STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN CHANDLER ROYAL,

Defendant-Appellant.

UNPUBLISHED
September 26, 2000

No. 214793
Oakland Circuit Court
LC No. 97-156823-FC

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

PER CURIAM.

Defendant was convicted by a jury of carjacking, MCL 750.529a; MSA 28.797(a), and pled guilty to receiving and concealing stolen property worth less than $100, MCL 750.535; MSA 28.803. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12; MSA 28.1084, to concurrent terms of four to twenty years' imprisonment on the carjacking conviction and ninety days in jail on the receiving and concealing stolen property conviction. Defendant appeals as of right. We affirm.

I

On appeal, defendant first argues that the trial court erred by not instructing the jury on venue. Because this issue is not preserved, this Court should reverse only if defendant establishes that he was prejudiced by the error or that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Because defendant has failed to prove that venue was improper in Oakland County, we find neither prejudice to defendant nor impairment to judicial proceedings. MCL 767.63; MSA 28.1003, which governs venue in the context of crimes involving stolen property, provides:

> When any property shall be stolen in 1 county and brought into another, the offender may be indicted, tried and convicted in the county into which such stolen property was brought, in the same manner as if such property had been

> originally stolen in that county; and when such property shall have been taken by burglary or robbery the offender may be indicted, tried and convicted of said burglary or robbery, in the county into which such property was brought in the same manner as if such burglary or robbery had been committed in that county.

Venue was proper in Oakland County. Under MCL 767.63; MSA 28.1003, a prosecutor within whose county stolen property has been brought has the right to bring charges against the offender who brought the stolen property therein. Defendant concedes that although the vehicle was stolen in Wayne County, he was arrested while driving the vehicle in Oakland County. Therefore, although the crime of carjacking may have occurred in Wayne County, because defendant brought the stolen property into Oakland County venue was proper in that county under MCL 767.63; MSA 28.1003. See *People v Franklin*, 117 Mich App 393, 395; 323 NW2d 716 (1982); see also *infra*.

II

Next, defendant argues that there was insufficient evidence to support his carjacking conviction. In reviewing the sufficiency of the evidence, we examine the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could conclude that the essential elements of the crime were proved beyond a reasonable doubt. *Carines*, *supra* at 757. The elements of carjacking are that (1) the defendant robbed, stole, or took a motor vehicle from another person; (2) the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle; and (3) the defendant did so either by force or violence, or by threat of force or violence, or by putting another in fear. MCL 750.529a; MSA 28.797(a); *People v Green*, 228 Mich App 684, 694; 580 NW2d 444 (1998).

In the instant case, defendant challenges the prosecutor's proofs regarding the third element. Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of the crime. *Carines*, *supra* at 757. Here, Regina Johnson testified that when defendant rear-ended her car he did not look surprised by the collision. She further testified that defendant became hostile and irate, yelled and screamed at her, pointed his fingers directly in her face from a very close distance, and although she repeatedly tried to back away from defendant, he kept moving closer toward her. As a result of defendant's conduct, according to Johnson, she feared for her life. Johnson further testified that she then walked to the back of the car to take down defendant's license plate number, at which time defendant got into her car and drove away without her permission. Thus, the evidence presented at trial, taken as a whole and in a light most favorable to the prosecution, could lead a rational jury to conclude that defendant took Johnson's car while putting her in fear or using force or violence. Accordingly, there was sufficient evidence to sustain defendant's carjacking conviction.

Defendant also argues that there was insufficient evidence to establish that venue was proper in Oakland County because he took Johnson's car while in Wayne County. The prosecutor asserts that venue was proper under § 63 of the Code of Criminal Procedure, MCL

767.63; MSA 28.1003. Defendant, on the other hand, contends that § 63 is only applicable to burglary and robbery, and not to general intent crimes such as carjacking. We reject defendant's argument.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Borchard-Ruhland*, 460 Mich 278, 284; 597 NW2d 1 (1999). The first step is to look at the legislative intent as evidenced in the statute's language. *Id*. If the language of the statute is unambiguous, this Court enforces the terms therein without further analysis. *Id*. However, if the statute's language is ambiguous and therefore subject to varying interpretations, judicial construction is appropriate. *Id*. at 284-285.

The plain language of § 63 demonstrates that it applies to the crime of carjacking. Although § 63 does not specifically define the term "stolen property," in the absence of a statutory definition of a term, this Court may consult dictionary definitions to determine the common meaning of a term. *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999). Random House Webster's Unabridged Dictionary (2d ed), defines "steal" as "to take (the property of another or others) without permission or right, esp. secretly or by force," and "to appropriate . . . without right or acknowledgment." Thus, contrary to defendant's argument, the plain language of § 63 provides no indication that it only applies when one takes property with the specific intent to permanently deprive the owner of lawful possession and subsequently brings that property into another county. Rather, considering the common sense definition of the term "steal," the plain language of § 63 establishes that it applies to those situations, such as carjacking, in which one takes the property of another without permission and brings the property into another county. In light of the unequivocal evidence that defendant took Johnson's car without her permission and brought it into Oakland County, and given the plain meaning of § 63, we conclude that venue was proper in Oakland County.

III

Defendant next asserts that the trial court abused its discretion when it made two evidentiary rulings. This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion occurs where an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling. *People v Gadomski*, 232 Mich App 24, 33; 592 NW2d 75 (1998).

Defendant first argues that the trial court abused its discretion when it sustained the prosecutor's objection to defense counsel's question to Johnson regarding whether defendant stopped the car he was driving due to braking or due to the collision with her car. We disagree. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. MRE 602; see also *People v Borney*, 110 Mich App 490, 497; 313 NW2d 329 (1981). Because Johnson admitted that she could not see whether defendant applied his brakes before striking her car, she had no personal knowledge regarding whether defendant attempted to brake before colliding with her car. Thus, we conclude

that the trial court did not abuse its discretion in holding that Johnson's answer to the question would have been inadmissible speculation.

Moreover, to the extent that defendant argues that the trial court's decision improperly limited his ability to present a defense, his argument is similarly without merit. Defendant ably presented his defense by eliciting concessions from Johnson that she could not see defendant's feet before the collision to determine whether he attempted to brake before striking her car and that defendant may have stopped his car due to braking. Further, during closing argument, defense counsel emphasized Johnson's concessions and argued to the jury that Johnson did not know what happened during the events at issue in this case.

Defendant also argues that the trial court abused its discretion when it prevented defense counsel from inquiring about the contents of Royal Oak Police Officer Kenneth Bean's police report on hearsay grounds. Again, we disagree. MRE 803(8)(B) precludes reports containing matters observed by police officers in all criminal cases. *People v Stacy*, 193 Mich App 19, 33; 484 NW2d 675 (1992). Therefore, the police report was inadmissible. Moreover, insofar as Officer Bean's police report contained hearsay within hearsay, MRE 805 requires that each hearsay statement within a hearsay statement must itself be admissible pursuant to a hearsay exception. *In re Freiburger*, 153 Mich App 251, 260; 395 NW2d 300 (1986). Defendant proffered no basis upon which any of the statements contained in the police report could have been properly admitted. Thus, we conclude that the trial court did not abuse its discretion in its evidentiary ruling. See *Gadomski, supra* at 32.

IV

Next, defendant argues that he was denied due process and a fair trial by an instance of prosecutorial misconduct. We review claims of prosecutorial misconduct to determine whether a defendant was denied a fair and impartial trial. *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999). However, because defendant failed to object to the prosecutor's comments at trial, we will review the issue only if a curative instruction could not have eliminated the prejudicial effect of the prosecutor's comments or if failure to review the issue would result in a miscarriage of justice. *Id*. at 512; *People v Ullah*, 216 Mich App 669, 679; 550 NW2d 568 (1996).

Defendant argues that the prosecutor improperly expressed personal knowledge of defendant's guilt during closing argument. A prosecutor may argue the credibility of the witnesses and the guilt of the defendant, but may not support the argument with the authority or prestige of the prosecutor's office or the prosecutor's personal knowledge. *People v Smith*, 158 Mich App 220, 231; 405 NW2d 156 (1987). In this case the prosecutor was not expressing her personal knowledge or belief. She was simply arguing what she believed the evidence showed. A prosecutor is free to argue the evidence and all reasonable inferences from the evidence as they relate to the prosecution's theory of the case. *People v Fisher*, 220 Mich App 133, 156; 559 NW2d 318 (1996).

V

Lastly, defendant argues that the cumulative effect of the alleged errors requires reversal. However, we have concluded that no errors occurred at trial; thus, we reject the argument that the cumulative effect of the errors requires reversal. See *People v Maleski*, 220 Mich App 518, 525; 560 NW2d 71 (1996).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Patrick M. Meter