

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
May 10, 2012

v

RICHARD MICHAEL BOND,
Defendant-Appellant.

No. 303460
Wayne Circuit Court
LC No. 10-010688-FH

Before: MURPHY, C.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of aggravated domestic assault, second offense, MCL 750.81a(3), and sentenced as an habitual offender, second offense, MCL 769.10, to 18 to 36 months' imprisonment. He appeals as of right. We affirm.

Defendant was convicted of assaulting his wife. She did not appear at trial, but the couple's son, WD, witnessed the altercation and testified for the prosecution. WD testified that the victim stopped by his grandmother's house and he went inside to obtain the victim's purse. When he came back outside, defendant's car was blocking the victim's van, defendant was standing next to the van's driver's side door, and the couple was fighting. Defendant punched the victim in the face as she sat in the driver's seat of her van. Defendant grabbed the victim by the neck and held her for about 45 seconds. Defendant then walked away from the van, but directed the victim to be at his house in one minute. When she replied that such a feat was not possible, defendant moved as if he was coming back toward the van. The victim escaped by driving onto a neighbor's lawn and continued driving until she reached a hospital.

I. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that his conviction for aggravated domestic assault cannot stand because the prosecution failed to present sufficient evidence that the victim suffered a "serious or aggravated injury." We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this 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). Circumstantial evidence and reasonable inferences

arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). “[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the [trier of fact’s] verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

As applicable to this case, aggravated domestic assault occurs when an individual assaults a spouse without a weapon and inflicts a “serious or aggravated injury” without intending to commit murder or to inflict great bodily harm less than murder. MCL 750.81a(1), (3); see also *People v Brown*, 97 Mich App 606, 610-611; 296 NW2d 121 (1980). “A serious or aggravated injury is a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body.” CJI2d 17.6; see also *Brown*, 97 Mich App at 611.

Viewed in a light most favorable to the prosecution, the evidence that defendant punched the victim in the mouth and choked her, causing two broken teeth on her lower jaw, abrasions and contusions on the left side of her face and left upper neck, and a laceration on the left side of her bottom lip, was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant inflicted a physical injury that caused disfigurement and impaired a part of the victim’s body. Although defendant suggests that this Court should ignore the most obvious “serious” injury—the two broken teeth—because the victim had tooth decay, photographs of the victim’s fractured teeth were admitted at trial and the treating physician testified that the victim’s broken teeth were consistent with being caused by the assault. Accordingly, the evidence was sufficient to sustain defendant’s aggravated domestic assault conviction.

II. PROPORTIONALITY

We reject defendant’s argument that he is entitled to resentencing because his sentence is disproportionate or because it was improper to enhance his sentence under the habitual offender statute, MCL 769.10. Defendant was sentenced within the appropriate range of the sentencing guidelines and he did not argue below that such a sentence would be disproportionate or that any sentence could not lawfully be enhanced under the habitual offender statute. Therefore, these claims are unpreserved and out review is limited to plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999).

Defendant contends that the trial court impermissibly subjected him to two sentence enhancement provisions, one under the aggravated assault statute for a second domestic assault conviction that elevated his current conviction to a felony, and one under the habitual offender statute that allowed his sentence to be enhanced because he has a prior felony drug conviction. Whether an habitual offender sentence enhancement can be compounded with an enhancement under another statutory scheme depends on the particular provisions at issue. See MCL 769.10(3) and *People v VanderMel*, 156 Mich App 231, 236-237; 401 NW2d 285 (1986). When construing a statute, this Court’s primary goal is to ascertain “and give effect to the intent of the Legislature.” *People v Dowdy*, 489 Mich 373, 379; 802 NW2d 239 (2011). The legislature has demonstrated its ability to exclude particular categories of felonies from the sentence

enhancement provision of the habitual offender act when it intends to do so. *People v Bewersdorf*, 438 Mich 55, 72; 475 NW2d 231 (1991). Neither MCL 769.10 nor MCL 750.81b¹ excludes aggravated domestic assault, second offense, from the sentence enhancement provisions of the habitual offender statute. Contrary to what defendant suggests, this case does not involve a criminal statute that itself enhances punishment. Rather, MCL 750.81a(3) provides that one or more previous domestic assault convictions is a circumstance that elevates the offense from a misdemeanor to a felony. When the legislative scheme elevates an offense, courts have found a legislative intent to permit enhancement of the penalty under the habitual offender act. See generally *People v Fetterley*, 229 Mich App 511, 540-541; 583 NW2d 199 (1998). Consequently, there was no error when the trial court enhanced defendant's sentence under both the aggravated domestic assault and habitual offender statutes.

Defendant also contends that his sentence is disproportionate when considered in conjunction with the consecutive sentence he will be required to serve for violating his parole when he committed the crime in this case. But neither the trial court nor this Court is required to consider the cumulative length of consecutive sentences in determining the proportionality of an individual sentence. See *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998), and *People v Clark*, 207 Mich App 500, 502; 526 NW2d 357 (1994). Defendant's sentence is within the sentencing guidelines range of five to 28 months. We must affirm a sentence within the guidelines range absent an error in the scoring of the guidelines or reliance on inaccurate information in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004). On appeal, defendant has not demonstrated that the guidelines were erroneously scored or that the trial court relied on inaccurate information. Accordingly, we affirm his sentence.²

III. *BLAKELY* v *WASHINGTON*

Defendant lastly argues that he is entitled to resentencing because the trial court's factual findings supporting its scoring of the sentencing guidelines were not determined by a jury, contrary to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). In *Blakely*, the United States Supreme Court struck down as violative of the Sixth Amendment a determinate sentencing scheme in which the sentencing judge was allowed to increase the defendant's maximum sentence on the basis of facts that were not reflected in the jury's verdict or admitted by the defendant. Our Supreme Court has determined that *Blakely* does not apply to Michigan's indeterminate sentencing scheme, in which a defendant's maximum sentence is set by statute and the sentencing guidelines affect only the minimum sentence. *People v McCuller*, 479 Mich 672, 676; 739 NW2d 563 (2007); *People v Drohan*, 475 Mich 140, 162-164; 715 NW2d 778 (2006); *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004).

¹ The provisions of MCL 750.81b apply to enhanced sentences under section 81a(3).

² Defendant's reliance on his sufficiency-of-the-evidence argument in section I to support his claim that his sentence is disproportionate is misplaced. A sufficiency-of-the-evidence claim relates only to the validity of a defendant's conviction, not his sentence.

Although defendant argues that these cases were wrongly decided, we are bound to follow decisions of our Supreme Court. *People v Hall*, 249 Mich App 262, 270; 643 NW2d 253 (2002).

Affirmed.

/s/ William B. Murphy
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan