

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LAMAR GRAY,

Defendant-Appellant.

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UNPUBLISHED

August 6, 1996

No. 182144

LC No. 94-004216

Before: Marilyn Kelly, P.J., and MacKenzie and R.J. Ernst\*, JJ.

MEMORANDUM.

Defendant appeals as of right from his jury trial conviction of entering without breaking, MCL 750.111; MSA 28.306. Defendant was sentenced to three to five years' imprisonment. We affirm.

Defendant argues that the trial court abused its discretion by denying his motion for a mistrial. We disagree. Although the trial court and the prosecution had agreed that defendant's prior criminal history would not be brought up in the course of trial, a lay witness, in an unresponsive answer to a proper question by the prosecutor, mentioned that he "knew [defendant] had been released from prison". A mistrial will be granted only when the error is so egregious that its prejudicial effect can be removed in no other way than by granting a mistrial. *People v Gonzales*, 193 Mich App 263; 483 NW2d 458 (1992); *People v Von Everett*, 156 Mich App 615, 623; 402 NW2d 773 (1986). No such prejudice resulted here, where the single comment was unresponsive.

Defendant also argues that the trial court abused its discretion in assessing one point under Offense Variable 17 (aggregate value of property obtained, damaged or destroyed). We disagree. Because there was evidence on the record to support the trial court's determination that the value of the property stolen was over \$200, we find no abuse of discretion in the scoring of OV 17. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Marilyn Kelly

/s/ Barbara B. MacKenzie

/s/ Richard J. Ernst