

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MITCHELL RYAN ARNOLD,

Defendant-Appellant.

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UNPUBLISHED

January 28, 2021

No. 351190

Ottawa Circuit Court

LC No. 19-042887-FC

Before: SHAPIRO, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assault with intent to do great bodily harm less than murder or by strangulation or suffocation, MCL 750.84. The trial court sentenced defendant to 108 to 240 months' imprisonment as a fourth-offense habitual offender, MCL 769.12. On appeal, defendant argues that insufficient evidence supported his conviction and that the trial court erred by scoring several offense variables (OVs) under the sentencing guidelines. We affirm.

In January 2019, the victim was living with defendant at defendant's home in Ferrysburg, Michigan. The victim was a drug addict, and defendant was her dealer or supplier. Defendant and the victim were dating and had a sexual relationship. After a few weeks of the victim living at his home, defendant began to suspect that the victim was stealing his drugs or money. Defendant then, over the course of several days, repeatedly hit, choked, and strangled the victim. He also threatened to kill the victim with a butcher knife. The victim testified that, on at least one occasion, she could not breathe for about 45 seconds because defendant was squeezing her neck. Defendant also developed a ransom scheme. The goal of the scheme was to collect \$10,000.00 from the victim's (then) husband in exchange for the victim's safety.

After a couple days, the victim escaped by running away and flagging down a law enforcement vehicle. The deputy who found the victim took photographs of the victim's visible injuries, including bruises on the left side of the victim's face and on her jawline, swelling and scratches behind the victim's left ear, and a "three-inch gash" on her leg. Later, the victim went to the emergency room with a sore throat. She also began to have drug withdrawals. She did not tell the emergency room nurses that she had been strangled, but she reported pain and swelling in

her cheek and pain in her neck. Defendant came to the hospital and promised to not hit or strangle the victim anymore. He also had drugs at his home for the victim. The victim left the hospital with defendant. And then, contrary to defendant's promise, the abuse continued. The victim testified that, after they arrived at defendant's home, defendant "backhanded me, jumped on top of me, had me pinned on the floor, strangling me." The victim also testified that defendant threatened to use a butcher knife to "cut me open from my neck to my belly button and search inside my body" for his drugs.

A few days later, the victim was back in the hospital and deputies from the Ottawa County Sheriff's Department interviewed defendant. During a conversation with deputies, defendant gave a deputy his cell phone and unlocked it. The deputy scrolled through defendant's text messages. While doing so, he saw a text message—sent by defendant—that said: "Bro, goddamn, her eye is black. That's not from me, I hit her—I hit her once out of reflex for being in my pocket, and the second time I choked her." When the deputy questioned defendant about this text message, defendant stated "I didn't hit her, all I did was choke her." Defendant then demonstrated to the deputy how he choked the victim.

At trial, Linda Lenae Rossman testified as an expert in forensic nursing with a specialty in strangulation. Rossman testified that the victim's ear would have looked as it appeared in the photographs (described earlier) if someone had punched the victim in the ear, that injuries to the victim's jawbone were consistent with strangulation, and that a victim of strangulation would potentially have a sore throat. Rossman testified that the victim's testimony as to the defendant's actions reflected Rossman's definition of strangulation.

The jury found defendant guilty of assault by strangulation. The trial court then accepted defendant's guilty plea to being a fourth-offense habitual offender. Before sentencing, defendant's presentence investigation agent prepared a presentence investigation report (PSIR). The PSIR reflected that defendant admitted to choking and strangling the victim. It reflected that law enforcement noted that the victim had injuries to the "back of her left ear, bruises in ear area and near left jaw, redness near neck, and vertical scratch on right lower hip area." The PSIR did not include a victim-impact statement.

At sentencing, the victim testified, and the parties contested the possible assessment of several OVs. The victim testified that she now had a higher risk of several serious health problems as a result of being strangled. The victim testified that she underwent 10 months of trauma therapy but continued to have nightmares and flashbacks. She testified that she was afraid of being killed or stalked and did not like to walk to her car by herself. As to defendant's guidelines scoring range, defense counsel contested the trial court's assessment of several OVs, including OV 3, OV 4, OV 10, and OV 13.

Defendant now appeals. Defendant argues that insufficient evidence supported his conviction and that the trial court erred by scoring OV 3, OV 4, OV 10, and OV 13. We disagree.

We review a sufficiency of the evidence challenge de novo. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011).

[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the

prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. [*People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).]

Because appellate courts do not hear testimony of witnesses, we defer to the jury's credibility determinations. *People v Henderson*, 306 Mich App 1, 9; 854 NW2d 234 (2014). It is the province of the trier of fact to determine what inferences may be fairly drawn from the evidence. *Id.* The prosecution's duty was only to prove the elements of the crime beyond a reasonable doubt "in the face of whatever contradictory evidence the defendant may provide." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (quotation marks and citation omitted). "Circumstantial evidence and the reasonable inferences that arise from that evidence can constitute satisfactory proof of the elements of the crime." *Henderson*, 306 Mich App at 9.

Due process requires that a conviction is supported by "sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999) (quotation marks and citation omitted). "An assault may be established by showing either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). A battery is "an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." *Id.* (quotation marks and citation omitted).

In this case, a rational fact-finder could have readily concluded that the prosecution met its burden at trial. See MCL 750.84; see also *Starks*, 473 Mich at 234. The victim testified that defendant choked and strangled her to the extent that she could not breathe. The prosecution presented photographs of the victim's injuries. Rossman testified that the victim's injuries were consistent with the victim's testimony and with strangulation. The prosecution also presented the text message that reflected defendant's admission that he choked and hit the victim. And a witness testified that defendant demonstrated how he choked the victim. Even assuming defendant's argument that the victim was "wholly incredible," this Court defers to the jury's role of determining the credibility of witnesses. *Henderson*, 306 Mich App at 9. Nonetheless, the photographs and the testimony of other witnesses corroborated key pieces of the victim's testimony. Viewed in the light most favorable to the prosecution, there was sufficient evidence that defendant committed assault by strangulation.

We now turn to defendant's challenges to the trial court's assessment of points under several OV's. "Under the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *Id.* Although the sentencing guidelines range is advisory, the trial court must accurately calculate the applicable range and take it into account in determining a defendant's sentence. *People v Lockridge*, 498 Mich 358, 391-392; 870 NW2d 502 (2015). "[I]f the defendant's sentence is within the recommended guidelines range, resentencing is not required unless there is a scoring error that

changes the guidelines range or the trial court relied on inaccurate information in sentencing the defendant.” *People v Carpenter*, 322 Mich App 523, 532; 912 NW2d 579 (2018).

Defendant argues that the trial court erred by assessing five points under OV 3. We disagree. OV 3 of the sentencing guidelines addresses physical injuries of the victim. See MCL 777.33(1). MCL 777.31(1)(e) requires a trial court to score five points if “[b]odily injury not requiring medical treatment occurred to a victim.” In *People v Cathey*, 261 Mich App 506, 514; 681 NW2d 661 (2004), we explained that “bodily injury” means “physical damage to a person’s body.” In *People v McDonald*, 293 Mich App 292, 298; 811 NW2d 507 (2011), we further explained that bodily injury includes “anything that the victim would, under the circumstances, perceive as some unwanted physically damaging consequence.”

In this case, the trial court properly scored five points under OV 3. See *id.*; see also *Cathey*, 261 Mich App at 514. The victim testified that she had a sore throat after a few of the strangulations, and the photographs reflected bruising to the victim’s ear area and an approximately three-inch scratch on the victim’s leg. Rossman, in her expert testimony, opined that the victim’s injuries were consistent with defendant strangling and hitting the victim as the victim (and defendant) described. Therefore, a preponderance of the evidence supported the trial court’s determination that the victim sustained physical injuries as a result of strangulation.

Next, defendant argues that the trial court erred by assessing 10 points under OV 4. We disagree. OV 4 of the sentencing guidelines addresses psychological injury to the victim. MCL 777.34. A trial court must assess 10 points under OV 4 if the victim suffers “[s]erious psychological injury requiring professional treatment.” MCL 777.34(1). Whether the victim sought treatment is not conclusive. MCL 777.34(2); *People v Armstrong*, 305 Mich App 230, 247; 851 NW2d 856 (2014). In *Armstrong*, we explained that a “trial court may assess 10 points for OV 4 if the victim suffers, among other possible psychological effects, personality changes, anger, fright, or feelings of being hurt, unsafe, or violated.” *Id.*

In this case, the trial court properly assessed 10 points under OV 4. See *id.* Although the PSIR did not include a victim-impact statement, the victim testified at the sentencing hearing. The victim testified that she had nightmares and flashbacks, was scared to walk by herself, and received professional treatment. Feelings of being hurt and unsafe are enough to qualify as serious psychological injuries. See *id.* Although defendant argues that there was no way to isolate the victim’s psychological symptoms from those she suffered as a result of her drug addiction, defendant points to no evidence that suggests that the victim’s injuries were a result of her drug addiction and not defendant’s actions. Therefore, a preponderance of the evidence properly supported the trial court’s assessment of 10 points under OV 4.

Defendant also argues that the trial court erred by assessing 10 points under OV 10. Again, we disagree. OV 10 of the sentencing guidelines addresses the exploitation of a vulnerable victim. MCL 777.40; *People v Lockett*, 295 Mich App 165, 183-184; 814 NW2d 295 (2012). MCL 777.40(1)(b) provides that 10 points should be assessed if the defendant “exploited a victim’s physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status.” Under OV 10, to “exploit” a victim “means to manipulate a victim for selfish or unethical purposes.” MCL 777.40(3)(b); *People v Huston*, 489 Mich 451, 464-467; 802 NW2d 261 (2011). This Court has held that a “domestic relationship” ordinarily

means a familial or cohabitating relationship. *People v Jamison*, 292 Mich App 440, 447; 807 NW2d 427 (2011). In *Huston*, 489 Mich at 464-467, our Supreme Court held that the vulnerability of a victim also depends on factors not listed in MCL 777.40(1)(b) and (c). These other factors include the victim's relationships and circumstances. *Id.* The *Huston* Court noted that "vulnerability" is defined in MCL 777.40(3)(c) as the "readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation." *Id.* at 466.

The trial court properly assessed 10 points under OV 10. The trial court could have reasonably determined that defendant and the victim were in a domestic relationship. See *Jamison*, 292 Mich App at 447. The victim was still married to someone else, but she was living with defendant. The PSIR reflected that the victim told law enforcement that she had been dating defendant for about a month. As to exploitation, the evidence suggested that the victim was readily susceptible to persuasion or temptation and that defendant exploited her drug addiction and circumstances. See *Huston*, 489 Mich at 466-467. The victim went back to defendant's home after leaving the hospital because she was having drug withdrawals and defendant could supply her drugs. Defendant then continued abusing the victim. Accordingly, the trial court properly assessed 10 points under OV 10.

Lastly, defendant argues that the trial court erred by assessing 25 points under OV 13. We disagree. OV 13 of the sentencing guidelines addresses a continuing pattern of criminal behavior. MCL 777.43(1). "For determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a). In *People v Carll*, 322 Mich App 690, 704-706; 915 NW2d 387 (2018), this Court explained that OV 13 is correctly scored when there are multiple felonious *events*, even if the felonious events occurred "in a single criminal episode."

In this case, the trial court properly assessed 25 points under OV 13. See *id.* The victim testified that defendant strangled her each day from January 10 to January 16, sometimes multiple times a day. Each of these strangulations constituted assault by strangulation. See MCL 750.84. During this same period, the victim also testified that defendant twice threatened her with a butcher knife. These acts constituted felonious assault. See MCL 750.82(1); see also *People v Jackson*, 487 Mich 783, 787 n 2; 790 NW2d 340 (2010). Both assault by strangulation and felonious assault are crimes against a person. MCL 777.16d. Defendant provides no legal authority to support his proposition that felonious acts must occur after the sentencing offense to be scored under OV 13. To the contrary, MCL 750.84(2)(a) clearly states that the other crimes should be counted if they occurred *within* five years of the sentencing offense. See MCL 750.84(2)(a). The statute does *not* include a limitation that says "before" or "after" the sentencing offense. There is also no requirement, contrary to defendant's assertion, that there be medical corroboration of the other criminal acts. Therefore, a preponderance of the evidence supported the trial court's determination that defendant committed three or more crimes against a person in a five-year period.

Affirmed.

/s/ Douglas B. Shapiro  
/s/ David H. Sawyer  
/s/ Jane M. Beckering