

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY T. DORRIS,

Defendant-Appellant.

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UNPUBLISHED  
October 30, 1998

No. 203762  
Wayne Circuit Court  
LC No. 96-503063

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals by right his convictions by jury of armed robbery, MCL 750.529; MSA 28.797, and fleeing and eluding a police officer, MCL 257.602a; MSA 9.2302(1). The trial court sentenced defendant to concurrent terms of imprisonment of three to fifteen years for armed robbery and one year for his fleeing and eluding conviction. We affirm.

This case arises from defendant's failed thievery. A security guard at a Meijer store in Van Buren Township observed defendant and codefendant Timothy Porter<sup>1</sup> open and then empty a package containing a cordless screwdriver. Defendant hid the screwdriver battery and a package of saw blades in the pockets of his pants. Security officers confronted defendant and codefendant when they attempted to leave the store and escorted them toward an office for questioning. As they walked, defendant refused the officers' request to keep his hands out of his pockets. The officers then attempted forcibly to remove defendant's hands from his pockets. Defendant drew a knife from his pocket during the struggle and attempted to slash one of the officers. Defendant and codefendant then ran from the store to their waiting car. Defendant drove the car out of the parking lot.

A Van Buren Township police officer patrolling in the area observed defendant's car shortly after it left the parking lot. The officer chased the car, eventually causing it to spin out of control and stop. Police officers then arrested defendant and codefendant. They retrieved the battery from defendant during a subsequent search of his person. The officers discovered four power tools in defendant's car.

Defendant first argues that he was denied the effective assistance of counsel by defense counsel's decision to concede his guilt of fleeing and eluding a police officer and first-degree retail fraud, MCL 750.356c; MSA 28.588(3). We disagree. To establish ineffective assistance of counsel, defendant must prove that counsel's performance fell below an objective standard of reasonableness and that the representation prejudiced him so as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). In doing so, however, defendant must overcome the presumption that the challenged action was sound trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Further, in this case, review is foreclosed unless the alleged deficiency is apparent on the record because defendant did not raise this issue below. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

We conclude that defendant received the effective assistance of counsel in this case. Trial counsel's decision to concede a defendant's guilt does not necessarily constitute ineffective assistance. *People v Walker*, 167 Mich App 377, 382; 422 NW2d 8 (1988), overruled in part on other grounds 456 Mich 693 (1998). Although trial counsel's concession that the defendant is guilty of the highest crime charged may constitute ineffective assistance if done without his consent, *People v Wise*, 134 Mich App 82, 97-99; 351 NW2d 255 (1984); *People v Schultz*, 85 Mich App 527, 532; 271 NW2d 305 (1978); see also *Wiley v Sanders*, 647 F2d 642 (CA 6, 1981), this Court will generally not second-guess counsel's trial strategy of admitting the defendant's guilt of a lesser offense. *People v Emerson (After Remand)*, 203 Mich App 345, 349; 512 NW2d 3 (1994); *Wise, supra* at 97-99. In this case, the evidence that defendant committed the offense of fleeing and eluding and the lesser offense of first-degree retail fraud was overwhelming. Counsel reasonably decided to concede defendant's guilt of these offenses in an effort to obtain an acquittal on the more serious armed robbery charge. We decline to second-guess counsel's reasonable strategic decision in this case. See *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Defendant next argues that the trial court erroneously instructed the jury that it could find defendant guilty of both felonious assault and first-degree retail fraud. Defendant, however, failed to preserve this issue by objecting below. *People v Kelly*, \_\_ Mich App \_\_, \_\_; \_\_ NW2d \_\_ (Docket No. 199995; issued 9/25/98), slip op p 9. No manifest injustice would result from our failure to review in this case because defense counsel requested the instruction. See *id.* Defendant may not assign error on appeal to something his counsel deemed proper at trial. *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998).

We likewise reject defendant's contention that the trial court denied him a fair trial in answering the jury's questions during deliberations. Because defendant failed to object below, we will consider this issue only if manifest injustice would result from our failure to review. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). No manifest injustice would result from our failure to review in this case because the trial court's remarks did not deprive defendant of a fair and impartial trial. *Id.* The trial court properly clarified the instructions in response to the jury's questions. *People v Martin*, 392 Mich 553, 558; 221 NW2d 336 (1974). The court's remarks did not reveal partiality or other bias and were not of a nature that would unduly influence the jury. *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988).

Finally, we reject, as wholly without merit, defendant's argument that the trial court erred in failing to ascertain whether he knowingly and intelligently waived his right to testify. A trial court need not elicit a waiver of a defendant's right to testify. *People v Bell*, 209 Mich App 273, 277; 530 NW2d 167 (1995).

Affirmed.

/s/ Maura D. Corrigan  
/s/ Martin M. Doctoroff  
/s/ E. Thomas Fitzgerald

<sup>1</sup> The jury found codefendant Timothy Porter guilty of larceny from a person, MCL 750.357; MSA 28.589. The trial court sentenced him to probation for three years. This Court dismissed codefendant's claim of appeal because of a lack of jurisdiction. *People v Porter*, unpublished order of the Michigan Court of Appeals issued September 4, 1997 (Docket No. 202414).