STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE D. HAYWOOD,

Defendant-Appellant.

UNPUBLISHED
June 15, 1999

No. 208005
Oakland Circuit Court
LC No. 97-152756 FH

Before: Collins, P.J., and Jansen and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of larceny by conversion in excess of $100, MCL 750.362; MSA 28.594; MCL 750.356; MSA 28.588, and possession of a fraudulent financial transaction device, MCL 750.157n(2); MSA 28.354(14)(2). Defendant was sentenced to consecutive terms as a fourth habitual offender, MCL 769.12; MSA 28.1084, to two years and five months to twenty years in prison for the larceny by conversion conviction and two to fifteen years in prison for the possession of a fraudulent financial transaction device conviction. Defendant appeals as of right and we affirm.

Defendant first argues that there was insufficient evidence presented at trial to support his larceny by conversion conviction because there was no direct evidence regarding the value of the converted vehicle. When reviewing a challenge to the sufficiency of the evidence, this Court must examine the evidence in the light most favorable to the prosecution to 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, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

> The larceny by conversion statute, MCL 750.362; MSA 28.594, provides:
> Any person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money or other property, or any part thereof, shall be deemed by so doing to have committed the crime of larceny and shall be punished as provided in the first section of this chapter.

The larceny statute, MCL 750.356; MSA 28.588, provides in relevant part:

> Any person who shall commit the offense of larceny, . . . if the property stolen exceed the value of $100.00, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 5 years or by fine of not more than $2,500.00. If the property stolen shall be of the value of $100.00 or less, such person shall be guilty of a misdemeanor.

Because the value of the converted property is used to differentiate between a felony and a misdemeanor offense, it is an essential element of the offense. *People v Johnson*, 133 Mich App 150, 153; 348 NW2d 716 (1984). Therefore, in defendant's prosecution for larceny by conversion in excess of $100, the prosecution was required to prove that the converted property, a Toyota Tercel, had a value of more than $100. It is conceded that no direct evidence of the value of the vehicle was presented. However, circumstantial evidence and reasonable inferences drawn from the evidence may constitute satisfactory proof of the elements of the crime. *People v Marsack*, 231 Mich App 364, 371; 586 NW2d 234 (1998).

In the present case, the subject property was a 1996 Toyota Tercel, which was in active use as a rental car by Avis Rent-a-Car. Defendant paid $207 to rent this vehicle for a one-week period. Furthermore, defendant's final bill for the one-month period which elapsed before the vehicle was finally returned was over $700. While jurors "may not use their own private or secret information concerning a matter at issue," they may "view the evidence presented in the light of their general knowledge of the field embraced within the scope of the inquiry." *People v Schmidt*, 196 Mich App 104, 107-108; 492 NW2d 509 (1992). The jurors found that a working, one-year-old Toyota Tercel—the use of which defendant himself apparently believed was worth $207 for a one-week period—had a value of more than $100. We believe that this finding was well within the scope of their "general knowledge." Accordingly, there was sufficient evidence presented for the jury to reasonably infer that the vehicle was worth in excess of $100.

Next, defendant contends that the trial court's instruction to the jury regarding the elements of larceny by conversion constituted error requiring reversal. Defendant failed to preserve this issue for appeal because he did not object to the allegedly improper instruction on the record before the jury retired to consider the verdict. MCR 2.516(C). Where there is no objection, relief will be granted only where manifest injustice occurred. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993).

The trial court, following its recitation of the elements of larceny by conversion, instructed the jury as follows: "[I]f you find that the defendant got the property by using some trick or pretense, you may consider whether the owner would have consented to the defendant taking the property, if the owner had known the true nature of the act or transaction involved." Defendant argues that the method by which he obtained delivery of the property is not an element of larceny by conversion, and that, therefore, this instruction was improper.

The character of the delivery of property, whether induced by legal or wrongful means, is not an element of the offense of larceny by conversion. *People v Christenson*, 412 Mich 81, 86, n 3; 312 NW2d 618 (1981); *People v Doe, alias Meyer*, 264 Mich 475, 481; 250 NW 270 (1933). However, whether the owner of the property consented to its conversion, and whether defendant intended to defraud or cheat the owner out of the property permanently, *are* elements of the offense. *People v Miciek*, 106 Mich App 659, 670; 308 NW2d 603 (1981). In this case, the prosecution presented evidence that defendant obtained possession of the vehicle by use of a false identity and fraudulent debit card. If the jury found that defendant had initially obtained possession of the vehicle through the use of trick or pretense, whether the owner would have consented to defendant taking the property if he had known the true nature of the act or transaction involved is certainly relevant to a determination of whether the owner consented to the ultimate conversion of the vehicle. Furthermore, whether defendant obtained possession by using trick or pretense is relevant to whether he intended to defraud the owner at the time of the actual conversion.

Moreover, the trial court properly instructed the jury regarding the essential elements of the offense of larceny by conversion, including that the prosecution was required to prove that defendant wrongfully deprived the owner of the property without the owner's consent and that defendant intended to permanently defraud or cheat the owner out of the property. When read as a whole, the trial court's instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Daoust*, 228 Mich App 1, 14; 577 NW2d 179 (1998). Therefore, no manifest injustice occurred in this case.

Lastly, defendant argues that he was denied a fair trial by the prosecutor's alleged mischaracterization of the evidence during closing argument. Defendant failed to object to any of the allegedly improper remarks, thus appellate review is generally precluded. An exception exists if a curative instruction could not have eliminated the prejudicial effect of the comments or where failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

A prosecutor is permitted to argue the evidence and all reasonable inferences from the evidence as it relates to the prosecutor's theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). After a careful review of the record, we conclude that the prosecutor's remarks were supported by the evidence. Moreover, the trial court explicitly instructed the jury that, in reaching a verdict, it was to consider only evidence that had been properly admitted, that the lawyers' statements and arguments were not evidence, and that it should only accept things the lawyers say that are supported by the evidence. Thus, any unfair prejudice caused by the prosecutor's comments was cured by these instructions. *People v Green*, 228 Mich App 684, 693; 580 NW2d 444 (1998). Therefore, no miscarriage of justice occurred because of the prosecutor's comments.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ Helene N. White