

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE RODNEY NUNN,

Defendant-Appellant.

UNPUBLISHED

July 17, 2008

No. 278274

Oakland Circuit Court

LC No. 2007-213290-FH

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of six to 30 years in prison for his conviction of unarmed robbery, MCL 750.530, entered after a jury trial. We affirm.

Defendant's conviction arose from a theft in a store in Auburn Hills. Kelly Brown, the assistant manager, was working at the store with Sharon Day. Defendant entered the store at approximately 4:00 p.m. and asked about a printer. Brown showed him the printer, and then began to wait on other customers. Brown and Day were briefly distracted when a young woman came into the store, demanded a refund for a camera, and then became angry when she was told she needed to provide a receipt. The woman left the store, returned briefly to continue to argue, and then left again. While this occurred, defendant moved around the store, talking on his cell phone. Brown then noticed that defendant had moved to an area of the store where cameras were located. Defendant was standing awkwardly with an angular bulge in his pants leg. Brown asked defendant what he had in his pants leg, and Day came to join Brown. Defendant bent over, slapped his ankle, and stated that he had nothing in his pants. Brown could see a bulge in defendant's pants that was consistent with the size of a camera box. Brown told Day to call the police. Defendant stated that he was leaving. He lowered his shoulder and knocked Brown aside, shoving her and forcing her out the door. He entered a parked car, which drove away. A customer noted the license plate and provided it to Brown, who in turn provided it to the police. Brown looked at the camera display, and saw that three cameras were missing.

Police officers subsequently apprehended defendant and three women in the car. The police found a camera still sealed in its box on the floor of the car between defendant's knees. One of the women with defendant, identified as Akeiba Hodges, had one camera under her coat on the seat. Another camera was found on the floor of the car between her knees. These were in unopened boxes. Hodges had another camera in her coat. Brown identified Hodges as the

individual who had earlier caused the commotion while attempting to return a camera. Brown identified three of the cameras found in the car as those taken from the store.

Defendant maintains that the trial court misscored Offense Variables 4 (psychological injury to a victim), and 14 (offender's role). A trial court's scoring of a sentencing variable is reviewed by this Court for an abuse of discretion and to determine whether the evidence of record supports the assigned score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). "Scoring decisions for which there is any evidence in support will be upheld." *Id.* (citation omitted).

Offense Variable 4 is scored at ten points for the occurrence of serious psychological injury to a victim that "may require professional treatment." MCL 777.34(2). "There is no requirement that the victim actually receive psychological treatment." *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004). Here, Brown testified that she was "very scared, very frightened" when defendant forced his way past her out of the store. In the victim impact portion of the presentence information report Brown stated that she had "receive[d] some psychological trauma as a result of the instant offense" and that she has "fear of working in the store alone." Because there is some support for this scoring decision, we affirm it.

Offense Variable 14 is scored at ten points if defendant is a leader in a multiple offender situation. MCL 777.44(1)(a). The testimony established that Hodges was complicit in defendant's apparent scheme to distract Brown and Day so that he could steal the cameras. The evidence that Hodges was a minor, and that she played a supporting role in the scheme, supported a finding that defendant was the leader in this situation. Defendant has not shown that this score was erroneous.

Affirmed.

/s/ Henry William Saad
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello