

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK MASTERS,

Defendant-Appellant.

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UNPUBLISHED  
September 9, 2003

No. 239996  
Wayne Circuit Court  
LC No. 01-003037

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for assault with intent to do great bodily harm, MCL 750.84. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that his conviction should be reversed because the trial court erroneously admitted evidence regarding defendant's prearrest silence.

When a defendant exercises his right to silence, his silence cannot be used against him at trial. *People v Taylor*, 245 Mich App 293, 304; 628 NW2d 55 (2001). The use for impeachment purposes of a defendant's prearrest silence does not violate a defendant's constitutional rights under the Fifth and Fourteenth Amendments or the Michigan Constitution. *People v Cetlinski*, 435 Mich 742, 747; 460 NW2d 534 (1990). Here, defendant's failure to give a statement to police was brought out before defendant testified, but it was also raised in the cross-examination of defendant. Defendant declined to pursue the court's offer to give a curative instruction.

Improper use of a defendant's silence for substantive evidence of guilt rather than for impeachment is harmless error where there is ample evidence to convince the jury of the defendant's guilt. *People v Hackett*, 460 Mich 202, 216; 596 NW2d 107 (1999). Complainant testified in detail about the assault and the injuries she sustained. Defendant admitted striking

her, but claimed that he acted in self-defense. There was ample evidence to support the verdict, and any error in the admission of the evidence was harmless.

Affirmed.

/s/ Jane E. Markey  
/s/ Mark J. Cavanagh  
/s/ Henry William Saad