

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellant,

v

MARTEEZ DONOVAN LAIDLER,
Defendant-Appellee.

Supreme Court
No. 142442-3

Third Circuit Court No. 09-12575
Court of Appeals Nos. 294147 & 295111

PLAINTIFF-APPELLANT'S
SUPPLEMENTAL BRIEF

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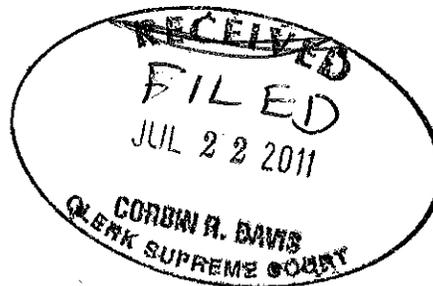


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Statement of Jurisdiction

The People request leave to appeal the published decision of the Michigan Court of Appeals dated December 28, 2010. The Michigan Supreme Court has jurisdiction over this application pursuant to MCR 7.301(A)(2) and MCL 770.12(2)(c).

Statement of Issue Presented

I.

OV 3 requires that 100 points be scored when a death results from the commission of the sentencing offense. Here, defendant and Holmes broke into a house and, as a direct result of that crime, Holmes was shot and killed. Did the sentencing court properly score 100 points for OV 3 because a death resulted from the commission of the sentencing offense?

The People answer: "Yes."

The trial court answered, "Yes."

Defendant answers: "No."

The Court of Appeals answered, "No."

Statement of Facts

In the early morning hours of May 5, 2009, Matthew Richmond and Dekea Kyles were sleeping in the living room of Mr. Richmond's home located at 11327 Whitehall in the City of Detroit when they heard glass breaking in the rear bedroom of the home.¹ Believing that the intruders were the same people who had broken into the home several days earlier and stolen his furniture, Mr. Richmond went to the bedroom and could see the silhouettes of three people outside the home. He told Ms. Kyles to go into the basement and to call the police.² He then retrieved his weapon, pointed it at the window, and pulled the trigger. When nothing happened, he went into the kitchen, racked the gun, and took off the safety.³ As he saw the window shades moving and a black hand inside the window, he fired two shots. The evidence technician testified that the window was twenty-seven inches wide by fifty-two inches high, and that the window sill was six-feet from the ground.

Officer Alexander Roths responded to a call about a shooting near the Whitehall address and found a man on the ground suffering from a gunshot wound – later identified as Dante Holmes – wearing all black with a black glove on. Defendant was standing next to him. Both Holmes and defendant lived in the neighborhood. The officer-in-charge, Officer Gordon Hampton, took a statement from defendant, where defendant admitted that he was with Dante Holmes when Holmes decided to break into the house on Whitehill. He stated that Holmes punched in the glass with his

¹References to the trial record are cited by the date of the hearing followed by the page number; 8/11, 65-66.

²Id. at 67-68, 72-73.

³Id. at 74, 77, 99.

right hand and then, upon hearing the shots, the two started running. When they reached the alley, Holmes said he was shot and that he could not make it back to his house.⁴ Holmes died that day as a result of the gunshot wound. The People argued at trial that Holmes, who was only 5'7", needed assistance reaching the window, and that defendant provided that needed assistance.⁵

Following a jury trial before the Honorable Patricia P. Fresard in the Wayne Circuit Court on August 11-12, 2009, defendant was convicted of first-degree home invasion.⁶ Defendant was ultimately sentenced within the guidelines to 40 months to 20 years.⁷ Defendant filed a motion to remand for resentencing with the Court of Appeals. The Court of Appeals denied the motion. Defendant also filed a brief on appeal, raising the following two issues: (1) defendant argued that OV 3 was improperly scored at 100 points because Holmes, the co-felon, was not a "victim" for purposes of scoring the guidelines, and (2) that the prosecutor erred by making improper comments to the jury.

In a published opinion, the Court of Appeals affirmed the conviction, holding that the arguments made by the prosecutor were not improper. But the Court of Appeals concurred with defendant that OV 3 was incorrectly scored, and therefore vacated defendant's sentence and remanded the case for resentencing. The People filed a timely application for leave to appeal,

⁴8/12, 96-99.

⁵Id. at 124-125.

⁶Id. at 155.

⁷At defendant's original sentencing, the court mistakenly used the sentencing grid for Class A offenses and sentenced defendant to a minimum of 110 months. Upon recognizing the error, defendant was properly sentenced using the grid for Class B offenses to a minimum of 40 months. 9/2, 13; 10/7, 3, 6.

arguing that the Court of Appeals erred in its interpretation of OV 3 and that resentencing is not required. This Court ordered argument on the application, and this supplemental brief follows.

Argument

I.

OV 3 requires that 100 points be scored when a death results from the commission of the sentencing offense. Here, defendant and Holmes broke into a house and, as a direct result of that crime, Holmes was shot and killed. The sentencing court properly scored 100 points for OV 3 because a death resulted from the commission of the sentencing offense.

Standard of Review

A trial court's scoring of a sentencing guidelines variable is reviewed for clear error.⁸ A scoring decision under the sentencing guidelines is not clearly erroneous if there is "any evidence" to support the decision.⁹ Where a question of statutory interpretation is involved, however, it is a question of law and must be reviewed de novo.¹⁰

Discussion

The sentencing court properly scored 100 points for OV 3 because Dante Holmes was killed during the commission of the sentencing offense, first-degree home invasion. OV 3, degree of physical injury to a victim, requires that 100 points be scored where a victim was killed.¹¹ A victim is any person harmed by the criminal actions of the charged party.¹² Here, Dante Holmes – the other

⁸*People v Hicks*, 259 Mich App 518, 522 (2003).

⁹*People v Witherspoon (After Remand)*, 257 Mich App 329, 335 (2003).

¹⁰*People v Cannon*, 481 Mich 152, 156 (2008).

¹¹MCL 777.33(1)(a).

¹²*People v Albers*, 258 Mich App 578, 593 (2003)

man committing the home invasion along with defendant – was killed during the commission of the sentencing offense.

The Court of Appeals’ decision that OV 3 was incorrectly scored ignores the plain language of the statute, which requires 100 points to be scored if death results from the commission of the offense. Under OV 3, 100 points are to be scored where a victim was killed.¹³ The instructions clarify this further, stating explicitly: “Score 100 points if death results from the commission of the offense and homicide is not the sentencing offense.”¹⁴ While the statute does not define “victim,” our Court of Appeals interpreted the term in *People v Albers* to mean – for the purposes of OV 3 – “any person harmed by the criminal actions of the charged party.”¹⁵

In *Albers*, the defendant was convicted of involuntary manslaughter after her young son – whom she knew to have started fires in the past – obtained a lighter and set their apartment complex on fire. As a result, the child living upstairs from their apartment was killed and another child visiting the upstairs neighbor was injured.¹⁶ The defendant was assessed 25 points under OV 3 for life-threatening or permanent injury to the second child resulting from that same fire. The Court upheld the scoring, noting that the second child was, “in a fundamental sense, a victim of the conduct underlying defendant’s conviction because he was seriously harmed as a result of the fire.”¹⁷ The Court went on to hold:

¹³MCL 777.33(1)(a).

¹⁴MCL 777.33(2)(b).

¹⁵*People v Albers, supra*, 258 Mich App at 591-593 (emphasis added).

¹⁶*Id.* at 580-581.

¹⁷*Id.* at 592.

[I]f the Legislature had intended to limit the application of OV 3 to the victim of the charged offense, it could have expressly included such a provision in the statute. . . . Because we find no authority indicating otherwise, we conclude that, for the purposes of OV 3, the term ‘victim’ includes any person harmed by the criminal actions of the charged party.¹⁸

This definition given by the Court of Appeals is consistent with the definition of “victim” found elsewhere in the sentencing guidelines. OVs 1 and 8 define “victim” as “each person in danger of injury or loss of life,” and OVs 7 and 9 state that a victim is each “person placed in danger of injury or loss of life.”¹⁹ So – as defined by both our Court of Appeals and the Legislature in other offense variables – the term “victim” is not limited to the intended or primary victim of the crime, but broadly covers those harmed or placed in harm by the actions of the charged party.

Even if defendant is not a “victim” in the traditional sense of the word, the instructions for OV 3 make clear that the Legislature intended that the sentencing court score 100 points if “death results from the commission of the offense.”²⁰ In this case, defendant and Dante Holmes were attempting to break into a home when the homeowner, Mr. Richmond, shot and killed Holmes. The defendant’s actions in committing the sentencing offense – first degree home invasion – resulted in the death of Holmes. The sentencing court was, therefore, correct in scoring 100 points for OV 3 because Holmes was killed as a consequence of defendant’s criminal actions.

¹⁸*People v Albers, supra*, 258 Mich App at 593.

¹⁹MCL 777.31(2)(a)(OV 1, Aggravated Use of a Weapon); MCL 777.38(2)(a)(OV 8, Victim Asportation or Captivity); MCL 777.37(2)(OV 7, Aggravated Physical Abuse); MCL 777.39(2)(a)(OV 9, Number of Victims); see also Crime Victim’s Rights Act, MCL 780.752(m)(i)(defining “victim” as “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime. . .”).

²⁰MCL 777.33(2)(b).

In ordering resentencing, the Court of Appeals majority reasoned that “Holmes simply was not a ‘victim’ because he was not harmed by defendant’s criminal activity, or by the crime that was committed, jointly, by defendant and Holmes.”²¹ But – as Judge O’Connell correctly noted in his partial dissent – a “victim” includes “*any person harmed* by the criminal actions of the charged party.”²² Holmes was shot as a direct result of the home invasion committed by defendant; the two decided to break into a house and, as a result of that joint criminal activity, Holmes was shot and killed. The fact that Holmes was not the intended or primary victim of defendant’s criminal activity is of no more consequence here than it was in *Albers*, as OV 3 plainly states that defendant is to be held accountable when death results from the commission of the sentencing offense. To interpret the statute differently is to add language to the instructions which simply is not there. Indeed, the Legislature is “presumed to be aware of the consequences of its use or omission of statutory language.”²³ Had the Legislature wanted to limit the application of OV 3 to intended victims – or to specifically exclude co-felons – it could have said so. It did not.

Ultimately, defendant participated in the home invasion, and Holmes died as a result of that home invasion. Accordingly, it makes sense to include Holmes as a victim, as the *Albers* court defined “victim” as “any person harmed by the criminal actions of the charged party.” Holmes was clearly a person harmed by defendant’s criminal activity. OV 3 was properly scored, and the Court of Appeals therefore erred in vacating defendant’s sentence.

²¹*People v Laidler*, __ Mich App __ (2010).

²²*People v Albers*, *supra*, 258 Mich App at 593(emphasis added). Indeed, as Judge O’Connell also pointed out in his dissent, “this statement [that Holmes was not a harmed by the crime committed] would certainly be a revelation to Holmes’s survivors.”

²³*Id.*, citing *People v Ramsdell*, 230 Mich App 386, 392 (1998).

Relief

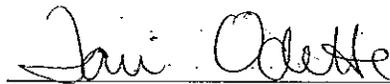
WHEREFORE, the People respectfully request that this Court grant leave to appeal or, in lieu of granting leave, reverse the Court of Appeals decision for the reasons stated in the dissent.

Respectfully submitted,

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