

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UNPUBLISHED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. 07-09615-01

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

BECKERING, P.J., (*concurring*)

I concur in the result reached by my colleagues. For offense variable (OV) 9 to be scored at ten points, there must be evidence to support a finding that two to nine victims “were placed in danger of physical injury or death.” MCL 777.39(1)(c). When scoring OV 9, “only people placed in danger of injury or loss of life when the sentencing offense was committed (or, at the most, during the same criminal transaction) should be considered.” *People v Sargent*, 481 Mich 346, 350; 750 NW2d 161 (2008). “The instructions do not necessarily require that a separate criminal offense have occurred with respect to that victim. For example, 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.” *Id.* at 350 n 2.

In this case, at the time of the carjacking, the victim, Taniya Stewart, was standing at the window of a Dairy Queen waiting for her food order to be processed. Dairy Queen employee Ella Guy had taken Stewart’s food order and was processing the order. While Guy’s attention was focused on preparing the food, defendant walked up behind Stewart at the window, placed a gun to her back, and asked for her money. Defendant then made Stewart return to her car, a black Mustang, and give him her money, whereafter he drove off with her car. Guy testified that when she completed the order, Stewart was no longer at the window. She asserted that she saw a man wearing a mask standing next to a black Mustang. Although Guy may not have been aware that a carjacking was taking place in her presence, it is fair to say that she was placed in danger of physical injury or death during the carjacking due to her close proximity to the events. As such, I would affirm a finding of ten points for OV 9 based on this evidence.

/s/ Jane M. Beckering