# STATE OF MICHIGAN

# COURT OF APPEALS

| | |
|---|---|
| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>January 16, 2001 |
| v | No. 218220<br>Oakland Circuit Court |
| JESS ALVIN SHELTON,<br><br>Defendant-Appellant. | LC No. 97-156681-FH |

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Defendant Jess Alvin Shelton appeals as of right from a jury conviction of larceny in a building,[1] for which he was sentenced as an habitual offender, third offense,[2] to eighteen months' probation. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

## I. Basic Facts And Procedural History

The testimony at trial showed that sometime in October 1997, Shelton was on the custodial staff at Oakland University and that he worked in West Vandenberg Hall, a dormitory for honors students. Each residential floor had a student lounge furnished with couches, chairs, and tables. One Friday afternoon, Shelton was seen taking a couch out of the building, placing it in the back of a university stake truck and driving away with it. It was later discovered that an identical couch was missing from the sixth floor lounge. Shelton's supervisor testified that he never instructed Shelton to remove the couch from the building. Witnesses guessed the incident occurred on October 17th or 24th. A security camera tape from the 24th did not show the couch being removed. The police later tried to obtain the tape from the 17th, only to learn that it had been recycled.

[1] MCL 750.360; MSA 28.59.

[2] MCL 769.11; MSA 28.1083.

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

At trial, Shelton denied removing the couch. Shelton implied that one person could not remove the couch from the building, stating that it was a difficult task even with two people. In rebuttal, a police officer testified that he moved a couch from the sixth floor to the parking lot by himself in five minutes. Following closing arguments and instructions, the jury found Shelton guilty as charged.

During the trial, the prosecutor elicited testimony, without objection, that West Vandenberg Hall was an honors dorm and that to live in the honors dorm a student had to maintain a 3.0 grade point average and take part in various educational and social functions. The prosecutor then referred to this testimony during closing argument, again without objection. He stated:

> The judge will tell you, you'll have to make a decision as to credibility. And, I'd suggest to you that based on what we've heard these two students of Oakland University who live in the honors hall have better things to do than to make up stories for no apparent reason.
>
> I suggest to you that what they saw is exactly what happened. They saw that defendant take a couch that didn't belong to him, load it on to a truck and drive away. And, if you believe those students, if you believe they saw what they say they saw, I'd suggest to you if you follow the law the defendant has completed the crime of Larceny in a Building. And, you have the duty as jurors if you find that evidence believable to convict the defendant for that crime. I suggest to you that would be the right thing to do based on the law and the evidence you heard and the only decision you could then make . . . .

## II. Prosecutorial Misconduct.

### A. Standard Of Review

Shelton contends that the prosecutor engaged in misconduct by improperly vouching for his witnesses' credibility. He failed to preserve this issue for appeal by objecting to the allegedly improper argument.[3] Accordingly, Shelton must demonstrate that this was a plain error affecting his substantial rights in order to be entitled to relief.[4]

### B. The Prosecutor's Statements

Our review of the record convinces us that that prosecutor did not vouch for these witnesses' credibility. Rather, the prosecutor properly argued from the facts that these witnesses should be believed because they had no reason to make up a story about defendant committing the crime.[5] In addition, even if the prosecutor's statements were improper, the trial court's

[3] *People v Schuette*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

[4] *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

[5] *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997); *People v Wise*, 134 Mich App 82, 104; 351 NW2d 255 (1984).

preliminary and final instructions that it was up to the jury to decide which witnesses to believe and that the lawyers' arguments were not evidence was sufficient to dispel any prejudice[6] and a prompt and specific instruction would have cured any error.[7] Accordingly, we conclude that Shelton has not proved that the sort of error meriting reversal occurred in this case.

## III. Right Not To Testify

### A. Standard Of Review

Shelton contends that before he took the stand, the trial court should have advised him of his constitutional rights not to testify or have his silence used against him. We review questions concerning constitutional law de novo.[8]

### B. The Trial Court's Obligation

The law in this area is well-settled. "Where a defendant has the assistance of trial counsel, the court need not sua sponte advise him of those constitutional rights."[9] We therefore conclude that the trial court here had no obligation to advise Shelton of his right not to testify and of his right not to have his silence used against him.

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

---

[6] People v *Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995).

[7] *People v McElhaney*, 215 Mich App 269, 284; 545 NW2d 18 (1996).

[8] *In re Carey*, 241 Mich App 222, 226; 615 NW2d 742 (2000).

[9] *People v Johnson*, 168 Mich App 581, 585-586; 425 NW2d 187 (1988); *People v Martin*, 150 Mich App 630, 640; 389 NW2d 713 (1986).