

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED
March 24, 1998

Plaintiff-Appellee,

v

No. 199281
Oakland Circuit Court
LC No. 94-135948-FH

TODD M. SCRIMA,

Defendant-Appellant.

Before: Hoekstra, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of obtaining money by false pretenses over \$100, MCL 750.218; MSA 28.415. He was sentenced to five years' probation. Defendant now appeals as of right. We affirm.

First, defendant argues that the trial judge gave an erroneous jury instruction during the trial. During cross-examination of the complaining witness, the trial court instructed the jury that it "should not concern itself" with whether or not defendant had repaid the victim. Defendant argues that the amount of money paid back on the loan would have been relevant to show his lack of intent to defraud. We disagree.

The essential elements of the offense of obtaining money by false pretenses are (1) a false representation as to an existing fact; (2) knowledge by defendant of the falsity of the representation; (3) use of the false representation with an intent to deceive; and (4) detrimental reliance on the false representation by the victim. *In re People v Jory*, 443 Mich 403, 412; 505 NW2d 228 (1993). The crime of false pretenses is complete when a victim relies upon a defendant's misrepresentation and passes title in reliance on that misrepresentation. *People v Phebus*, 116 Mich App 416, 420; 323 NW2d 423 (1982). Thus, the crime in this case was complete when defendant obtained the loan; his later action could not undo it. We conclude that the trial court's instruction regarding repayment was proper.¹

Defendant also contends that because he intended to repay the loan, there was no intent to defraud. We disagree. Defendant's intent to repay the ill-gotten funds, whether formed before or after he obtained the loan, was irrelevant. See *People v Peach*, 174 Mich App 419, 428-429; 437 NW2d 9 (1989).

In connection with this issue, defendant also claims that the trial court erred in denying him the opportunity to cross-examine the complaining witness on the issue of repayment of the loan. This argument is not preserved for appellate review because defendant failed to identify it in his statement of questions presented. MCR 7.212(C)(5); *People v Yarger*, 193 Mich App 532, 540 n 3; 485 NW2d 119 (1992). Even were this issue preserved, it is without merit. As noted above, evidence regarding repayment of the loan was irrelevant. The trial court did not abuse its discretion in limiting defendant's cross-examination in this area.

Finally, defendant argues that there was insufficient evidence to support his conviction of false pretenses. We disagree. When reviewing the sufficiency of the evidence in a jury trial, we consider the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified on other grounds 441 Mich 1201 (1992).

Defendant argues that his representation that he owned the property was insufficient to support his prosecution for false pretenses because, at the time of the representation, he had an equitable interest in the property under the purchase agreement. However, an equitable interest alone is insufficient to justify a representation of ownership; defendant must also have had some kind of legally cognizable title to the property. *Jory, supra* at 420. After reviewing the evidence in this case, we conclude that there was sufficient evidence to support defendant's conviction.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Myron H. Wahls

/s/ Roman S. Gribbs

¹ Defendant argues that his repayment of the loan was evidence of his intent, at the time of the crime, to repay the loan. However, as noted below, his intent to repay the loan was irrelevant. It was defendant's intent to obtain the loan by false pretenses that was at issue.