STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDDIE JAMES JOHNSON,

Defendant-Appellant.

UNPUBLISHED
July 5, 1996

No. 153020
LC No. 91-010882

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

Defendant, Eddie James Johnson, appeals as of right his convictions and sentences for unarmed robbery, MCL 750.530; MSA 28.798, and unlawfully driving away an automobile (UDAA), MCL 750.413; MSA 28.645. He was sentenced to ten to fifteen years' imprisonment on the robbery conviction and to two to five years' imprisonment on the UDAA conviction. We affirm.

The charges in this case arose out of an attack on David Otlowski and the theft of his vehicle. Otlowski also lost a gold chain in the attack.

Defendant first argues that convictions for unarmed robbery and UDAA constitute double jeopardy. This argument is without merit. Convictions for armed robbery and UDAA do not constitute double jeopardy. *People v Hurst*, 205 Mich App 634, 636-639; 571 NW2d 858 (1994). While the other offense in this case was unarmed robbery, we do not see how this fact distinguishes this case from *Hurst*. Therefore, defendant is not entitled to relief on this issue.

Defendant next argues that there was insufficient evidence of the element of larceny to support the unarmed robbery conviction. Specifically, defendant argues that there was insufficient evidence of intent to permanently deprive Otlowski of his vehicle and insufficient evidence that defendant took Otlowski's gold chain. With respect to the vehicle, defendant argues that he took the vehicle only for joyriding purposes, and supports this argument by pointing out that the vehicle was recovered near the

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* Circuit judge, sitting on the Court of Appeals by assignment.

scene of the crime. With respect to the chain, defendant points out that it was not recovered in his possession.

In reviewing a sufficiency of the evidence claim, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Taken in the light most favorable to the prosecution, the fact that Otlowski's car was recovered near the scene of the crime does not disprove defendant's intent to permanently deprive Otlowski of the vehicle. Defendant also lived near the crime scene. From this evidence, a reasonable juror could infer that the car was left near the crime scene not because it was no longer being used, but because it was a convenient place to park it while not in use. With respect to the gold chain, evidence that a defendant was one of the victim's attackers and that the victim no longer possessed certain property after the attack is sufficient to support a conviction of the attacker for unarmed robbery. *People v Martin*, 37 Mich App 295, 295-296; 194 NW2d 464 (1971). The same amount of evidence was presented in the present case and, therefore, the evidence was sufficient to support an unarmed robbery conviction.

Defendant next argues that his statement to police should have been suppressed because it was involuntary due to prearraingment delay. We review the trial court's findings with respect to this issue for clear error. *People v Bender*, 208 Mich App 221, 226-227; 527 NW2d 66 (1994). Defendant was in custody less than forty-eight hours before his arraignment. Therefore, defendant cannot prevail simply by pointing to the delay. *People v McCray*, 210 Mich App 9, 12; 533 NW2d 359 (1995). Rather, the test remains whether the suspect's will was overborne and his capacity for self-determination critically impaired. Prearraignment delay is but one factor to be considered in this analysis. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988).

In this case, the only evidence suggesting that defendant's will was overborne was the fact that he was in custody for twelve hours before giving his statement. The only evidence suggesting that the police delayed arraignment to obtain a statement is a notation in a police report that the case was as good as closed. That report was written three hours before defendant gave his statement. On the other hand, there is no evidence that defendant was injured or in ill health, or that police deprived defendant of food or sleep, or threatened defendant with abuse. In this context, the trial court's voluntariness determination was not clearly erroneous.

Defendant's final argument is that his sentence of ten to fifteen years' imprisonment is disproportionate. This sentence is within the guidelines range. To challenge the proportionality of a sentence which is within the guidelines range, the defendant must present unusual circumstances to the trial court before sentencing in order to preserve this issue for review. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Defendant did not do so at any of his sentencing hearings and, therefore, this issue is waived.

Affirmed.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Timothy P. Pickard