

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONELL DARRYL GREEN,

Defendant-Appellant.

UNPUBLISHED
February 15, 2005

No. 250436
Wayne Circuit Court
LC No. 02-014329-01

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for first-degree home invasion, MCL 750.110a(2), for which the trial court sentenced him to seven to twenty years' imprisonment. We affirm.

I. *Batson* Ruling

Defendant first contends that the trial court erred in refusing to require the prosecution to come forward with race-neutral reasons for its peremptory challenges, in violation of *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986). We disagree.

“This Court reviews a trial court’s *Batson* ruling for an abuse of discretion.” *People v Howard*, 226 Mich App 528, 534; 575 NW2d 16 (1997). An abuse of discretion will be found “only when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling.” *People v Sawyer*, 222 Mich App 1, 5; 564 NW2d 62 (1997). “An appellate court is to give great deference to the trial court’s findings on this issue because they turn in large part on credibility.” *Harville v State Plumbing and Heating, Inc*, 218 Mich App 302, 319-320; 553 NW2d 377 (1996), citing *Hernandez v New York*, 500 US 352, 365; 111 S Ct 1859; 114 L Ed 2d 395 (1991). The standards for review of a claim of discrimination in jury selection are equally applicable in the civil and criminal trial contexts. *Id.* at 319 n 9.

In *Batson*, the United States Supreme Court established a three-part test for considering claims that the prosecution improperly exercised peremptory challenges to exclude minorities from a jury panel. Under this test, the defendant must first make a prima facie showing that the prosecution exercised the challenge on the basis of race. *Id.* at 96-97. If the defendant makes such a showing, the burden then shifts to the prosecution to provide a race-neutral explanation

for its challenge. *Id.* at 97-98. If the prosecution then articulates a race-neutral reason, the trial court must decide whether the defendant has proved purposeful racial discrimination. *Id.* at 98. But where a party fails to show that the totality of the circumstances give rise to an inference of race-based discrimination, it is unnecessary to require opposing counsel to proffer a nondiscriminatory basis for the peremptory challenges. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 369; 533 NW2d 373 (1995), citing *Batson*, *supra* at 96-97.

In this case, the prosecution used its peremptory challenges to excuse a total of eight jurors. Defendant objected because four of the challenges “were of black jurors.” But defendant failed to articulate any facts that would establish an inference that any of those jurors were excluded on the basis of their race, other than the fact they were the same race as defendant. “The mere fact that a party uses one or more peremptory challenges in an attempt to excuse minority members from the jury venire, which is at most what was shown in the instant case, is not enough to establish a prima facie showing of discrimination.” *Clarke v Kmart Corp*, 220 Mich App 381, 383; 559 NW2d 377 (1996), citing *People v Williams*, 174 Mich App 132, 137; 435 NW2d 469 (1989).

The trial court determined that the prosecutor’s reasons for dismissing two of the jurors were apparent from the record, stating:

I’m not a very imaginative person, so excuse me if I just say this. I think that if I was a listening person, I could conclude that there was reason why Ms. Anderson might have been excused as well as Ms. White.^[1] Ms. White was a subject of a challenge. And it was challenged for no other reason and that she was kind of equivocate [sic] – so I don’t see those as following anything in particular. You placed it on the record. I don’t require a response.

We agree with the trial court’s ruling that defendant failed to establish a prima facie claim of jury discrimination. Because defendant failed to satisfy step one of the three-step *Batson* process, the trial court did not err in refusing to proceed to steps two and three.

II. Sufficiency of the Evidence

Next, we address defendant’s challenge to the sufficiency of the evidence to support his conviction and his claim of error with regard to the trial court’s instructions to the jury. Claims of insufficient evidence to sustain a criminal conviction invoke the constitutional right to due process of law. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). “Thus, review is de novo for this constitutional issue.” *Id.* “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that

¹ Potential jurors Anderson and White indicated that they did not believe they were in a position to judge people. Anderson, whose husband is a pastor, stated, “My personal belief is that God judges.” White indicated that she is Pentacostal and told the court, “I do not judge people.”

the essential elements of the crime were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling the person is armed with a dangerous weapon or another person is lawfully present in the dwelling. *People v Silver*, 466 Mich 386, 390 n 3; 646 NW2d 150 (2002), quoting MCL 750.110a(2).

“A conviction of aiding and abetting requires proof of the following elements: (1) the underlying crime was committed by either the defendant or some other person, (2) the defendant performed acts or gave encouragement that aided and assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time of giving aid or encouragement.” *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995).

Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could determine that defendant aided or encouraged the commission of first-degree home invasion. Defendant admitted that he knew that his co-perpetrators were planning to break into a house to steal money and drugs. With the intent of aiding or encouraging this burglary, defendant provided them with the bullets. Defendant also accepted a two-way radio so he could be informed of when the burglary was to take place. Defendant went to the house his co-perpetrators intended to rob and admitted that he was going to “keep an ear out” while they entered the house. Finally, defendant did not flee the scene of the crime until after the back door had been kicked in, and then, only because defendant discovered someone was in the house. Even if defendant did not initially intend that they would break and enter the dwelling while people were home, he went to the home at 3:00 a.m. when it was likely that people would be sleeping inside, and he noticed cars in the driveway. He clearly knew or had reason to know his co-perpetrators would be armed with a dangerous weapon because he provided them with a case of nine-millimeter bullets to help them accomplish the crime. Therefore, there was sufficient evidence to support defendant’s conviction.

III. Jury Instructions

Defendant next argues that the trial court erred in refusing to instruct the jury on the defense of voluntary abandonment. We disagree. Errors in jury instructions are questions of law that are reviewed de novo. *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002). A trial court is required to give a requested instruction, except where the theory is not supported by evidence. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995).

This Court has held that “the burden is on the defendant to prove by a preponderance of the evidence that he has voluntarily and completely abandoned his criminal purpose.” *People v Stapf*, 155 Mich App 491, 495; 400 NW2d 656 (1986).

“Abandonment is not ‘voluntary’ when the defendant fails to complete the attempted crime because of unanticipated difficulties, unexpected resistance, or circumstances which increase the probability of detention or apprehension.” [*Id.*, quoting *People v Kimball*, 109 Mich App 273, 286-287; 311 NW2d 343 (1981), mod 412 Mich 890 (1981).]

The trial court did not err in failing to read the instruction on voluntary abandonment because there was no evidence to support the instruction. There was no evidence of failure to complete the attempted crime. On the contrary, the evidence shows that the home invasion was completed when the door was kicked in. There was also no evidence that defendant abandoned the criminal purpose voluntarily: defendant stated that he ran away only because there were people in the house.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski