STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD ALLEN LOWN,

Defendant-Appellant.

UNPUBLISHED
November 22, 1996

No. 174238
LC No. 93-008335-FH

Before: Sawyer, P.J., and Griffin and M.G. Harrison,* JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of receiving and concealing stolen property over $100, MCL 750.535; MSA 28.803, and open container in a motor vehicle, MCL 257.624; MSA 9.2324. He thereafter pled guilty to being a habitual offender (fourth offense). MCL 769.12; MSA 28.1084. He was sentenced to six to fifteen years in prison on the receiving and concealing conviction and to a concurrent sixty-day sentence on the open container violation. He now appeals and we affirm.

Defendant first argues that the trial court erred in denying his motion to suppress evidence and quash the information based upon the search of the automobile defendant was driving at the time of his arrest. We disagree. The trial court upheld the search as a valid inventory search. Defendant does not challenge either the validity of his arrest or the validity of the impoundment of the vehicle. Rather, defendant argues that the search was merely a pretext for the purpose of solving a crime, not conducting an inventory. The trial court found that the search was properly conducted in accordance with the department's inventory search policy. We are not persuaded that the trial court clearly erred in that finding.

Next, defendant argues that the trial court erred in admitting into evidence photographs of the stolen boat motor because the chain of custody had been broken and no foundation has been established. However, defendant failed to preserve this issue for appeal by objecting at trial. MRE 103(a)(1).

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

Defendant next argues that the prosecutor abused his authority when he returned the allegedly stolen property to its purported owner before trial. Defendant, however, has again failed to preserve this issue for appeal by raising the issue in the trial court. See *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1994).

Defendant's next argument is that the trial court erred in refusing to give a directed verdict of acquittal. We disagree. This issue is reviewed by looking at the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find each element of the offense proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). In the case at bar, defendant argues that there was insufficient evidence to establish that defendant knew that the property was stolen in light of the fact that the vehicle in which it was found had been loaned to defendant. However, the person who loaned the vehicle to defendant testified that the stolen property was not there when the vehicle was loaned; another witness testified that the stolen motor had not been in the car earlier in the evening when she had been a passenger in the car. From this evidence, the jury could conclude that it was, in fact, defendant who placed the stolen property in the borrowed vehicle. Therefore, a rational trier of fact could conclude that defendant knew the property was stolen.

Next, defendant argues that he received ineffective assistance of counsel, pointing to a number of relatively minor misstatements made by counsel during closing argument and to counsel's failure to object to the admission of the photographs of the stolen property. We are not persuaded, however, that, but for the errors or omissions by counsel, that there is a reasonable probability that the outcome would have been different. See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Finally, defendant argues that the sentence imposed was disproportionate and constituted cruel and unusual punishment. We disagree. Defendant has an extensive criminal history, with five juvenile adjudications beginning at age thirteen, leading to an adult criminal career of four prior felonies and two prior misdemeanors. Furthermore, defendant was on parole at the time of the commission of the instant offense. Accordingly, we are satisfied that the sentence imposed was proportionate, *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), and does not constitute cruel and unusual punishment.

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael G. Harrison