

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC DONALD PURIFOY,

Defendant-Appellant.

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UNPUBLISHED

August 16, 2002

No. 230910

Oakland Circuit Court

LC No. 00-170816

Before: Murray, P.J., and Fitzgerald and O’Connell, JJ.

PER CURIAM.

Defendant was originally charged with first-degree murder, MCL 750.316, assault with intent to commit murder, MCL 750.83, and carrying a concealed weapon in a motor vehicle, MCL 750.227(2). He now appeals as of right his jury trial conviction of carrying a concealed weapon in a motor vehicle, MCL 750.227(2).<sup>1</sup> Defendant was sentenced, as a third habitual offender, MCL 769.11, to four to ten years’ imprisonment for the carrying a concealed weapon conviction. We affirm.

Defendant’s sole issue on appeal is that the trial court failed to correct obvious scoring errors in the sentencing guidelines. We disagree. This Court reviews issues regarding the trial court’s scoring of the guidelines to determine whether the evidence supported the scoring. *People v Leversee*, 243 Mich App 337, 349; 622 NW2d 325 (2000). The trial court’s scoring of the sentencing guidelines will be upheld on appeal if there is any record evidence to support the score. *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

Defendant argues that it was error for the court to assess defendant twenty-five points for offense variable 1 (OV 1), one hundred points for offense variable 3 (OV 3), and ten points for offense variable 9 (OV 9), because the scoring reflected that defendant actually participated in or had knowledge of the shooting that took place. However, defendant argues that he was only convicted of carrying a concealed weapon based upon his conduct of driving away after the

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<sup>1</sup> Defendant was also charged with felon in possession of a firearm, MCL 750.224, and possession of a firearm during the commission of a felony, MCL 750.227b, but requested that those charges be bifurcated prior to the commencement of trial. After trial, defendant pleaded guilty to both the felon in possession of a firearm and felony-firearm charges. However, those convictions are not being appealed.

shooting had taken place, and thus, the scoring inaccurately represented defendant's participation in the shooting. We find no error as the evidence presented at trial supported the trial court's scoring of defendant's sentencing guidelines. *Leversee, supra; Elliott, supra.*

Under OV 1, aggravated use of a weapon, twenty-five points may be assessed if "[a] firearm was discharged at or toward a human being . . . ." MCL 777.31(1)(a). Specifically, OV 1 instructs that, "[i]n multiple offender cases, if 1 offender is assessed points for the presence or use of a weapon, all offenders shall be assessed the same number of points." MCL 777.31(2)(b). This language implies that defendant need not have actually shot the victims in order to be assessed points. Therefore, in a multiple offender situation, participation in the crime alone is enough to be given points under OV 1 where a firearm was discharged at or toward a human being. Defendant drove by the red Baretta that contained the victims. Tompkins, the shooter, told defendant to stop and "back up" because one of the men in the red Baretta was saying something to them. Defendant backed up the van and aligned it window to window with the red Baretta. Defendant then heard gunshots and ducked down. After the gunshots ceased, defendant saw a gun in Tompkins' right hand. Tompkins then told defendant to pull away. Defendant drove out of the parking lot and went home. Accordingly, OV 1 was properly scored.

Additionally, the scoring of one hundred points for OV 3, for physical injury to a victim, was also proper. One hundred points is assessed under OV 3 if a "victim was killed." MCL 777.33(1)(a). Specifically, OV 3 instructs that, "[i]n multiple offender cases, if 1 offender is assessed points for death or physical injury, all offenders shall be assessed the same number of points." MCL 777.33(2)(a). Moreover, one hundred points is to be scored if "death results from the commission of a crime and homicide is not the sentencing offense." MCL 777.33(2)(b). As discussed *supra*, defendant does not have to actually kill the victim or be convicted of a homicide offense to have points assessed in connection with the crime. Defendant was aware of the shooting after it occurred, yet drove Tompkins away from the scene with the murder weapon. Consequently, a death did result from the commission of "a crime," and defendant was not being sentenced for a homicide. Thus, the scoring of one hundred points was correct.

Lastly, the scoring of ten points for OV 9 was proper. Ten points is scored if there were "2 to 9 victims." MCL 777.39(1)(c). The number of victims is determined by counting "each person who was placed in danger of injury or loss of life as a victim." MCL 777.39(2)(a). Both France and Morris were shot multiple times by Tompkins. Morris' injuries were fatal. Although France survived, he was placed in danger of losing his life. Thus, defendant was correctly assessed ten points under OV 9.

Affirmed.

/s/ Christopher M. Murray  
/s/ E. Thomas Fitzgerald  
/s/ Peter D. O'Connell