

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN JOSEPH LENDZION ,

Defendant-Appellant.

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UNPUBLISHED

October 2, 1998

No. 204377

Macomb Circuit Court

LC No. 96-002899 FH

Before: Gribbs, P.J., and Sawyer and Doctoroff, JJ.

PER CURIAM.

Following a one-day jury trial, defendant was convicted of attempted larceny over \$100, MCL 750.356; MSA 28.588; MCL 750.92; MSA 28.287. Defendant was sentenced to twelve to thirty months' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecutor's remarks during his rebuttal and closing arguments denied him a fair trial. However, defendant neither objected to the prosecutor's statements nor requested curative instructions.<sup>1</sup> Therefore, appellate review of this issue is precluded unless the alleged misconduct was so egregious that no curative instruction could have removed the prejudice to defendant or if manifest injustice would result from our failure to review the alleged misconduct. *People v Launsberry*, 217 Mich App 358, 361; 551 NW2d 460 (1996); *People v Nantelle*, 215 Mich App 77, 87; 544 NW2d 667 (1996). After a contextual review of the prosecutor's comments, we find no impropriety. Moreover, any potentially prejudicial effects from the prosecutor's statements were cured by the court's instruction that the attorneys' statements were not evidence and that the jurors should only accept the comments supported by the evidence. Therefore, manifest injustice will not result from our failure to review the alleged misconduct.

Next, defendant argues in the alternative that he received ineffective assistance of counsel because his attorney failed to object to or request limiting instructions for the prosecutor's alleged misconduct. However, because there was no evidentiary hearing on this issue below, appellate review is limited to the record. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996).

To establish ineffective assistance of counsel, the defendant must show that his trial counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced the defendant as to deprive him of a fair trial. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). We have already concluded that the allegedly improper prosecutorial comments were either unobjectionable or permissible. Defendant cannot base his claim of ineffective assistance of counsel on his attorney's failure to advance meritless objections at trial. See *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 42 (1995); *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991); *People v Lyles*, 148 Mich App 583, 596; 385 NW2d 676 (1986). Moreover, defendant has not overcome the presumption that counsel's failure to object or ask for instructions was sound trial strategy, intended to avoid emphasizing unfavorable comments to the jury. *People v Sardy*, 216 Mich App 111, 116; 549 NW2d 23 (1996); *People v Lawless*, 136 Mich App 628, 635; 357 NW2d 724 (1984). Finally, in light of evidence placing defendant at the scene of the crime, as well as the testimony of two witnesses who identified defendant as one of the men in the truck, defendant has not shown that he was prejudiced by counsel's alleged errors.

Affirmed.

/s/ Roman S. Gibbs

/s/ David H. Sawyer

/s/ Martin M. Doctoroff

<sup>1</sup> At trial, defendant objected to one of the prosecutor's remarks, but on a different ground than that asserted on appeal. Therefore, the objection did not preserve this issue for appeal. See *Nantelle*, *supra* at 77.