

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRIS LENELL DAVIS,

Defendant-Appellant.

UNPUBLISHED

November 22, 2002

No. 235368

Oakland Circuit Court

LC No. 2000-174197-FC

Before: Jansen, P.J., and Holbrook, Jr. and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; first-degree home invasion, MCL 750.110a(2); and aggravated assault, MCL 750.81a(1). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 30 to 50 years' imprisonment for armed robbery, 10 to 30 years' imprisonment for home invasion, and 308 days' imprisonment for aggravated assault. Defendant appeals as of right. We affirm.

On July 25, 2000, Cynthia Crandall went to C & L Jewelry Store looking for jewelry to add to her collection. The store owner recalled another customer, who sold him a gold chain, commenting that "[Ms. Crandall] has a lot of jewelry, a lot of diamonds."¹ After leaving the store, Ms. Crandall visited another pawn shop and then went home. When Ms. Crandall opened the door to her home, two intruders assaulted her and took her jewelry and cash.

Shortly after her assailants left, Ms. Crandall ran outside and witnessed two African-American men getting into a tan car at the bank's parking lot across the street. Ms. Crandall testified that she began screaming and ran after this car. According to Ms. Crandall, when the occupants of the car saw her, the driver put the car into reverse and backed down the street. A neighbor who heard Ms. Crandall screaming called the police. Later that afternoon, the police spoke with the owner of the C & L Jewelry Store and arrested defendant the following day. A search of defendant's car revealed a black nylon bag containing Ms. Crandall's jewelry.

¹ The owner fingerprinted this individual and made a copy of his driver's license before purchasing the gold chain. Defendant was identified as the individual who sold the gold chain.

Defendant initially claims that there was insufficient evidence to establish his identify as the perpetrator of these crimes. Specifically, defendant argues that his conviction was based solely on the fact that the police discovered the stolen jewelry in his car. We disagree.

In reviewing a sufficiency of the evidence claim, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). However, we will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Further, "circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

While the mere possession of the stolen jewelry is insufficient to place defendant at the scene of these crimes, there was other evidence presented to establish his guilt. See *People v McDonald*, 13 Mich App 226, 236-237; 163 NW2d 796 (1968). Ms. Crandall described one of her assailants as a big man weighing over 200 pounds. Similarly, the owner at C & L Jewelry testified that the customer who commented on Ms. Crandall's jewelry, shortly before it was stolen, also had a heavy build. This customer was later identified as defendant. Ms. Crandall further claimed that she saw two African-American men, who she stated appeared to be her assailants, getting into a car parked across from her home right after the incident. The bank surveillance pictures of the car in question were admitted into evidence, and defendant's fiancé identified the car as belonging to defendant. Moreover, when Ms. Crandall began chasing this vehicle, the occupants put the car into reverse and backed down the street. Ms. Crandall also testified that one of her assailant's wore a silk dew-rag. When defendant was arrested he was wearing a black dew-rag and Ms. Crandall identified this at trial as resembling the one worn by her assailant. While defendant's fiancé claimed that defendant was with her when these crimes occurred, we defer to the jury regarding issues of witness credibility. *Wolfe, supra* at 514-515. On this record, a rational trier of fact could have concluded beyond a reasonable doubt that defendant was the perpetrator of these crimes. *Johnson, supra* at 723.

Defendant next argues that the prosecutor violated his federal and state equal protection guarantees, US Const, Am XIV; Const 1963, art 1, § 2, by excusing a potential juror who was African-American. We disagree. In *Batson v Kentucky*, 476 US 79, 89; 106 S Ct 1712; 90 L Ed 2d 69 (1986), the Supreme Court held that a prosecutor may not challenge potential jurors solely on the basis of their race. A trial court's *Batson* ruling is reviewed on appeal for an abuse of discretion. *People v Ho*, 231 Mich App 178, 184; 585 NW2d 357 (1998).

The burden is on the defendant challenging the alleged discriminatory use of peremptory challenges to establish a prima facie case of purposeful discrimination. *Batson, supra* at 93-94; *Harville v State Plumbing & Heating, Inc*, 218 Mich App 302, 319; 553 NW2d 377 (1996). Once the defendant makes such a showing, the burden shifts to the prosecution to articulate a racially neutral reason for its actions. *Harville, supra* at 319. To establish a prima facie case, the defendant must show that: (1) he is a member of a cognizable racial group; (2) the prosecutor used peremptory challenges to remove a person of the defendant's race from the venire; and (3) the facts and relevant circumstances create an inference that the prosecution used its peremptory challenges to exclude potential jurors on the basis of their race. *Batson, supra* at 96. Relevant circumstances may include a pattern of excusing jurors of the defendant's race or the

prosecutor's comments and questions during voir dire. *Id.* at 96-97. The decision to leave other persons of a defendant's race on the jury constitutes strong evidence against a showing of discrimination. *People v Howard*, 226 Mich App 528, 536, n 3; 575 NW2d 16 (1997); *People v Williams*, 174 Mich App 132, 137; 435 NW2d 469 (1989).

As proof of the prosecution's discriminatory intent, defendant cites the fact that he and the juror in question were both African-American. However, defendant failed to present any pattern on the part of the prosecution of excusing African-Americans in this case. Moreover, the record is devoid of any statements or questions by the prosecutor regarding race during voir dire. In fact, the trial court pointed out that the jury in this case included two African-Americans. See *Howard, supra* at 536, n 3; *Williams, supra* at 137. Further, a review of the record indicates that the prosecution did not exhaust its peremptory challenges. See *Howard, supra* at 536, n 3. The race of defendant and the challenged juror alone is insufficient to establish a prima facie case of purposeful discrimination. See *Williams, supra* at 137. Because defendant failed to establish a prima facie case, the burden never shifted to the prosecution to articulate a race-neutral reason for its challenge. *Id.* Consequently, we find no abuse of discretion on the part of the trial court.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Jessica R. Cooper