

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLEN PURIFY,

Defendant-Appellant.

UNPUBLISHED

November 13, 2008

No. 281195

Wayne Circuit Court

LC No. 07-009615-01

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carjacking, MCL 750.529a, armed robbery, MCL 750.529, unlawful imprisonment, MCL 750.349b, felon in possession of a firearm, MCL 750.224f, three counts of felonious assault, MCL 750.82, resisting or obstructing a police officer, MCL 750.81d, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a third habitual offender, MCL 769.11, to concurrent prison terms of 16 to 50 years for the carjacking and armed robbery convictions, 10 to 30 years for the unlawful imprisonment conviction, five to ten years for the felon in possession conviction, four to eight years for each of the felonious assault convictions, and two to four years for the resisting or obstructing conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant appeals his sentences as of right, arguing that the legislative guidelines were improperly scored. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

A court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). Defendant contends only that the trial court erred in scoring ten points for offense variable (OV) 9 of the sentencing guidelines, MCL 777.39. OV 9 should be scored at ten points if there “were 2 to 9 victims who were placed in danger of physical injury or death,” and it required the court to “count each person who was placed in danger of physical injury or loss of life or property as a victim.” Defendant contends that his sentences were scored only as to carjacking as the offense carrying the highest penalty, *People v Eberhardt*, 205 Mich App 587, 590-591; 518 NW2d 511 (1994), and that there was only one victim of the carjacking.

We review a trial court’s scoring to determine whether it properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). A scoring decision “for which there is any evidence

in support will be upheld.” *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). But in addition to this deferential standard, because defendant did not object to this scoring at his sentencing, this issue has not been preserved for appeal, so we review the issue for plain error. MCR 6.429(C); *People v Kimble*, 470 Mich 305, 310-312; 684 NW2d 669 (2004).

Based on the record in this case and the standard of review, we find that the trial court had ample basis for scoring OV 9 as it did. Defendant approached the complainant, Taniya Stewart, with a gun while Stewart was placing an order at the window of a Dairy Queen. Defendant demanded money, led Stewart to her car, pushed her aside, and drove away in Stewart’s car with her purse. Stewart immediately asked for help from another individual parked nearby, who turned out to be an undercover police officer engaged in unrelated surveillance. The officer requested backup and followed defendant. Defendant drove to an abandoned house, where he was confronted by police officers. Defendant ignored their orders to stop, physically fought with an officer who tried to arrest him, and threatened the officers with his gun. An officer shot defendant in the leg, and defendant was then taken into custody.

OV 9 is to be scored “only with respect to the specific criminal transaction that gives rise to the conviction for which the defendant is being sentenced.” *People v Chesebro*, 206 Mich App 468, 471; 522 NW2d 677 (1994). Thus, when scoring OV 9, the court cannot count persons unaffected by the transaction as victims, e.g., those who are victims of uncharged offenses. *People v Gullett*, 277 Mich App 214, 217-218; 744 NW2d 200 (2007). However, a “victim” of a crime can be a person who the defendant never intended to affect, such as a bystander responding to a call for help. *People v Morson*, 471 Mich 248, 261-262; 685 NW2d 203 (2004). Furthermore, the focus of OV 9 is on people put into harm’s way by the criminal *transaction*, not just the crime itself: “in a robbery, the defendant may have robbed only one victim, but scoring OV 9 for multiple victims may nevertheless be appropriate if there were other individuals present at the scene of the robbery who were placed in danger of injury or loss of life.” *People v Sargent*, 481 Mich 346, 350-351 n 2; 750 NW2d 161 (2008). Indeed, only one person had her car taken at gunpoint. However, the evidence supports a finding that the entire carjacking transaction placed more people than just the complainant in danger of injury or loss of life.

Affirmed.

/s/ Stephen L. Borrello

/s/ Alton T. Davis