

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLINTON ALPHONSO NASH,

Defendant-Appellant.

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UNPUBLISHED

August 11, 2000

No. 213323

Macomb Circuit Court

LC No. 97-000220-FH

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of first-degree retail fraud, MCL 750.356c(2); MSA 28.588(3)(2), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with retail fraud on an aiding and abetting theory. John Polansky testified that defendant entered his store and requested a battery. Shortly thereafter, Justine Haltiner entered the store and exchanged a look and a word with defendant. Haltiner picked up a box containing a police scanner. As defendant moved to the rear of the store, Haltiner left without paying for the scanner. Defendant then exited the store. Polansky went outside and observed defendant and Haltiner sitting in a car together. He noted the license plate number, which he provided to the police. When police stopped the car, the scanner was found in the car. Haltiner testified that she alone took the scanner. In response to a question on cross-examination, Haltiner admitted that she and defendant were friends, but denied that they had ever dated. The jury convicted defendant as charged.

Defendant argues that he was denied a fair trial and due process as a result of prosecutorial misconduct. Defendant contends that the prosecutor's question to Haltiner regarding a dating relationship was without foundation, and inserted innuendo that likely resulted in his conviction. We disagree. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). Defendant did not object to the question; therefore, we review the issue only for plain error affecting a substantial right. *People v Carines*, 460 Mich 750, 761-762; 597 NW2d 130 (1999). The prosecutor's question went to possible bias, and thus was not improper. *People v Morton*, 213 Mich App 331, 334-335; 539

NW2d 771 (1995). The question did not suggest or imply that Haltiner testified as she did because she and defendant had a relationship that went beyond friendship. Other evidence was sufficient to support defendant's conviction. Even assuming arguendo that error occurred, defendant has not shown that it affected the outcome of the proceedings. *Carines, supra*.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that the representation so prejudiced the defendant that he was denied a fair trial. *People v Pickens*, 446 Mich 298, 313-314; 521 NW2d 797 (1994). Counsel is presumed to have afforded effective assistance; to overcome that presumption, a defendant must show that counsel's failure to perform an essential duty resulted in prejudice. *People v Stubli*, 163 Mich App 376, 379; 413 NW2d 804 (1987).

Defendant argues that defense counsel's failure to recall Haltiner to testify as to the lack of a dating relationship and perhaps to identify pictures of herself and her husband/fiancé constituted ineffective assistance because such testimony would have rebutted the innuendo introduced by the prosecution. We disagree. Had Haltiner been recalled, she could have done nothing more than repeat her testimony that she and defendant had been friends for a number of years, but had not dated. Counsel's failure to recall Haltiner did not deprive defendant of a substantial defense, i.e., one that would have made a difference in the outcome of the trial. Furthermore, counsel's decision must be considered trial strategy. We do not substitute our judgment for that of counsel regarding matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 439; 597 NW2d 843 (1999). Defendant has not overcome the presumption that counsel rendered effective assistance. *Stubli, supra*.

Affirmed.

/s/ William B. Murphy  
/s/ Michael J. Kelly  
/s/ Michael J. Talbot