STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 21, 2013
v	No. 309536 Gogebic Circuit Court
JAMIE RAY JETT, Defendant-Appellant.	LC No. 2011-000279-FH

Before: SERVITTO, P.J., and WHITBECK and SHAPIRO, JJ.

PER CURIAM.

Defendant, Jamie Ray Jett, appeals as of right his convictions of resisting or obstructing a police officer[1] and operating a motor vehicle while intoxicated, second offense.[2] The trial court sentenced Jett as a fourth-offense habitual offender[3] to serve concurrent terms of 46 months' to 15 years' imprisonment for resisting or obstructing a police officer, and 60 days' imprisonment for operating a motor vehicle while intoxicated. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

Gogebic County Sherriff Deputy Joshua Elias testified that on July 29, 2011, he stopped Jett for speeding. Deputy Elias smelled intoxicants during the stop, performed several sobriety tests, and eventually arrested Jett and transported him to jail. After Jett was unable to perform a breath test, Deputy Elias obtained a search warrant for Jett's blood to determine his blood alcohol content.

Jett testified that he is afraid of needles. Deputy Elias testified that after he and other officers transported Jett to the hospital, Jett became combative, and four officers were required to hold him down. Gogebic County Sheriff Peter Matonich testified that Jett bit his hand while the officers were obtaining his blood.

[1] MCL 750.81d.

[2] MCL 257.625.

[3] MCL 769.12.

Before trial, Jett moved the trial court for a change in venue on the basis that Jett—who is African American—was likely to be denied a jury drawn from a fair cross section of the community because of the low proportion of African Americans in Gogebic County. Defense counsel asserted that only 4.1% of the residents of Gogebic County are African American, and that "an African American has never been in a jury pool in Gogebic County." The trial court denied Jett's motion, finding that counsel's assertions were not "supported by either affidavit or anything else." Jett's jury venire did not include any African Americans. After the parties selected the jury, Jett renewed his motion for a change in venue, which the trial court again denied. The jury found Jett guilty of both charges.

On appeal, Jett contends that the trial court's failure to change his venue deprived him of a jury comprised of a fair cross-section of the community.

II. RIGHT TO AN IMPARTIAL JURY DRAWN FROM A FAIR CROSS SECTION OF THE COMMUNITY

A. STANDARD OF REVIEW

This Court reviews de novo whether a defendant was denied his Sixth Amendment right to an impartial jury drawn from a fair cross section of the community.[4]

B. LEGAL STANDARDS

The Sixth Amendment of the United States Constitution provides that

> [i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . .

The United States Supreme Court in *Duren v Missouri*[5] provided that, for a defendant to establish a prima facie case that his or her jury was not drawn from a fair cross section of the community, the defendant must show

> (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.[6]

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[4] *People v Bryant*, 491 Mich 575, 595; 822 NW2d 124 (2012).

[5] *Duren v Missouri*, 439 US 357; 99 S Ct 664; 58 L Ed 2d 579 (1979).

[6] *Bryant*, 491 Mich at 597, quoting *Duren*, 439 US at 364.

C. APPLYING THE STANDARDS

African Americans "are a distinct group in the community" and thus satisfy the first requirement.[7] But Jett asserts that the trial court erred by failing to evaluate the reasonableness of Jett's jury venire and subsequently denying his motion to change venue. We conclude that Jett did not provide any evidence for the trial court to evaluate to determine whether Jett's jury venire was unfair or unreasonable under the second and third prongs of *Duren*, and thus the trial court did not err when it denied his motions.

Even presuming that only 4.1% of citizens in Gogebic County are African American (an assertion that appeared in Jett's brief to the trial court without the benefit of the US Census Bureau document that Jett provides on appeal), Jett provided no evidence concerning the composition of jury pools and venires in Gogebic County over time. Under the second *Duren* prong, the defendant must show that group's representation "in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community[.]"[8] To satisfy this requirement, "a court must examine the composition of jury pools and venires *over time* using the most reliable data available . . ."[9] Here, Jett asserted that no jury venire in Gogebic County had ever contained an African American, but did not provide any evidence to support that assertion. Jett's unsupported assertion is exactly the sort of claim that this Court will reject on appeal.[10]

Jett additionally asserts on appeal that, because there were no African Americans in his jury venire, there was "a 100% chance of [Jett] not having any African Americans on his jury." However, concerning the second *Duren* prong, "[t]he representation of African-Americans in [a] defendant's venire is only relevant as a part of the larger picture of venires or jury pools."[11] That Jett did not have any African Americans in his jury venire, standing alone, does not establish a Sixth Amendment violation.

Nor would this fact alone establish the third *Duren* prong. A systematic exclusion arises from a *process* of exclusion.[12] Thus, a defendant cannot show a systematic exclusion by solely relying on his or her own jury venire.[13] Jett cannot rely on the lack of African Americans in his own jury venire to establish a Sixth Amendment violation.

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[7] *Bryant*, 491 Mich at 598.

[8] *Id*. quoting *Duren*, 439 US at 364.

[9] *Bryant*, 491 Mich at 599-600 (emphasis in the original).

[10] See *People v Williams*, 241 Mich App 519, 526-527; *People v Flowers*, 222 Mich App 732, 737; 565 NW2d 12 (1997); *People v Howard*, 226 Mich App 528, 533; 575 NW2d 16 (1997).

[11] *Bryant*, 491 Mich at 602.

[12] *Bryant*, 491 Mich at 598; *Howard*, 226 Mich App at 533.

[13] *Williams*, 241 Mich App at 526.

Jett additionally asserts on appeal that the following statement by the trial court proves that there was a systematic exclusion of African Americans on juries in Gogebic County: "I don't want there to be any—any assumption that the Court agrees that there's never been an African American on the jury venire in this county . . . ." Contrary to Jett's argument, this statement clearly *refuted* defense counsel's statement. Further, even had the trial court agreed with defense counsel's statement, it is unclear how the trial court's statement alone would establish the existence of a *process* of exclusion.

We conclude that the trial court did not err when it denied Jett's motions after it determined that Jett did not provide any evidence to support—much less establish—that African Americans are systematically excluded from jury venires in Gogebic County.

We affirm.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro