

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EPSOM JOHNSON, III.,

Defendant-Appellant.

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UNPUBLISHED

February 17, 1998

No. 196893

Washtenaw Circuit Court

LC No. 95-005317 FH

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison\*, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction for larceny by conversion over \$100, MCL 750.362; MSA 28.594. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant first contends that the prosecutor deprived him of a fair trial when, during opening argument, the prosecutor apprised the jury that, to avoid shifting the burden of proof improperly onto defendant, the prosecution could not comment on possible defenses, defendant now contending that this statement did just what the prosecutor said could not and should not be done. There was, however, no objection and defendant fails to identify how the statement actually prejudiced the defense. Absent timely objection which would have given the circuit court an opportunity to obviate any possible prejudice by curative instruction, the issue is not preserved and the conduct did not rise to the level of error requiring reversal. *People v Bahoda*, 448 Mich 261, 285; 531 NW2d 659 (1995).

Defendant next argues that the trial court erred in allowing him to be impeached on the basis of a prior conviction for receiving and concealing stolen property. Inasmuch as defendant failed to testify in his own defense, however, this issue is not cognizable as a basis for appellate relief. *People v Finley*, 431 Mich 506; 431 NW2d 19 (1988). In any event, impeachment on the basis of this crime under MRE 609 is permissible. *People v Clark*, 172 Mich App 407, 418-419; 432 NW2d 726 (1988).

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

Finally, defendant contends that the trial court erred in instructing the jury, over objection, that if it found defendant had made a false statement to the police at the time of his arrest, it could infer from the fact of falsehood that this was evidence of defendant's guilt of the crime charged. This instruction was not, however, erroneous. *People v Welford*, 189 Mich App 478, 481-482; 473 NW2d 767 (1991); *Wright v West*, 505 US 277, 296; 112 S Ct 2482; 120 L Ed 2d 225 (1992).

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison