STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANCIS JUNIOR BARKLEY,

Defendant-Appellant.

UNPUBLISHED
December 1, 1998

No. 201261
Cheboygan Circuit Court
LC No. 96-001582 FH

Before: White, P.J., and Markman and Young, Jr., JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of receiving and concealing stolen property valued in excess of $100, MCL 750.535(1); MSA 28.803(1). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to 80 to 360 months' imprisonment. Defendant appeals as of right, and we affirm.

I

Defendant first argues that there was insufficient evidence to warrant his conviction. Viewing the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt, we review this claim de novo. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). We will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *Id*. at 514; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

According to *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996), the prosecutor had to prove the following elements beyond a reasonable doubt:

> "'(1) that the property was stolen; (2) *the value of the property*; (3) *the receiving, possession or concealment of such property by the defendant with the knowledge of the defendant that the property had been stolen*; (4) the identity of the property as

> being that previously stolen; and (5) the guilty constructive or actual knowledge of the defendant that the property received or concealed had been stolen.'" [Citations omitted; emphasis added.]

Defendant challenges the sufficiency of the evidence on elements (2) and (3).

A

Defendant first argues that the prosecutor failed to prove that defendant knew the items in his possession were stolen. The prosecutor must show that a defendant received the goods with the knowledge that they had been stolen or received them under circumstances that would justify a jury's inference and subsequent conclusion that the defendant knew they were stolen. When a defendant's conduct tends to show that he had knowledge that the goods were stolen, he must offer an explanation of how the items came into his possession. *People v Korn*, 217 Mich 170, 173-174; 185 NW 817 (1921). The lack of any reasonable explanation for possession of stolen item supports an inference of guilt. *People v Salata*, 79 Mich App 415, 421-422; 262 NW2d 844 (1977). Other circumstances supporting an inference of guilty knowledge include the defendant's possession of a stolen article soon after it was taken, any change in the article's condition or alteration of identifying marks, serial numbers or registration, and a purchase price that is out of line with the article's value. *Id*.

Here, one of the complainants, Linda Konicki, discovered four tables and other items at defendant's "yard sale" that she and other family members had been storing at a storage facility. Konicki found a few of the items inside a microwave sitting on defendant's porch. As Konicki and other family members were going through defendant's house, defendant's niece, Jessica Barkley, noticed the activity at her uncle's home, approached a police officer who was on the scene, and identified a leather jacket that she believed defendant might have taken from her. The officer found the jacket in the house. Defendant's only explanation for possession of the tables was that he had purchased them for $100 from a man identified only as "Ralph." According to defendant, Ralph, accompanied by a female and an infant, had driven up to defendant's house in a small car and told defendant that he wanted to "get rid of these items." Defendant offered no explanation for his possession of the other items recovered.

In light of these circumstances, including the large number of items recovered, and the fact that defendant offered a somewhat implausible explanation for his possession of the stolen tables, and no explanation for any of the other items, except a denial that they came from the same source, although all the items, except the nieces' items were missing from the same location, the jury could reasonably have inferred that defendant knew that the items were stolen. *Korn, supra* at 173-174; *Salata, supra*.

B

Defendant also argues that the prosecutor failed to demonstrate that the value of the items stolen was more than $100. The value of stolen goods is determined by the price the goods will bring on the

open market at the time and place they were received by the defendant. The jury will determine the value by considering all the testimony presented at trial. *People v Toodle*, 155 Mich App 539, 553; 400 NW2d 670 (1986). The owner of the goods is "qualified to testify as to the value of his property unless his evaluation is based on personal or sentimental value." *People v Watts*, 133 Mich App 80, 84; 348 NW2d 39 (1984). Here, Linda Konicki testified as to the value of the tables and other small items recovered in defendant's house. Although the value of none of the items individually came to $100, when considered together, the figure easily exceeded that amount. Also, defendant's niece valued her jacket, a gift from her mother, at about $150, indicating that it originally had been worth about $200. This was sufficient evidence to establish the value of the items and that the value exceeded $100.

II

Defendant next argues that he is entitled to resentencing, claiming that the sentence imposed violates the rule of proportionality. A sentence can constitute an abuse of discretion if it is disproportionate "to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). This Court reviews habitual offender sentences for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). In *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995), the Court determined that the sentencing guidelines are inapplicable to habitual offenders and instead approved four factors to be utilized in assessing the defendant's record and determining his sentence: (1) the proper way to discipline the defendant; (2) the need to protect society from the defendant; (3) the potential for reforming the defendant; and (4) the potential for deterring others from committing like offenses. *Id*. at 628. The trial court expressly considered the first three factors in sentencing defendant, noting especially that the likelihood of recidivism in defendant's case was very high. Indeed, defendant's extensive criminal record indicates that he simply is unable "to conform his conduct to the laws of society." *Hansford, supra* at 326. Finally, we note that the term of defendant's sentence was within the statutory limits set under MCL 769.12; MSA 28.1084 and that the court took into account the recommendation contained in the presentence investigation report. There was no abuse of discretion on the part of the trial court in sentencing defendant.

Affirmed.

/s/ Helene N .White
/s/ Stephen J. Markman
/s/ Robert P. Young, Jr.