

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMARIO ANTONE BROWN,

Defendant-Appellant.

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UNPUBLISHED

July 20, 2006

No. 260310

Oakland Circuit Court

LC No. 2004-198331-FH

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Defendant was convicted by a jury of attempted unlawfully driving away a motor vehicle, MCL 750.92 and MCL 750.413, and attempted larceny from a motor vehicle, MCL 750.92 and MCL 750.356a(1). He was sentenced as a third habitual offender, MCL 769.11, to concurrent terms of 1 to 5 years' imprisonment. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I

On August 25, 2004, at approximately 1:30 a.m., Jeremy Parks pulled into the driveway of the home he shared with Marvin Blankenship, Adam Hall, and Kevin Dyehouse. Parks observed the driver's side door of Blankenship's Oldsmobile Cutlass was open, and lying in the driveway next to the open door was a blue winter coat with red markings. Parks then saw a black male get out of the Cutlass, pick up the jacket, and walk down the driveway and head north on Joslyn Road. After going into the house and confirming with Blankenship that no one had permission to be in his vehicle, Parks immediately began pursuit of the individual by proceeding north on Joslyn Road.

Approximately a half-mile from the house, Parks saw the individual standing outside the driveway of another residence. By this time, Blankenship had joined Parks in the pursuit. Defendant, after apparently noticing that he was being pursued by Parks and Blankenship, ran across the road and into a Sunoco gas station. The station attendant called the police. The police subsequently found defendant inside a cooler at the gas station and arrested him.

Parks next saw defendant when defendant left the gas station with the police. Defendant was wearing the same jacket Parks had earlier observed in the driveway and had the same hairstyle. Parks identified defendant as the suspect he and Blankenship were pursuing. Blankenship also indicated that defendant was the person being pursued, describing the suspect as a black man with dreadlocks or braids, who wore baggy jeans and a large blue-colored shirt or jacket.

Kerri Rose, Hall's girlfriend, testified that on the morning of August 25, 2004, she was at the house where Parks and the others lived. At approximately 1:30 a.m., she was awakened by her dog barking; she looked out the window and saw a black male leaving the driveway. Rose later described the male as short, thin, and wearing a bright blue and red colored jacket. Rose went outside and saw the individual at the edge of the yard. She got into her boyfriend's Chevy Tahoe and followed Parks and Blankenship in their pursuit of defendant. The suspect crossed the street approximately three feet in front of Rose's headlights as he headed toward the Sunoco. She subsequently identified defendant as the person being pursued.

Officer Brian Miller was dispatched to the Sunoco and found defendant in the rear cooler. At the time of arrest, Officer Miller described defendant as wearing braids in his hair and wearing a bright blue puffy jacket with several circular patches on it of varying colors, which were mostly white.

## II

Defendant first argues that insufficient evidence was presented at trial to support his convictions because the evidence identifying him as the perpetrator of the crimes was unreliable. He does not dispute that the crimes occurred.

Sufficiency of the evidence challenges in a criminal trial are reviewed de novo. *People v Cox*, 268 Mich App 440, 443; 709 NW2d 152 (2005). This court views the evidence in a 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 Dewald*, 267 Mich App 365, 371; 705 NW2d 167 (2005); *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of a crime. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

"A reviewing court should not interfere with the jury's role in determining credibility of witnesses and weighing the evidence." *Dewald, supra* at 371. Similarly, the credibility of identification testimony is also a question for the trier of fact and is not resolved anew. *Davis, supra* at 700.

Only Parks saw the suspect attempting to unlawfully drive away a vehicle and attempting to commit larceny from a motor vehicle. He later saw the suspect on Joslyn Road, then enter the gas station, and later leave the gas station in the custody of the police. However, Parks' description of defendant as a black man wearing a blue coat with red markings was similar to the

description given by Rose, who saw defendant in the yard and fleeing into the Sunoco station, and was similar to the description of Blankenship. The descriptions coincided with the description of defendant, who was chased into the gas station. Although there were slight discrepancies in the descriptions, the credibility of identification testimony is a question for the jury and will not be resolved anew. *Davis, supra* at 700. Viewed in a light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that defendant was the perpetrator of the crimes.

In support of his claim of insufficient evidence, defendant also argues that the trial court erred in excluding, on the basis of hearsay, statements he made to police officers at the time of his arrest regarding his reason for being in the cooler at the gas station. We find this argument without merit.

The statements were hearsay because they were out-of-court statements that were submitted for the truth of the matter asserted. MRE 801(c); *People v Poole*, 444 Mich 151, 158-159; 506 NW2d 505 (1993). The statements were not offered against defendant, but were offered by defendant to support his claims. Contrary to defendant's argument, we find no basis for admission under MRE 801(d)(2)(D), as "a statement by the party's agent or servant concerning a matter within the scope of the agency or employment . . ." or under the hearsay exceptions cited by defendant.

### III

Defendant next argues that the trial court violated his due process rights at sentencing by misscoring Offense Variable (OV) 9 of the sentencing guidelines when it scored OV 9 for two victims. Defendant contends that the court erred in basing the scoring on two victims because damage to the vehicle of the alleged second victim, Hall, was not before the jury, and, moreover, the presentence investigation report indicated that his car was not damaged and that he was not seeking restitution. We find this argument without merit.

The proper interpretation and application of the legislative sentencing guidelines are legal questions that are reviewed de novo. *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). "A sentencing court has discretion in determining the number of points to be scored, provided that there is evidence on the record that adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). In scoring OV-9, a court must assess the highest applicable points based on the number of victims. See *Morson, supra* at 261; MCL 777.39. A court must count as a victim each person who was placed in danger of injury or loss of life. *Morson, supra* at 262.

The presentence investigation report contained statements that Rose was the last person to drive the Chevy Tahoe belonging to Hall, and that she found its door slightly open after seeing defendant in the yard, and this was not how she had left the vehicle. Also the presentence investigation report indicated that police officers had checked the Tahoe after arresting defendant and had observed that the steering column was loose.

A judge preparing to sentence a defendant may consider other criminal conduct for which the defendant has not been charged or convicted. *Morales v Parole Bd*, 260 Mich App 29, 45-46; 676 NW2d 221 (2003). Even though defendant was not charged or convicted of a crime involving the Tahoe, evidence in this regard may be considered by the trial court in sentencing defendant, and is supported by the presentence investigation report. The court properly considered Hall a victim for purposes of the sentencing guidelines.

Affirmed.

/s/ Janet T. Neff  
/s/ Richard A. Bandstra  
/s/ Brian K. Zahra