

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 15, 2012

v

LEONARD LEPPEL JACKSON,
Defendant-Appellant.

No. 301903
Wayne Circuit Court
LC No. 07-010097-FC

Before: JANSEN, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of sentence entered by the trial court resentencing defendant as a third habitual offender,¹ to 9 to 20 years in prison for his armed robbery conviction.² We affirm.

Defendant argues the trial court erred in resentencing him when it assessed 10 points for offense variable 10 (“OV 10”). Defendant requests that this Court remand for resentencing.

“This Court reviews a sentencing court’s scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score.”³ A trial court’s scoring decision “for which there is any evidence in support will be upheld.”⁴ This Court reviews “de novo as a question of law the interpretation of the statutory sentencing guidelines.”⁵

¹ MCL 769.11.

² MCL 750.529.

³ *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

⁴ *People v Endres (On Remand)*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

⁵ *Id.*

This Court must affirm minimum sentences that are within the recommended guidelines range, except when there is an error in scoring the sentencing guidelines.⁶ OV 10, which pertains to exploitation of a vulnerable victim, requires an assessment of 10 points if, “[t]he offender exploited a victim’s physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status.”⁷ The statute defines “vulnerability” as “the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.”⁸ One factor a sentencing court should consider in determining whether a victim is “vulnerable” is the victim’s youth or agedness.⁹ “‘Exploit’ means to manipulate a victim for selfish or unethical purposes.”¹⁰

Defendant argues that zero points should be assessed under OV 10 because he only robbed the mother, not the children, and therefore only the mother can be considered a victim for the purposes of OV 10. Because only the mother’s “vulnerability” is relevant under OV 10, and defendant did not exploit her youth during the armed robbery, defendant argues the scoring of 10 points under OV 10 was incorrect. We disagree.

Defendant’s argument overlooks that, according to both case law and the charging document and another offense variable to which defendant takes no exception, the children are considered “victims” of the armed robbery. In *Cannon*, the Court defined the term “victim” for purposes of OV 10 as, “[A] person who suffers from a destructive or injurious action or agency [or] a person who is deceived or cheated[.]”¹¹ Here, defendant approached Sherry Taylor, pointed a gun at her children, Cherrise and Charlie, and threatened to shoot them unless Taylor gave him all her money and other valuables. The children were crying and screaming during the incident. Pointing a gun at another’s head is potentially destructive and injurious, and the children’s reactions demonstrate that they suffered from defendant’s actions. This is sufficient record evidence to support the trial court’s finding that the children “suffer[ed] from a destructive or injurious action or agency [or were] deceived or cheated.”¹²

Moreover, the charging document and another offense variable support the conclusion that the children were victims. As originally written, defendant’s armed robbery charge indicated Charlie and Cherrise (the children) were the victims of the offense. In a pretrial motion, the prosecution moved to amend the Felony Information to include Taylor (the mother)

⁶ MCL 769.34(10).

⁷ MCL 777.40(1)(b).

⁸ MCL 777.40(2)(c).

⁹ *People v Cannon*, 481 Mich 152, 158; 749 NW2d 257 (2008).

¹⁰ MCL 777.40(2)(b).

¹¹ *Cannon*, 481 Mich at 161 (citation omitted).

¹² *Id.*; see also *Endres*, 269 Mich App at 417 (“Scoring decisions for which there is any evidence in support will be upheld.”).

as a victim of the armed robbery count. Notably, the prosecution requested that the children remain as “victims” of the armed robbery count:

The children, Cherrise and Charlie Harris, should remain as victims of the Armed Robbery in Count One, as already listed in the Information:

The elements of armed robbery are (1) an assault, (2) a felonious taking of property from the victim’s presence or person, (3) whole [sic] the defendant is armed with a weapon described in the statute.

In an armed robbery case, the prosecutor need not show the victim actually owned the property taken...Rather, the proper analysis is to determine whether the alleged victims had a right to possession of the subject property superior to that of the defendant.

Defendant did not object to this amendment and the trial court granted the motion to amend the Felony Information.

Finally, the assessment of defendant’s OV 9 score, which pertains to the number of victims, provides additional support for the fact that the children are victims of the armed robbery. In defendant’s case, OV 9 was scored at 10 points, which is appropriate when “[t]here were 2 to 9 victims who were placed in danger of physical injury or death[.]”¹³ The definition of “victim” under OV 9¹⁴ tracks closely with the definition of “victim” under OV 10 as explained in *Cannon*.¹⁵ The charging document and other offense variable further reinforce the conclusion extracted from case law that the children were victims of the armed robbery for the purposes of OV 10.

Once it is determined that the children are “victims,” the only remaining issue is whether there is any evidence to support the finding that defendant exploited the children based on their youth.¹⁶ MCL 777.40(3)(b) defines “exploit” as, “[to] manipulate a victim for selfish or unethical purposes.” Here, the same facts that demonstrate the children were victims also show that defendant exploited the children based on their youth. Defendant chose to point what appeared to be a gun at two young children, ages nine and six, who were with their mother. He did so in order to obtain money and other valuables from their mother. As a result of defendant’s actions, the young children began to cry and scream, afraid that defendant might harm them.

¹³ MCL 777.39(1)(c).

¹⁴ MCL 777.39(2)(a) (A victim under OV 9 is a “ person who was placed in danger of physical injury or loss of life or property . . . ”). See also *People v Morson*, 471 Mich 248, 262; 685 NW2d 203 (2004) (holding that a pedestrian standing nearby when the defendant committed armed robbery against another person was a “victim” under OV 9).

¹⁵ *Cannon*, 481 Mich at 161 (A victim under OV 10 is a “person who suffers from a destructive or injurious action or agency [or] a person who is deceived or cheated[.]”).

¹⁶ *Endres*, 269 Mich App at 417.

These actions demonstrate that defendant took advantage of the children's young ages to distress both the children and the mother in order to more easily obtain the money and valuables he sought. This evidence is sufficient to support the trial court's finding that defendant exploited the victims based on their youth.

Affirmed.

/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan