two of the witnesses. The trial court implemented an appropriate procedure for the jury to submit these questions. The jurors submitted their questions in writing to the judge, they were reviewed for admissibility by the judge off the record before being presented to the witnesses, and the judge allowed counsel to ask questions of the witnesses after each of the jurors' questions were asked. There is no evidence that the substance of the questions posed to the witnesses was prejudicial to defendant. *People v Stout*, 116 Mich App 726, 733; 323 NW2d 532 (1982).

Because the trial court had the discretion to allow the jurors to submit questions, and a review of the questions presented reveals that they do not reflect juror bias or prejudice, defendant has not shown plain error.

Defendant next contends that this matter should be remanded for correction of his PSIR. When a defendant challenges the factual accuracy of information contained in the presentence report, the trial court has a duty to resolve the challenge. *People v McAllister*, 241 Mich App 466, 473; 616 NW2d 203 (2000), remanded in part on other grounds 465 Mich 884 (2001). In response to the challenge, the court may determine the accuracy of the information, accept the defendant's version, or disregard the challenged information. *People v Newcomb*, 190 Mich App 424, 427; 476 NW2d 749 (1991), overruled on other grounds *People v Randolph*, 466 Mich 532; 648 NW2d 164 (2002); MCR 6.425(E)(2). If the court finds the contested information to be inaccurate or irrelevant, the court must make its finding on the record and must either correct the information or delete it from the report. MCL 771.14(6); MCR 6.425(E)(2)(a).

Appended to the prosecutor's appeal brief is an updated version of the PSIR that contains the amendments sought by defendant. Although the prosecutor represents that he was informed that the Department of Corrections also received a corrected copy, there is no indication in the record of this being so. Under the circumstances, we remand the matter to the trial court to simply determine that a corrected copy of the PSIR is on file with the Department of Corrections.

We affirm, but remand for a determination by the trial court that the corrected PSIR is on file with the Department of Corrections. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio