STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT C. WHITE,

Defendant-Appellant.

UNPUBLISHED
February 2, 1999

No. 205783
Oakland Circuit Court
LC No. 95-142201 FC

Before: Kelly, P.J., and Hood and Markey, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of carjacking, MCL 750.529a; MSA 28.797(a), receiving stolen property valued over $100, MCL 750.535; MSA 28.803, and failure to obey a police officer's signal, MCL 750.479a; MSA 28.747(1). He was sentenced to three to twenty years' imprisonment for the carjacking conviction, two and a half to five years for receiving stolen property, and six months for failing to obey a police officer's signal, and appeals as of right. We affirm.

The victim in this case was outside of a friend's house at approximately 10:30 p.m. when he was attacked and beaten unconscious by two people out of a group of about 12 to 14 strangers. The two attackers took the victim's keys and drove away in his car. Later that evening, police found the car and, after a chase, caught and arrested defendant, who exited from the driver's side when the car crashed into a tree. The victim identified defendant in a lineup.

Defendant argues for the first time on appeal that police comments to the victim rendered the lineup impermissibly suggestive, thus denying him the right to a fair trial. We disagree.

A defendant is denied due process if a pretrial identification procedure is so unnecessarily suggestive that it leads to "irreparable misidentification." *People v Anderson*, 389 Mich 155, 169; 205 NW2d 461 (1973). However, where, as here, the defendant does not object at trial or move to suppress a lineup identification, a claim that it was unduly suggestive lineup is reviewed only for manifest injustice. *People v Whitfield*, 214 Mich App 348, 351; 543 NW2d 347 (1995). Where identification is an issue at trial, and the jury has an opportunity to consider "any reasons to question the accuracy" of the identification, there is no manifest injustice. *Whitfield, supra* at 351.

In this case, the victim positively identified defendant at the lineup. Then he told police that another person in the lineup also looked familiar and might have been part of the group. At that point, the police told him not to say any more. At trial, defense counsel cross-examined the victim extensively about the lineup, what he said, what he remembered, and what police said to him. Thus, the jury had an opportunity to consider all the reasons why defendant now questions the accuracy of the identification. There was no manifest injustice.

Next, defendant argues that there was insufficient evidence of knowledge to support his conviction for receiving and concealing stolen property. Defendant points out that the officers were not able to see and identify the driver while they were chasing the vehicle, and that several people exited the car very quickly after it crashed. We cannot agree.

In order to convict defendant, the prosecution had to prove that he received, possessed, or concealed stolen property, worth over $100, with actual or constructive knowledge that it was stolen. MCL 750.535; MSA 28.803; see also *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996). Circumstantial evidence and reasonable inferences arising therefrom can constitute satisfactory proof of the elements of an offense; however, inferences may not be based on evidence which is uncertain or speculative, or which raises only a mere conjecture or possibility. *People v Fisher*, 193 Mich App 284, 289; 483 NW2d 452 (1992). Assessing credibility is exclusively for the trier of fact. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

It is undisputed that the car was stolen and that it was worth over $100. The victim testified that defendant was one of the assailants. The arresting officers testified that, after it crashed, they saw the driver exit the car and attempt to escape, that they never lost sight of him until he was apprehended, and that it was defendant. Further, one of defendant's own witnesses testified that defendant was present when the car was stolen.[1] Thus, the testimony supports an inference that defendant was in possession of the car and that he must have known it was stolen. Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to find defendant guilty beyond a reasonable doubt. *Quinn, supra* at 573-574.

Defendant last argues that, because he was arrested on the same day that the car was stolen, double jeopardy was violated when he was convicted of both carjacking and receiving stolen property. We again disagree. Although defendant did not object below, we address this issue because it raises significant constitutional questions. *People v Duranseau*, 221 Mich App 204, 205; 561 NW2d 111 (1997).

Double jeopardy prohibits re-prosecution after an acquittal, successive prosecutions for the same offense after a conviction, and multiple punishments for the same offense. *People v Hunt (After Remand)*, 214 Mich App 313, 315; 542 NW2d 609 (1995). It is unclear which provision defendant is addressing on appeal. Although defendant cites only successive prosecution cases, we note that this case does not involve a re-prosecution after acquittal, nor a second prosecution after a conviction.[2] We therefore conclude that he must be objecting to the imposition of separate sentences for the crimes of carjacking and receiving stolen property. Because he does not discuss any federal cases, the issue will be analyzed under the Michigan constitution.

Double jeopardy protects a defendant from enduring more punishment than was intended by the Legislature. *People v Whiteside*, 437 Mich 188, 200; 468 NW2d 504 (1991). Under the Michigan constitution, determination of whether the Legislature intended to allow multiple punishments involves a examination of the subject matter, language and history of the statutes involved. *People v McClain*, 218 Mich App 613, 616; 554 NW2d 608 (1996). The court should also consider "whether each statute prohibits conduct violative of a social norm distinct from that protected by the other, the amount of punishment authorized by each statute, whether the statutes are hierarchical or cumulative, and the elements of each offense." *People v Rivera*, 216 Mich App 648, 650-651; 550 NW2d 593 (1996).

A person is guilty of carjacking if they take a motor vehicle by force or threat of force; and in the presence of its owner, a passenger, or one in lawful possession of the vehicle. See MCL 750.529a; MSA 28.797(a); see also *People v Parker*, 230 Mich App 337, 343; ___ NW2d ___ (1998). Specific intent to permanently deprive the owner of possession is not required. *Parker*, *supra* at 344. Further, the statute provides that a carjacking sentence "may be imposed to run consecutively to any other sentence imposed for a conviction that arises out of the same transaction." MCL 750.529a(2); MSA 28.797(a)(2); see also *Parker*, *supra* at 343-344.

The elements of receiving stolen property are: receiving, possessing, or concealing stolen property; worth over $100; with actual or constructive knowledge that it was stolen. MCL 750.535; MSA 28.803; see also *Quinn*, *supra* at 574. This crime has no elements in common with carjacking. It is not a lesser included offense of carjacking. The two statutes prohibit different behaviors in the continuum of a car theft -- the taking itself, and the concealing and profiting from the taking. See *Parker*, *supra* at 343; see also *People v Allay*, 171 Mich App 602, 609; 430 NW2d 794 (1988). We therefore conclude that the two statutes address violations of different social norms. Further, and most importantly, the Legislature has clearly disclosed its intent by specifically authorizing multiple (consecutive) punishments for carjacking and any other crime committed in the same transaction. See MCL 750.529a(2); MSA 28.797(a)(2). Thus, there was no double jeopardy violation in this case.

Affirmed.

/s/ Michael J. Kelly
/s/ Harold Hood
/s/ Jane E. Markey

[1] The witness testified, however, that it was defendant's brother who took the car.

[2] Absent special circumstances, double jeopardy requires that the prosecution join at one trial all the charges arising from a single criminal episode. *People v Sturgis*, 427 Mich 392, 401; 397 NW2d 783 (1986). That is precisely what was done in this case.