

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUGENE MOTEN, III,

Defendant-Appellant.

UNPUBLISHED

July 30, 2002

No. 230663

Saginaw Circuit Court

LC No. 00-018739-FH

Before: Bandstra, P.J., and Hoekstra and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction on a charge of domestic violence, third offense, MCL 750.81(4). We affirm.

Defendant first argues that the prosecutor committed misconduct by improperly bolstering a prosecution witness and undermining defendant’s credibility. Because defendant failed to preserve this issue, our review is precluded unless an objection could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Because we conclude that the prosecutor made no improper statements, a miscarriage of justice would not result from our failure to review this issue.

Defendant next argues that the trial court erred in denying his motion for mistrial based on a witness’s references to defendant’s previous prison terms. We disagree. A trial court’s denial of a motion for mistrial is reviewed for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001).

“As a general rule, unresponsive testimony by a prosecution witness does not justify a mistrial unless the prosecutor knew in advance that the witness would give the unresponsive testimony or the prosecutor conspired with or encouraged the witness to give that testimony.” *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). We find nothing in the record to indicate the prosecution knew the witness would state that defendant had previously been imprisoned, or that it conspired with or encouraged the witness to provide that testimony. Indeed, defendant concedes the witness’s statements were volunteered and unresponsive. Accordingly, the trial court did not err in denying defendant’s motion. This is especially true

where, as here, defendant rejected the opportunity to have the jury charged with a cautionary instruction. *People v Lumsden*, 168 Mich App 286, 298-299; 423 NW2d 645 (1988).

We affirm.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell