

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 22, 2011

v

DANIEL LATRELL WILLIAMS,
Defendant-Appellant.

No. 299250
Kalamazoo Circuit Court
LC No. 2010-000019-FH

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of second-degree fleeing and eluding a police officer, MCL 257.602a(4). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to 4 to 20 years' imprisonment. Defendant appeals his conviction as of right. We affirm.

Defendant's conviction arises from a high-speed chase that took place after defendant drove away from a police officer during a traffic stop. At sentencing, the trial court found that both the officer and the passenger in defendant's vehicle were victims for the purpose of scoring offense variable (OV) 9, MCL 777.39, and, as a result, scored it at ten points. Defendant objected to the trial court's scoring of OV 9 at sentencing, thus preserving the issue for appeal. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004).

We review a sentencing court's scoring decisions for an abuse of discretion. *People v Dorhan*, 264 Mich App 77, 89; 689 NW2d 750 (2004). A reviewing court must determine whether the trial court's decision is supported by adequate evidence on the record. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). "Scoring decisions for which there is any evidence in support will be upheld." *People v Endres (On Remand)*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

With respect to OV 9, MCL 777.39(1)(c) directs the sentencing court to score ten points for OV 9 when "[t]here were 2 to 9 victims who were placed in danger of physical injury or death." MCL 777.39(2)(a) defines "victim" to include "each person who was placed in danger of physical injury or loss of life or property."

In this case, the trial court found that defendant placed two people in danger of physical injury or death: the police officer and defendant's front-seat passenger. The evidence showed

that the officer was standing next to the driver's side of defendant's vehicle when defendant unexpectedly sped away. This act itself exposed the officer to a danger of being injured. Defendant then led the officer on a high-speed chase through downtown Kalamazoo, where speed limits were as low as 25 miles per hour. Although the chase lasted less than ten minutes, defendant disregarded multiple stop signs, and both defendant and the officer reached speeds in excess of 70 miles per hour. Defendant's actions during the high-speed chase placed both the officer and defendant's passenger in danger of physical injury or death. This evidence adequately supports the trial court's finding that both the officer and defendant's passenger were victims placed in danger of physical injury or death for purposes of scoring OV 9. See *id.*

In reaching our conclusion, we disagree with defendant that, because there was no collision or near miss, no property damage, and no injury to any of the parties involved, neither the officer nor the passenger were placed in danger. To be a victim for OV 9 scoring purposes, a person need not have suffered actual injury or been the intended victim of the offense. See *People v Morson*, 471 Mich 248, 262; 685 NW2d 203 (2004) (finding that person who was standing nearby and responded to robbery victim's call for help was properly scored as a victim under OV 9); *People v Kimble*, 252 Mich App 269, 274; 651 NW2d 798 (2002) (holding that fiancé and child of murdered woman who were next to her in the car when she was shot were victims for purposes of scoring OV 9). Further, the plain language of MCL 777.39(2)(a) does not require actual physical injury or property damage but only the "danger of physical injury or loss of life or property." See *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001) ("When [statutory] language is unambiguous, no further judicial construction is required or permitted, because the Legislature is presumed to have intended the meaning it plainly expressed.").

While defendant indicates that no evidence was presented illustrating that his passenger was an unwilling participant and contends that his passenger could have been considered an accomplice and not a victim, there was no evidence presented implicating defendant's passenger as an accomplice in this case. Furthermore, the relevant inquiry for purposes of scoring OV 9 is how many persons were placed in danger of physical injury or death. See MCL 777.39(2)(a). Here, the evidence is adequate to support the trial court's finding that defendant's passenger was a person placed in danger of physical injury or death for purposes of scoring OV 9.

Accordingly, we find that the trial court did not abuse its discretion in scoring ten points for OV 9.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering