STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALCOLM XAVIER JEFFRIES,

Defendant-Appellant.

UNPUBLISHED
December 17, 1996

No. 184705
LC No. 94-3132 FH

Before: Fitzgerald, P.J., and O'Connell and T.L. Ludington,* JJ.

PER CURIAM.

Defendant was convicted by jury of two counts of unarmed robbery, MCL 750.530; MSA 28.278, and one count of unauthorized driving away of an automobile (UDAA). MCL 750.413; MSA 28.645. He was subsequently convicted[1] before the bench of being an habitual offender, fourth, MCL 769.12; MSA 28.1084, and was sentenced to concurrent terms of fifteen to sixty years with respect to the unarmed robbery convictions and five to twenty-five years with respect to the UDAA conviction. He now appeals as of right, and we affirm.

First, defendant's statutory and constitutional right to be present at his trial, MCL 768.3; MSA 28.1026, US Const, Am 14, was not unlawfully impinged upon. Defendant's belligerent manner and obscenities warranted his exclusion from the courtroom. See *People v Staffney*, 187 Mich App 660, 663-666; 468 NW2d 238 (1991).

Second, the court did not abuse its discretion in denying defendant's request to have substitute counsel appointed. Appointment of substitute counsel is appropriate only upon a showing of good cause and only then when substitution will not unreasonably disrupt the judicial process. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). Defendant has failed to demonstrate good cause in that his relationship with his attorney was not noticeably more antagonistic than his relationship with everyone else even tangentially involved in the proceedings below. Further, contrary to defendant's contention, the record indicates that defendant's attorney performed competently.

---

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

Third, while a suspect is generally entitled to have counsel present during an identification procedure, *People v Wilki*, 132 Mich App 140, 142; 347 NW2d 735 (1984), an exception exists for prompt, "in-field" identifications, *People v Turner*, 120 Mich App 23; 328 NW2d 5 (1982). Prompt, "in-field" identifications without the presence of counsel are permitted unless the police have "very strong evidence" that the suspect is the culprit. *Id*. We agree with the circuit court that the police lacked "very strong evidence" that defendant was a perpetrator of the crime at the time they conducted the "in-field" identification procedure in issue. The complainants described the perpetrators as two African-American males. The officers observed a vehicle that matched the general description of the missing vehicle, but it was occupied by only one African-American male. The officers then verified that the vehicle did, in fact, belong to the complainant, but defendant made an exculpatory statement. As set forth in *Turner*, the requisite strong evidence exists only where "the suspect has himself decreased any exculpatory motive, i.e., where he has confessed or presented the police with either highly distinctive evidence of the crime or a highly distinctive personal appearance." *Id.* In light of this lack of compelling evidence that he was the perpetrator, he had no right to counsel. *Id*.; see also *People v Coward*, 111 Mich App 55, 63; 315 NW2d 144 (1981). Additionally, we find no evidence that the procedure was unduly suggestive. See *Turner*, *supra*, p 38.

Fourth, the circuit court's denial of defendant's motion to suppress evidence of a prior theft conviction may not constitute an abuse of discretion where defendant did not testify at trial. *People v Finley*, 431 Mich 506, 521; 431 NW2d 19 (1988).

Fifth, evidence supports the sentencing court's scoring of offense variable 7 (OV 7), exploitation of victim vulnerability, to reflect that defendant had exploited the through a difference in size or strength. Defendant, standing over six feet tall and weighing over two hundred pounds, reached through a car window and choked the female victim of the robbery. Because evidence supports the court's scoring, we uphold it. *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

Finally, in light of defendant's extensive criminal history and the particular facts of the present case, we find no abuse of discretion in the sentences imposed. See *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990); *People v Gatewood*, 450 Mich 1021; 546 NW2d 252 (1996).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ Thomas L. Ludington

[1] Certain irregularities exist with respect to the documentation of this conviction and its effect on the sentences imposed for the underlying substantive felonies. Because defendant has not raised this issue on appeal, we decline to address it.