STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC C. JACKSON,

Defendant-Appellant.

UNPUBLISHED
October 7, 1997

No. 196600
Oakland Circuit Court
LC No. 96-144913-FH

Before: Kelly, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of receiving and concealing stolen property valued over $100, MCL 750.535; MSA 28.803. After the verdict, the trial court found defendant guilty of being an habitual offender, fourth offense. The trial court initially sentenced defendant to forty months to sixty months' imprisonment for the receiving and concealing stolen property conviction. That sentence was vacated and defendant was sentenced to six to twenty years' imprisonment for the habitual offender conviction. Defendant now appeals his convictions as of right. We affirm.

At trial, defendant admitted to being in possession of Carol Hillie's stolen automobile, but claimed he had rented it from Hillie's boyfriend, Rodney Washington, in exchange for some crack cocaine. Washington testified that he did not know defendant and that he never rented Hillie's car to defendant.

On appeal, defendant first argues that the trial court erred by denying his request for CJI2d 22.1, which instructs the jury how to determine the fair market value of property. Contrary to defendant's assertion, the record reveals that defendant did not request this instruction at trial or object to its omission.[1] Therefore, we will only review this issue if necessary to avoid manifest injustice. *People v Johnson*, 215 Mich App 658, 672; 547 NW2d 65 (1996). Manifest injustice is not present in this case because the trial court properly instructed the jury that it was required to find beyond a reasonable doubt that the car was worth more than $100 in order to convict defendant. See *People v Peach*, 174 Mich App 419, 429-430; 437 NW2d 9 (1989).

Next, defendant argues that there was insufficient evidence that the car was worth more than $100. We disagree. When reviewing the sufficiency of evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996). Although the prosecution presented no direct evidence of the car's value at the time it was stolen, there was ample evidence in the record from which a reasonable juror could have inferred that the car, a 1995 Grand Am that was operable and "in pretty good condition," had a value exceeding $100. Accordingly, defendant is not entitled to relief on this claim of error. *Medlyn, supra* at 340.

Defendant also contends that the prosecutor engaged in purposeful racial discrimination when exercising his peremptory challenges, in violation of *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986). We disagree. This Court reviews a trial court's ruling regarding a *Batson* challenge for an abuse of discretion. *Harville v State Plumbing and Heating Inc*, 218 Mich App 302, 320; 553 NW2d 377 (1996), citing *People v Hart*, 170 Mich App 111, 112; 427 NW2d 557 (1988). "[T]he Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant." *Batson, supra* at 89. Initially, the defendant bears the burden of establishing a prima facie case of purposeful discrimination. *People v Barker*, 179 Mich App 702, 705-706; 446 NW2d 549 (1989), aff'd 437 Mich 161; 468 NW2d 492 (1991). Once a defendant has established a prima facie case of discrimination, the prosecution must articulate racially neutral reasons, particular to the case to be tried, for its peremptory challenge, though this explanation need not rise to the level of a for cause challenge. *Id.* at 706. After the prosecution offers its reasons, the trial court must decide if the defendant has established purposeful discrimination. *Id.* Because the determinations involved are largely dependent on credibility, this Court gives great deference to the trial court's findings. *Harville, supra* at 319-320, citing *Barker, supra* at 706.

In this case, the prosecution exercised three of its five peremptory challenges. Two of these three were used to remove black venire members. Although defendant's case was ultimately decided by an all-white jury, the record indicates that two or three black persons remained on the venire from which the jury was selected. These factors alone do not establish a prima facie case, see *People v Williams*, 174 Mich App 132, 137; 435 NW2d 469 (1989), and defendant does not point to any additional factors that would support an inference of discrimination. The prosecutor did not make any comments referring to race during voir dire. Moreover, because the record shows that the victim and the officer in charge were also black, there appears to have been little motivation to discriminate. Finally, defendant's argument that the prosecutor's asserted reason for excusing Mr. Stevenson (his unemployment) was not racially neutral is without merit. The fact that unemployment may be more prevalent in the black population does not make the prosecutor's explanation racially based, and defendant has not offered any evidence to suggest that the prosecutor chose this criterion because of its alleged disproportionate effect on black venire members. *Hernandez v New York*, 500 US 352, 362; 111 S Ct 1859; 114 L Ed 2d 395 (1991). Accordingly, we hold that the trial court did not abuse its discretion in overruling defendant's objection to the prosecutor's exercise of the challenges. *Harville, supra* at 319-320.

Defendant next argues that his conviction should be reversed because he was not permitted to elicit testimony from Rodney Washington at trial regarding Washington's prior contact with defendant. Specifically, defendant claims Washington would have testified that he inquired about having the charges against defendant dismissed prior to trial. However, because defendant made no offer of proof as to what Washington's testimony would have been, this issue was not preserved for appeal. MRE 103(a)(2); *People v Stacy*, 193 Mich App 19, 31; 484 NW2d 675 (1992). This Court will grant relief in such circumstances only to prevent a miscarriage of justice. See *Stacy*, *supra* at 31. Because defendant was allowed the opportunity to cross-examine Washington, but failed to make an offer of proof regarding the substance of Washington's excluded testimony, we are unable to conclude from the record before us that our denial of the relief sought would result in a miscarriage of justice.

Finally, defendant argues that he was denied a fair trial because the trial court read his aliases from the information during voir dire. It is apparent from the record that the trial court read the alternative names in order to ensure that none of the jurors knew defendant. This was not improper. Defendant's reliance upon *People v Thompson*, 101 Mich App 609; 300 NW2d 645 (1980), is misplaced. The trial court's reading of the aliases did not constitute evidence. Moreover, the jury was properly instructed that it should only consider the evidence in determining the verdict and that the judge's comments and instructions did not constitute evidence.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

[1] The record indicates that defendant objected to the lack of "the R and C under instruction." We read this as an objection to the trial court's failure to instruct the jury on the misdemeanor offense of receiving and concealing stolen property having a value under $100, MCL 750.535; MSA 28.803.