STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN DUANE REDWINE,

Defendant-Appellant.

UNPUBLISHED
March 20, 1998

No. 193444
Recorder's Court
LC No. 95-002862

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

PER CURIAM.

Following a jury trial, defendant was convicted of carjacking, MCL 750.529a; MSA 28.797(a). The trial court sentenced defendant as an habitual offender, third offense, MCL 769.11; MSA 28.1083, to fifteen to thirty years' imprisonment. Defendant now appeals as of right. We affirm.

I

Defendant first argues that his conviction should be reversed due to the lack of an arraignment on the information in circuit court. From our review of the record, it does not appear that defendant was ever formally arraigned on the information. We conclude, however, that this oversight does not require the reversal of defendant's conviction.

Informing a defendant of the nature and cause of the accusations being made against him is one of the most important functions of the arraignment. *People v Thomason*, 173 Mich App 812, 815; 434 NW2d 456 (1988). MCR 6.113(A), which governs the arraignment on the information, requires that the trial court either "state to the defendant the substance of the charge contained in the information or require that the information" be read to defendant.

Defendant's arraignment on the information was set for March 17, 1995, then adjourned to March 24, 1995, at defendant's request. However, the arraignment does not appear to have taken place on March 24, 1995.[1] Nevertheless, MCR 6.113(A), specifically states that, "[u]nless the defendant demonstrates actual prejudice, failure to hold the arraignment on the scheduled date is to be deemed harmless error." The record establishes that on February 19, 1995, defendant was arraigned

on the warrant in district court. On that day, defendant was assigned court appointed counsel and bail was set at $35,000. At a conference on July 28, 1995, defendant was told he was being tried for carjacking. The complainant testified as to the substance of the charge. The Court then summarized the substance of the charges against defendant. After a motion to suppress was denied, defense counsel requested a jury trial, in effect entering a plea of not guilty.

No statute prescribes a specific time by which arraignment on the information must occur. *People v Martin*, 147 Mich App 297, 303-304; 382 NW2d 726 (1985). In the present case, more than four months before trial, defendant was informed of the nature and substance of the charges against him. Defendant was represented by counsel. Furthermore, defendant was able to enter a plea of not guilty and proceed to a jury trial. Because defendant has not demonstrated that he was prejudiced by the failure to hold the arraignment on the scheduled date, we conclude that the error was harmless. See MCR 6.113(A)(1).

II

Next, defendant maintains that because he did not receive notice of the intent to enhance his sentence as a third habitual offender and the trial court did not establish the existence of the prior felony convictions before imposing sentence, his sentence was improperly enhanced. MCL 769.11; MSA 28.1083; MCL 769.13; MSA 28.1084. These contentions are not supported by the record. The prosecutor stated on the record that the notice had been served, there were several references on the record to the notice of intent being filed and served, at trial defense counsel reminded the court that the file contained an Habitual Offender Notice, and defendant did not object at sentencing to the enhanced sentence. The existence of the prior felony convictions was established by information contained in the presentence report. See MCL 769.13; MSA 28.1085.

III

Defendant also argues that his sentence of fifteen to thirty years was disproportionate and inconsistent with the sentencing guidelines applicable to comparable crimes. However, neither of these factors is relevant in the sentencing of habitual offenders. In reviewing a sentence imposed for an habitual offender, an appellate court must determine only whether there has been an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). The crime of carjacking is punishable by imprisonment for life or for any term of years. MCL 750.529a; MSA 28.797(a). A trial court does not abuse its discretion "in giving a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society." *Id*. at 326. Applying this standard, we conclude that the trial court did not abuse its discretion in sentencing defendant to a prison term of fifteen to thirty years.

IV

Defendant next contends that he was denied a fair and impartial trial because of prosecutorial misconduct. The propriety of a prosecutor's conduct depends on all the facts and circumstances of a

case and must be evaluated in context. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Minor*, 213 Mich App 682, 689; 541 NW2d 576 (1995).

Defendant contends that during rebuttal the prosecutor made statements designed to elicit sympathy from the jury and to encourage the jury to put themselves in the complainant's role in arriving at a verdict. We disagree. The prosecutor's comments were not an improper attempt to elicit the sympathy of the jury. Rather, the prosecution was simply arguing that the facts and evidence demonstrated that the complainant was credible. See *People v Howard*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 172633, issued 11/25/97), slip op p 9. The prosecutor's comments, evaluated in context, did not deny defendant a fair and impartial trial.

V

In his final claim of error, defendant contends that there was insufficient evidence to support his conviction. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

The elements of carjacking are as follows: (1) the defendant stole or took a motor vehicle from another person; (2) the defendant did so in the presence of that person, a passenger in the motor vehicle, or any other person in lawful possession of the motor vehicle; and, (3) that the defendant did so by force or violence, by threat of force or violence, or by putting another in fear. *People v Raper*, 222 Mich App 475, 481; 563 NW2d 709 (1997).

Defendant asserts that the complainant was not credible because her descriptions of the assailant were inconsistent. However, questions of the credibility of the witnesses are for the trier of fact. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991).

In the present case, the complainant testified that defendant forcefully grabbed the keys from her hands and threw a cup of coffee on her when she tried to resist him. Defendant then drove off in her car. Approximately six hours later, defendant was found riding in the complainant's car. At the time of his arrest, defendant was wearing clothing that, for the most part, matched the description given by the complainant to the police. Defendant also matched the general physical description given by the complainant. At a photographic line-up the next day, the complainant identified defendant. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that sufficient evidence was presented to support defendant's conviction.

Affirmed.

/s/ Roman S. Gribbs
/s/ Mark J. Cavanagh
/s/ Henry William Saad

[1] On March 16, 1995, defense attorney Scharg filed a motion for adjournment of the arraignment on the information citing his unavailability. Defense counsel requested that the arraignment be adjourned to March 24, 1995. The next day, this action was before Wayne Circuit Court Judge Richard P. Hathaway. Defendant was represented by Rita Young, who had been assigned to him on an unrelated case. The transcript of the proceedings contains the following passage:

> MS. YOUNG: Rita Young, for the defendant, your Honor.
>
> It is my understanding that Mr. Redwine is also before the Court on arraignment on a car jacking and habitual offender third. That the attorney on that matter has asked that it be set over until March 24th.
>
> I would also like to request the Court to set the controlled substance offense over to March 24th, as well.
>
> THE COURT: Who is the attorney on that case.
>
> THE CLERK: It is Rita Young on this one and Henry Scharg on the other one.
>
> THE DEFENDANT: I would ask the Court to release Mr. Scharg.
>
> THE COURT: Come up with the money for your own lawyer, if your lawyer shows up with the appearance slip, Mr. Scharg will be gone.
>
> So what are we doing here, Jane?
>
> THE CLERK: We are going to put it over until March 24th.
>
> MS. YOUNG: Mr. Redwine has indicated that if the Court would allow him to have additional time –
>
> (Discussions were held off the record between Court and Counsel.)

On March 24, 1995, the matter came before Recorder's Court Judge Vera Massey Jones. After the case was called and the court clerk announced that defendant was present for a dispositional conference, the following record was made:

> MS. YOUNG: Good morning, your Honor. Rita Young, on behalf of the Defendant, Melvin Duane Redwine.

MR. JANSEN: Joe Jansen, appearing on behalf of the People of the State of Michigan, your Honor.

MS. YOUNG: We're asking for a blind draw in the possession of less than 25 grams.

THE COURT: And you're going to stand in for his attorney of record that's on the case?

MS. YOUNG: Yes, your Honor.

THE COURT: Okay, so we can get a blind draw on both of them.

MS. YOUNG: With respect to – I think he's charged with car jacking, we waive the formal reading of the Information.

MR. JANSEN: Your Honor, let the record reflect that the Prosecutor has served a copy of the habitual offense, third –

THE COURT: According to this, he's been arraigned. There was an AOI on both of these before.

MS. YOUNG: Oh, all right.

THE COURT: Now, follow me.

You're standing in for the attorney of record on the other case, right?

MS. YOUNG: Right.

That is Henry Scharg with Mr. Redwine's permission. Is that correct Mr. Redwine?

DEFENDANT REDWINE: I haven't talked with Mr. Scharg at all.

THE COURT: No, because he isn't here. She's standing in for him.

Do you want to or no?

DEFENDANT REDWINE: Well, I actually would like to get a postponement until –

THE COURT: Then you can not stand in for the other attorney.

MS. YOUNG: Okay.

THE COURT: We'll give her a blind draw. In this case, you're filing a notice of the habitual –

MR. JANSEN: Third offense.

THE COURT: On which case?

MR. JANSEN: On the car jacking case which is 95-002-862.

THE COURT: Okay.

And that's the one with Mr. Scharg.

MR. JANSEN: Yes.

THE COURT: So, it's filed.

It's in the file. But we'll have to wait until his attorney is present to put anything on the record.