

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 17, 2011

v

IVORY JAMAR CRAWFORD,
Defendant-Appellant.

No. 298863
Wayne Circuit Court
LC No. 07-011654-FC

Before: SERVITTO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree murder, MCL 750.317. He was originally sentenced as a third habitual offender, MCL 769.11, to 50 to 100 years' imprisonment. In a prior appeal, this Court affirmed his conviction but remanded for resentencing. *People v Crawford*, unpublished opinion per curiam of the Court of Appeals, issued December 3, 2009 (Docket No. 286956), lv den 486 Mich 903 (2010). On remand, defendant was resentenced as a second habitual offender to 45 to 100 years' imprisonment. Because defendant's offense variables were correctly scored, we affirm.

This case arose out of an incident on March 17, 2007, in which the victim was violently attacked, was severely beaten, and eventually died. On that day, the victim and several female friends went to an after-hours club in Detroit. While at the club, the victim's female friends got into an altercation with several of defendant's female friends. The dispute continued outside the club and the individuals from the two groups began fighting. The victim intervened to protect a female friend from an attack by one of the co-defendants. During the melee, defendant and his companions stomped, kicked, and punched the victim repeatedly in the face and chest area. The victim was badly beaten and suffered an apparent seizure. Afterwards, defendant took a wallet from the victim's back pocket. The victim died following the attack.

On appeal, defendant argues that the trial court erred in the scoring of Offense Variables (OVs) 3, 7, 9 and 14 and that the scoring errors resulted in an incorrect sentence. We disagree.

A sentencing court has discretion to determine the number of points to score offense variables provided there is evidence on the record to support a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Thus, "[t]his Court reviews a sentencing court's scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v*

McLaughlin, 258 Mich App 635, 671; 672 NW2d 860 (2003). The sentencing court's score is upheld if there is any support in the record for it. *Hornsby*, 251 Mich App at 468.

OV 3 concerns physical injury to a victim. MCL 777.33. Under this statute, defendant is assessed 25 points if a "life-threatening or permanent incapacitating injury occurred to a victim." MCL 777.33(1)(c). Zero points are assessed if "no physical injury occurred to a victim," and a score of 100 points is imposed if the "victim was killed." MCL 777.33(1)(f); MCL 777.33(1)(a). The 100 points, however, can only be assessed if the "homicide is not the sentencing offense." MCL 777.33(2)(b).

Here, there was evidence to support the trial court's score of 25 points for OV 3. Testimony established that defendant and his co-defendants punched, kicked, and stomped the victim while he lay in a physically vulnerable position on the ground. Their assault inflicted life-threatening or permanent incapacitating injuries on the victim. MCL 777.33(1)(c). He sustained trauma to his head, bleeding on his brain, bruising to his lung, and scrapes to his knees. The injuries to the head and brain ultimately led to his death. Moreover, the trial court's ruling was in accordance with *People v Houston*, 473 Mich 399; 702 NW2d 530 (2005). Defendant acknowledges that this Court is bound by *Houston*, but claims the case was wrongly decided and invites us to express our disagreement with the decision. We decline to do so.

Defendant next asserts there was no evidence of excessive brutality against the victim and, as such, the trial court erroneously scored OV 7 at 50 points. Defendant contends the correct score should have been zero points. We disagree.

A trial court scores 50 points for OV 7 if the evidence shows that the victim was treated with "sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). "[S]adism' means conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3).

Medical testimony revealed that the victim's face was swollen and bruised and that he suffered multiple areas of trauma to his head and bleeding on the brain from a broken blood vessel, which was caused by blunt force trauma. A Wayne County assistant medical examiner testified that the victim also suffered bleeding on the right lobe of his thyroid and multiple bruises on his right lung, indicating that the victim was struck in the neck and the chest and/or back. The examiner further testified that the victim had abrasions on both knees, which are typically seen when one is falling to the ground if unconscious and/or dying. The medical examiner opined that the victim would have been rendered unconscious because of the bleeding on the brain and would have died a short time later because of brain swelling and vital centers shutting down.

In addition, eyewitness testimony established that defendant and his co-horts repeatedly kicked, stomped, and punched the victim in the head and torso while he lay helplessly on the ground. Defendant's co-defendants admitted to collectively stomping on the victim somewhere on his back, kicking him on his sides seven to eight times, and hitting him with a beer bottle once or twice in his back. They also testified that the victim's beating lasted for about 15 to 20 minutes, a time period in which the victim could have experienced extreme or prolonged pain

while he was conscious. MCL 777.37(3). Therefore, there was support for the trial court's scoring of OV 7 at 50 points.

Defendant next claims that OV 9 should have been scored at zero points, rather than the 10 points assessed by the trial court because there was only one victim of the offense of which he was convicted. We disagree.

OV 9 is to be scored at ten points if there were "2 to 9 victims who were placed in danger of physical injury or death," MCL 777.39 (1)(c), and at zero points if there were "fewer than 2 victims who were placed in danger of physical injury or death." MCL 777.39(1)(d). For the purposes of scoring OV 9, a trial court is to "count each person who was placed in danger of injury or loss of life as a victim." MCL 777.39(2)(a).

Defendant contends that he only engaged in a physical altercation with the victim and that he did not participate in the assault of the victim's female friends, who were attacked by defendant's co-defendants. However, the evidence shows that the victim's female friends could also be considered victims of defendant's crime. During the confrontation outside the club, defendant's co-defendants attacked the victim's female friends. A co-defendant punched one of the victim's female friends. The victim's other female friend, Kela Keys, was hit in the head with a beer bottle by another co-defendant. Keys testified that she saw defendant strike the victim several times and he was thereafter lying on the ground moaning. Keys testified that when she approached the group, including defendant, and reached out to try to help the victim, one of the females yelled at her not to touch him, at which point she ran and tried to get help. Defendant's actions toward the victim thus placed Keys in danger of physical injury. Considering what had transpired, at least two people—the victim and one, if not both, of his female friends—were placed in "danger of physical injury or death." MCL 777.39(1)(c). Therefore, there was ample evidence on record to support the trial court's scoring of OV 9 at ten points.

Finally, defendant challenges the trial court's assessment of 10 points for OV 14. OV 14 concerns the offender's role and is to be scored at ten points if the offender of the crime "was a leader in a multiple offender situation." MCL 777.44(1)(a). The entire criminal transaction should be considered when scoring this variable. MCL 777.44(2)(a).

Here, the trial court correctly scored OV 14 at ten points. The record evidence showed that, when the victim was being attacked, defendant did not just passively observe what was happening or take measures to diffuse the situation. Instead, defendant entered the fray and began viciously stomping, kicking, and beating the victim. Defendant points to the fact that, during the course of this criminal transaction, he was not involved in the confrontation between his co-defendants and the females from the victim's group. Defendant further claims he would not have been dragged into the situation but for the actions of his co-defendants and the victim's female friends, and that these women were the leaders in this incident. However, defendant's arguments are invalidated by his actions. The facts establish that defendant was not forced to attack the victim. Defendant entered the fray on his own volition. That defendant was not involved in the confrontations between the females from both groups does not absolve his criminal actions that led to the victim's death. And, long after the females discontinued their fighting, defendant and another co-defendant continued their assault upon the victim, for as long

as 15 minutes. Defendant, then, could be viewed as a leader in the assault. Hence, the trial court did not abuse its discretion in assessing ten points for OV 14. *Hornsby*, 251 Mich App at 468.

Because the guidelines were appropriately scored and defendant's sentence falls within the appropriately scored guidelines range, defendant's argument that he is entitled to resentencing is without merit. The sentence was based on accurate information and a correct calculation of the sentencing guidelines range and, therefore, is in accordance with MCL 769.34. Lastly, because defendant is not entitled to resentencing, we need not address his claim that he should be resented before a different judge.

Affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens