STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH ELIJA CLARK,

Defendant-Appellant.

UNPUBLISHED
January 14, 1997

No. 176440
LC No. 93-066691-FH

Before: Young, P.J., and Markey and D.A. Teeple,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted on an aiding and abetting theory of circulation of a wrongly held or obtained financial transaction device, MCL 750.157q; MSA 28.354(16). Defendant was sentenced to serve six months in jail. He appeals as of right. We affirm.

The evidence established that Kristine Ellis accidentally left her purse at defendant's home. Two days later, defendant's girlfriend made some purchases at a department store with Ellis' credit card. Defendant's girlfriend returned to the store with defendant later that day to purchase more merchandise. The two were apprehended by store security officers when they again attempted to use Ellis' credit card.

Defendant first argues that he was denied effective assistance of counsel because his trial attorney called defendant and his girlfriend to the stand, thus opening the door to their impeachment with prior inconsistent statements. The decision to call certain witnesses is apparently a matter of trial strategy that this Court will not second-guess. See, e.g., *People v Emerson (After Remand)*, 203 Mich App 345, 349; 512 NW2d 3 (1994). Defendant's counsel also failed to object to a police officer's summation of defendant's confession. This did not, however, constitute ineffective assistance because the officer did not editorialize during the summation, as in *People v McGillen #1*, 392 Mich 251, 263-264; 220 NW2d 677 (1974), and the statement was otherwise admissible. MRE 801(d)(2)(A).

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

Defendant next argues that he was denied a fair trial by the prosecutor's argument that the jury could infer that defendant knew his girlfriend possessed the credit card in light of their boyfriend/girlfriend relationship, the fact that they lived together, and because she had already given defendant expensive items purchased with the credit card. These arguments were permissible because they merely presented inferences to the jury that were based on facts established during the trial. *People v Viaene*, 119 Mich App 690, 697; 326 NW2d 607 (1982). Defendant also asserts that the prosecutor mischaracterized a portion of defense counsel's closing argument so as to suggest that defense counsel was attempting to deliberately mislead the jury. Our review of this argument discloses no such suggestion. Although the prosecutor's characterization was inaccurate, it was not a personal attack on counsel or the defendant's entire defense, as prohibited by *People v Dalessandro*, 165 Mich App 569, 580; 419 NW2d 609 (1988). Finally, defendant argues that the prosecutor introduced defendant's self-incriminating statements in violation of a discovery understanding. Because defendant made the statements himself and obviously had knowledge of them independent of the discovery process, defendant cannot succeed on this claim. *People v Taylor*, 159 Mich App 468, 487-488; 406 NW2d 859 (1987).

Defendant next claims that the trial court erred in admitting defendant's self-incriminating statements before the corpus delicti of his crime was established. We disagree. Our review of the record reveals that the evidence presented before the jury heard defendant's confession established both the occurrence of a specific injury -- the fraudulent circulation of another's credit card -- and that some criminal agency was the origin of this injury. *People v Ford*, 417 Mich 66, 75, 77; 331 NW2d 878 (1982); *People v Hilliard*, 160 Mich App 484, 486-488; 408 NW2d 482 (1987). This was sufficient to establish the corpus delicti and to permit the prosecution's introduction of defendant's incriminating statements. *People v Konrad*, 449 Mich 263, 269-270; 536 NW2d 517 (1995); *People v Cotton*, 191 Mich App 377, 394; 478 NW2d 681 (1991).

Defendant further asserts that his motion for a directed verdict of acquittal should have been granted because there was insufficient evidence of his knowledge of his girlfriend's intent to defraud or cheat. We disagree. Three department store security officers who observed defendant stated that he appeared to be very nervous when accompanying his girlfriend back to the store. They also testified that defendant and his girlfriend grabbed merchandise quickly without looking at price tags or sizes. One officer testified that when the store clerk took the stolen credit card into a back room defendant said, "Something is up, let's get out of here." Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that defendant's criminal intent was proven beyond a reasonable doubt. See *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

Finally, defendant claims that the cumulative weight of all the errors in his trial combined to create sufficient prejudice to deny him a fair trial. We find no substantial errors in defendant's trial that could have created such prejudice. *People v Rosales*, 160 Mich App 304, 313; 408 NW2d 140 (1987).

Affirmed.

/s/ Robert P. Young
/s/ Jane E. Markey
/s/ Donald A.Teeple