

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GABRIEL HERRERA,

Defendant-Appellant.

UNPUBLISHED

April 26, 1996

No. 173906

LC No. 93-007659

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN L. TERECHENOK,

Defendant-Appellant.

No. 173920

LC No. 93-008774

Before: MacKenzie, P.J., and Cavanagh and T.L. Ludington*, JJ.

PER CURIAM.

Both defendants were originally charged with two counts of armed robbery, MCL 750.529; MSA 28.797. Defendant Herrera was also charged with possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Following a joint bench trial, both defendants were convicted of one count of armed robbery. Defendant Herrera was sentenced to five to fifteen years' imprisonment and defendant Terechenok was sentenced to five to 18 years' imprisonment. Both defendants appeal as of right. We affirm in both cases.

* Circuit judge, sitting on the Court of Appeals by assignment.

Evidence at trial established that defendants and another man entered the home of Connie Daniel while her brother-in-law Awraha Daniel, Jennifer Cain, and Stephanie Murray were present. Defendants told the women to get on the floor, and the other man -- who had a revolver -- told Awraha Daniel to lie down. The other man then handed the revolver to defendant Terechenok while defendant Herrera retrieved a knife from the kitchen. All three men beat Awraha Daniel, and Herrera took \$300 from Daniel while the other man pointed the gun. Herrera then stabbed Awraha Daniel in the shoulder. Terechenok took money from Connie Daniel's purse and the men then fled in Awraha Daniel's vehicle.

In No. 173906, defendant Herrera first argues that the trial court erred in scoring Offense Variables 9 and 17. We disagree. This Court will not disturb the trial court's scoring decisions if there is record evidence to support the scores. *People v Johnson*, 202 Mich App 281, 288; 508 NW2d 509 (1993). Applying this standard, we find no error in the scoring of OV 9 to reflect defendant's role as a leader in the offense. Unlike the others, Herrera was familiar with the house where the robbery occurred. Herrera kicked and beat Daniel, demanded money from him, went through his pockets, and stole \$300. He retrieved a knife and stabbed Daniel. This reflects more than the passive, "tag along" role portrayed by Herrera and justifies the court's scoring decision. Compare *Johnson, supra*. Because the claimed error in the scoring of OV 17 does not alter Herrera's total offense variable so as to change the level at which he was ultimately placed, any error in the scoring of that variable would be harmless. *Id.* See also *People v Ratkov (After Remand)*, 201 Mich App 123; 505 NW2d 886 (1993). Accordingly, we need not review that claim.

Defendant Herrera also contends that the trial court erred in assuming that Herrera was guilty of two juvenile offenses that had been dismissed for lack of evidence. The court, however, change the scoring of the guidelines to reflect that Herrera had no prior high severity juvenile adjudications. Further, there is nothing in the record to suggest that, in imposing sentence, the judge erroneously assumed that defendant's contacts with the juvenile justice system resulted in convictions. The claim is therefore without any record support.

In No. 173920, defendant Terechenok contends that there was insufficient evidence to support his conviction because the testimony concerning his identity as one of the perpetrators was contradictory and unreliable. The claim is without merit. In reviewing the sufficiency of the evidence in a bench trial, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221; 380 NW2d 11 (1985). Here, Awraha Daniel identified Terechenok as one of the robbers. Viewed in a light most favorable to the prosecution, this evidence was sufficient to establish defendant's identity. The credibility of the identification testimony was a matter for the trial court, as the trier of fact, to decide. We will not resolve it anew. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Defendant Terechenok also argues that the trial court erroneously sustained the prosecutor's objection to certain hearsay testimony of Jennifer Cain. According to defendant, the ruling prevented Cain from explaining why Connie Daniel, who was unavailable to testify, would want Cain to lie about

the identities of the robbers. We find the argument unpersuasive. The court allowed Cain to testify on cross-examination that she lied when she said defendants were the robbers. The court also allowed Cain to testify that Connie Daniel had instructed her to lie about defendants' identities. Defendants were therefore able to successfully impeach Cain's credibility. Connie Daniel's motive for inducing Cain to lie was simply not relevant, and the court's failure to pursue the matter was not an abuse of discretion. *People v Miller*, 198 Mich App 494, 495; 499 NW2d 373 (1993).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Mark J. Cavanagh

/s/ Thomas L. Ludington