STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY THACKER,

Defendant-Appellant.

UNPUBLISHED
September 8, 1998

No. 202451
Recorder's Court
LC No. 96-003172

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of unarmed robbery, MCL 750.530; MSA 28.798. He contends that he was deprived of a fair trial when, in rebuttal, the prosecution introduced expert testimony to the effect that defendant "probably understood" his *Miranda*[1] rights in confessing his involvement in this and another robbery (the subject of defendant's application for delayed appeal in Docket No. 207821) when subjected to custodial interrogation by the police. We affirm.

There was no objection to the introduction of this evidence, and this is therefore unpreserved, nonconstitutional error. To obtain appellate relief, in this situation defendant has forfeited any right to appellate relief unless the error was so substantial that it affected his substantial rights in a way that was likely outcome determinative. *People v Grant*, 445 Mich 535, 552-553; 520 NW2d 123 (1994).

Under this standard, to obtain appellate relief defendant must first establish that the admission of this evidence was erroneous. He fails in this task at the threshold. Before the prosecution introduced such expert testimony in rebuttal, defendant himself introduced, in the defense case-in-chief, the testimony of Steven W. Perkins as an expert witness, who opined that [1]defendant "probably did not" understand his *Miranda* rights. The evidentiary principle is well established in this State that when

> evidence which might be inadmissible under strict rules is nevertheless introduced into the case through inadvertence or otherwise … the adverse party is entitled to introduce

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[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966); 10 Ohio Misc 9; 36 Ohio Ops 2d 237; 10 ALR 3d 974 (1966).

> evidence on the same matters lest he be prejudiced. The party who first introduces improper evidence cannot object to the admission of evidence from the adverse party relating to the same matter.

31A CJS, Evidence, § 190, pp 509-512, adopted in *Grist v The Upjohn Co*, 16 Mich App 462, 482-483; 168 NW2d 389 (1969). Accord: *Warren v McLouth Steel Corp*, 111 Mich App 496, 500-501; 314 NW2d 666 (1981); *Young v E W Bliss Co*, 130 Mich App 363, 370-371; 343 NW2d 553 (1983). Since it was defendant who initially "opened the door", he will not be heard to complain that the credibility and weight of the evidence he introduced on this point was contradicted by an opposing witness. Furthermore, even assuming arguendo we are nonetheless compelled to proceed to the next step to evaluate possible prejudice, in light of the strength of the evidence, including defendant's fingerprint being found in a highly incriminating location for which there was no innocent explanation, we further conclude that defendant has failed to establish that, assuming error, his substantial rights were prejudiced.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Myron H. Wahls
/s/ Mark J. Cavanagh

[1]