

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK DANIEL LEMCKE,

Defendant-Appellant.

UNPUBLISHED
October 31, 1997

No. 186478
Montmorency Circuit Court
LC No. 94-000854 FH

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant was convicted of operating a motor vehicle while under the influence of intoxicating liquor, third offense, MCL 257.625(6), (10); MSA 9.2325(6), (10), and operating a motor vehicle while under a license revocation, MCL 257.904(1); MSA 9.2604(1). Defendant appeals as of right. We affirm.

Defendant argues that he was deprived of a fair trial by four specific instances of judicial misconduct. Because defendant failed to properly preserve this issue by timely objection below, appellate review is forfeited unless defendant establishes the existence of plain error that was outcome determinative. *People v Grant*, 445 Mich 535, 548-549, 552-553; 520 NW2d 123 (1994); *People v Sardy*, 216 Mich App 111, 117-118; 549 NW2d 23 (1996). First, contrary to defendant's argument, the trial court made no comments during its preliminary instructions to the jury from which the jury could infer that the court was partial to one party over the other. Thus, defendant has failed to show that the trial court's comment pierced the veil of judicial impartiality. *Lansing v Hartsuff*, 213 Mich App 338, 349; 539 NW2d 781 (1995); *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988). Second, the trial court did not pierce the veil of judicial impartiality when it interrupted defense counsel's opening statement where the interruption prevented counsel from injecting irrelevant information into the proceedings. *People v Mills*, 450 Mich 61, 66-68; 537 NW2d 909 (1995); *Ambrose v Detroit Edison Co*, 380 Mich 445, 456; 157 NW2d 232 (1968). Third, although the trial court's admonishments of defense counsel were imprudent at times, we are not persuaded that they were likely to have influenced the jury in a manner detrimental to defendant. *Collier, supra*; *People v Jackson*, 98 Mich App 735, 739-741; 296 NW2d 348 (1980). Finally, the trial court did not pierce

the veil of judicial impartiality when it instructed the jury that defendant had conceded the existence of the first three elements of the OUIL offense. A trial court may inform the jury that a fact has been established if the defendant admits its occurrence. *People v Pratt*, 251 Mich 243, 246-247; 231 NW 564 (1930); *People v Hamer*, 19 Mich App 318, 320; 172 NW2d 487 (1969). Moreover, because the court did not instruct the jury that the fourth element had been established or that the offense of OUIL had been established, the instruction given did not irrevocably take from the jury the issue of defendant's guilt or innocence. *People v Turrell*, 25 Mich App 646, 647-648; 181 NW2d 655 (1970).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs