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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 26, 2026 2:22 PM
v	No. 357937 Muskegon Circuit Court
JOSHUA LEVI ALGER, Defendant-Appellant.	LC No. 12-061794-FH

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

Defendant appeals as on leave granted[1] his convictions of assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84; and second-offense aggravated domestic violence, MCL 750.81a. Defendant also challenges several offense variables (OV) under the sentencing guidelines. We affirm.

I. BACKGROUND

This case arises out of defendant's March 2012 assault of the victim, defendant's wife. At the time, there were two court orders prohibiting defendant from having contact with the victim. Further, defendant was soon to be extradited to Colorado because of charges there. In this instance, on March 1, 2012, the victim was standing outside of a bar with two other men, Earl Bundy and David Ripley, when defendant arrived with three other individuals. Defendant had been arguing with the victim over the telephone earlier that day. Ripley reported that defendant "made immediate contact" with the victim as soon as he got out of the car, punching her face so hard that "a tooth or something" flew out of her mouth.

Scott Krueger, one of the men who arrived with defendant, stated that he initially saw defendant hug the victim, and then he heard the victim scream and described defendant as being "in a bit of a rage." He saw defendant yank the victim, grab her by the hair, and yell at her.

[1] *People v Alger*, 29 NW3d 476 (Mich, 2026).

Krueger also saw defendant hit the victim with an item at least once. Krueger tried to pull defendant away from the victim but was unable to do so. Krueger suggested that he and the people with him go get defendant's mother while Bundy went inside the bar to report the assault.

Defendant subsequently dragged the victim away from the bar, toward his mother's house, which was apparently within walking distance. Tabitha Bledsoe, one of those with defendant, stated that defendant "just blasted" the victim in the face, meaning that he punched her. She also stated that she saw the victim on the ground, bleeding badly from her mouth, and defendant leaning over her. Defendant and the victim were near the building next to the bar, and nobody else was with them. Defendant "was yelling and screaming," and the victim stated that she had "swallowed her teeth." Bledsoe stated that defendant had a shoe in his hand and that he drew back his hand like he was going to hit the victim, but Bledsoe did not see defendant hit the victim at that point. Danielle Ripley, another woman who arrived with defendant, saw that defendant had a black-and-white item in his hand that could have been a shoe, and he was hitting the victim with it.

Julia Riggs was working at the bar that evening when the report was made. She first saw defendant and the victim approximately 40 yards from the back of the bar. She saw defendant pinning the victim by her throat against a garage wall and hitting the victim who was yelling at defendant to let her go and not hit her. Defendant then dragged the victim toward the next garage and hit her additional times. Riggs called 911.

Defendant's mother, Tracy Alger, was home and saw defendant and the victim pushing each other outside of Alger's house. Alger went outside to pull defendant away from the victim, and defendant went inside covered in blood.

When Whitehall Police Department Officer Brandon Parsons arrived, it was clear to him that the victim had significant facial injuries, as her face was swollen and she was covered in blood. Whitehall Police Department Sergeant Douglas Morris saw that the victim was covered in blood, and he located defendant inside of his mother's home. Defendant was covered in blood.

The victim went to the hospital via ambulance, where medical personnel diagnosed her with several serious injuries, including facial fractures. At the hospital, the victim first told Officer Parsons that she did not remember what happened, although she eventually said that defendant almost killed her and that "it was so scary."

In May 2013, defendant pleaded no contest to AWIGBH and second-offense aggravated domestic violence. The charges read to defendant at the plea hearing made clear that he was charged with two separate counts, specifically:

> *Ms. McEnhill* [assistant prosecutor]: [T]hat on or about March 1st of 2012 the defendant . . . in the area of 112 W. Spring Street, City of Whitehall, Muskegon County . . . did, count 1, make an assault upon [the victim] with intent to do great bodily harm less than the crime of murder, contrary to Michigan law.
>
> Count 2 alleges that the defendant did assault [the victim] with, an individual with whom he had a dating relationship, without a weapon and did inflict serious or aggravated injury up [sic: upon] her but with, without intending to

> commit murder or to inflict great bodily harm less than the crime of murder. [Quotation marks omitted.]

Defendant noted that he was confused about one charge requiring intent and one charge not requiring intent but confirmed his understanding of the charges and the maximum penalties. Defendant disputed, however, that he was a fourth-offense habitual offender. The trial court relied on the police report and the victim's medical records to support the factual basis of the charges. Defense counsel asserted during sentencing that defendant wanted to withdraw his plea, but the trial court sentenced defendant.

Defendant appealed, and a panel of this Court vacated defendant's convictions on the basis that defendant entered his plea without fully understanding his habitual-offender status. *People v Alger*, unpublished per curiam opinion of the Court of Appeals, issued June 16, 2016 (Docket No. 322473), p 1. The Michigan Supreme Court, however, held that "[w]here the defendant knowingly pleaded no contest being aware of the maximum possible prison sentences he was facing, he did not establish that an error occurred in the plea proceeding that would entitle him to have his plea set aside." *People v Alger*, 500 Mich 938; 889 NW2d 510 (2017). The prosecution had conceded, however, that defendant was a third-offense habitual offender. *Id*. Accordingly, the Court remanded the case to this Court to address defendant's coercion claim. *Id*. If there was no coercion, then the Court ordered this Court to remand the case to the trial court for resentencing. *Id*.

On remand, a panel of this Court held that defendant had presented no evidence that the jail conditions coerced him into pleading. *People v Alger (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued March 2, 2017 (Docket No. 322473), p 5. Because there was no coercion, and defendant's plea was not involuntary, the panel affirmed defendant's convictions but remanded the case to the trial court for resentencing as a third-offense habitual offender. *Id*. at 5-6.

In the trial court, defendant moved several times to withdraw his plea. The trial court denied defendant's motions following a hearing. One hearing occurred on July 23, 2018, and the court addressed defendant's claim that he should be allowed to withdraw the plea because the crimes for which he was charged are mutually exclusive under *People v Davis*, 320 Mich App 484; 905 NW2d 482 (2017), vacated in relevant part, 503 Mich 984 (2019). The court found a "distinct factual difference between" this case and *Davis* as it explained:

> [I]n this situation, we have at least two separate acts in this case from a factual standpoint based on the [police] report that was used to substantiate the plea. And that specifically is, based on the report, there was an initial assault that was accomplished apparently with just fist or hand, something, without any additional weapons or anything else to assist him, and that occurred at or near the rear of this bar, the door to the bar, in the vicinity of that, and that involved the Defendant, as one of the witnesses said, blasting the victim, which she meant to be a punch to the victim, and which the victim's at least one tooth, if not multiple teeth, were dislodged. That would certainly be an aggravated assault. The victim happened to be the Defendant's wife, so it's . . . domestic aggravated assault and that was one assault that occurred here.

> Then it appears, based on the report, the Defendant dragged the victim by her hair down the street towards sounds like it's his mother's house or this residence on Spring Street, and it was halfway down the street from where the initial assault took place to where this second assault took place. And apparently halfway down the street or alley, whatever it was that lead[s] to this house, a second assault took place. And this time the Defendant was equipped with what was believed to be a shoe, and that's where he inflicted the great bodily harm on the [victim].
>
> So there were two separate assaults here. And we don't have the single event situation that we have addressed in [*Davis*]. And for that reason, I find [*Davis*] does not apply here.

The trial court resentenced defendant in October 2018.

In April 2019, defendant again moved to withdraw his plea or for resentencing, arguing that he could not have convictions of both AWIGBH and aggravated domestic violence.

The trial court held an evidentiary hearing in August 2019, during which several witnesses testified, including Officer Parsons and Sergeant Morris, witnesses Krueger and Riggs, the victim's mother, and a friend of the victim who all testified on behalf of the prosecution. The defense called the victim to testify as well. Both the victim's mother and the victim's friend testified that the victim began seeing a counselor after the assaults, that she became timid and afraid if people came near her, that she was less open to meeting new people, that she experienced nightmares because of the assaults, and that she struggled to navigate her children's relationship with defendant and his family. The victim testified that she considered the assaults one continuous incident because she would not have been able to survive two assaults that evening, and she had "missing pieces" from her memory of the incident due to the severity of the blows.

After hearing the testimony, the trial court reaffirmed its previous finding that defendant committed two assaults, so the case did not involve multiple punishments for the same conduct. Regardless, there were elements of each offense that were not in common with the other, including the intent to do great bodily harm for AWIGBH but not aggravated domestic violence. Aggravated domestic violence required a domestic relationship that AWIGBH did not require, and an injury, required for aggravated assault, was not an element of AWIGBH. Therefore, even if defendant's convictions involved the same act, there was not a double-jeopardy violation, and the trial court denied defendant's motion to withdraw his plea.

As to sentencing, the trial court assessed 10 points for OV 1 on the basis that defendant used a shoe to assault the victim. The trial court found that 10 points were proper for OV 4 because testimony demonstrated that the victim had been in counseling due to this incident. Further, the trial court assessed 15 points for OV 8 on the basis that defendant dragged the victim away from others to assault her in a place of greater danger, and five points were proper for OV 12 because defendant also committed unlawful imprisonment. The trial court sentenced defendant, as a third-offense habitual offender, MCL 769.11, to serve $8^1/_2$ to 20 years' imprisonment for AWIGBH and 14 months for second-offense aggravated domestic violence.

Defendant moved for reconsideration, which the trial court denied. Defendant now appeals.

II. ANALYSIS

A. DOUBLE JEOPARDY

First, defendant argues that his convictions violate double jeopardy and that his plea was inaccurate because he lacked notice about the charges, and the trial court failed to separate the factual bases for the pleas.

We review for an abuse of discretion a trial court's decision regarding a motion to withdraw a plea. *People v Guyton*, 511 Mich 291, 301; 999 NW2d 393 (2023). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). This Court also reviews for an abuse of discretion a trial court's decision on a motion for reconsideration. *People v Segura*, 348 Mich App 123, 132; 17 NW3d 129 (2023). We review de novo whether there has been a violation of the Double Jeopardy Clause. *People v Perry*, 317 Mich App 589, 600; 895 NW2d 216 (2016). Finally, we review de novo as a question of statutory construction whether a statute applies retroactively. *People v Conyer*, 281 Mich App 526, 528; 762 NW2d 198 (2008).

The United States and Michigan Constitutions each "protect a defendant from being placed twice in jeopardy, or subject to multiple punishments, for the same offense." *Perry*, 417 Mich App at 601-602 (quotation marks and citation omitted). See US Const, Am V; Const 1963, art 1, § 15.

In this case, defendant pleaded no contest to AWIGBH and second-offense aggravated domestic violence. "The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm *less than murder*." *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005) (quotation marks and citations omitted). A person commits aggravated domestic violence when he or she assaults a person with whom he or she has a qualifying relationship, including a spouse, "without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder . . . ." MCL 750.81a(2).

Defendant argues that the trial court and the prosecution have separated a single domestic-violence incident into two crimes. A trial court must establish a factual basis for a no-contest plea before accepting the plea. *People v Armisted*, 295 Mich App 32, 44; 811 NW2d 47 (2011). Under MCR 6.302(D)(2),[2] however, the trial court may not question a defendant about his or her participation in a crime if the defendant is pleading no contest. Given defendant pleaded no contest, there was limited discussion about the factual basis of the plea. In discussing the factual basis, the trial court stated it would "review what it received as exhibit 1." Exhibit 1 at the plea

[2] This court rule has been amended since the time of defendant's plea, but the prohibition against questioning a defendant during a no-contest plea remains consistent.

hearing was the medical records, and the extent of the injuries enumerated in that report were read aloud by the court. While the trial court only mentioned Exhibit 1, the medical records, it is clear from the record the trial court also relied on the police report. The factual basis for the offenses begins with the trial court reading from a document that includes the date of the offenses and statements to police. At the close of the hearing, the trial court expressly accepted two exhibits for the record: (1) medical records and (2) a police report.

Subsequently, defendant moved to withdraw and argued that the differing intents of the offenses precluded him from being convicted of both offenses. Although defendant briefly raised the issue of the intent required under each charge at the plea hearing, defendant afterward confirmed that he understood the charges. The trial court found that defendant committed separate offenses and the record supports the trial court's findings. Witnesses saw that defendant first punched the victim, knocking out one of her teeth. This constituted aggravated domestic violence. Defendant then dragged away the victim and, with a new intent, repeatedly assaulted her, including with a shoe, and committed AWIGBH.

Contrary to defendant's claim on appeal, the trial court did not err by relying on the police report and medical records to support the factual basis for both offenses. Defendant relies on *Valentine v Konteh*, 395 F3d 626 (CA 6, 2005), in which the United States Court of Appeals for the Sixth Circuit stated that the prosecution could have mitigated due-process issues by specifying the factual bases for each separate incident.[3] As defendant acknowledges, however, there are *significant* differences between the situation in this case and that in *Valentine*, 395 F3d at 628. In *Valentine*, the defendant faced 40 counts of sexual abuse for ongoing sexual abuse of a child. In this case, the prosecution charged defendant only with two counts, for which defendant had a preliminary examination. Defendant confirmed that he understood his plea, and the trial court properly found that there was record evidence of two separate counts.

Defendant also points to the prosecution's statement during an April 2023 hearing that "[t]he charge has never altered from assault with intent to do great bodily harm with an added, ah, alternative charge, as it were, of aggravated domestic violence second offense." The prosecution's statement simply indicated that defendant's charges remained consistent. Defendant was aware, from the information read in his presence in open court, that he was pleading no contest to two separate counts. Further, the trial court bound over defendant following the preliminary examination on both counts, rather than the prosecution requesting that the trial court instruct a jury on an alternative charge. Moreover, defendant pleaded no contest to the offenses, and by his affirmatively choosing to do so, he did not contest them. The brief statement by the prosecution during a motion hearing did not determine the charges defendant faced. Therefore, the trial court did not err by finding that defendant's convictions were not on the basis of one single act.

Even if defendant did not commit separate acts to support both convictions, defendant's convictions do not violate the Double Jeopardy Clause.

[3] Decisions of lower federal courts are not binding, but they may be persuasive. *People v Walker*, 328 Mich App 429, 444-445; 938 NW2d 31 (2019).

The prohibition against double jeopardy protects individuals from: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. *People v Miller*, 498 Mich 13, 17; 869 NW2d 204 (2015). This third protection, at-issue in this case, is known as the "multiple punishments" strand. See *id*. The multiple-punishment strand ensures that courts confine sentences to the limits that the Legislature prescribes. *Id*. at 17-18. The Legislature may explicitly authorize cumulative punishment under two statutes. *People v Mitchell*, 456 Mich 693, 695; 575 NW2d 283 (1998). The question "is whether there is a clear indication of legislative intent to impose multiple punishment[s] for the same offense" and, if there is, there is no double-jeopardy violation. *Id*. at 695-696. If the Legislature has explicitly prohibited multiple punishments, then the trial court may not cumulatively punish a defendant for multiple offenses. *Miller*, 498 Mich at 18. "The Legislature, however, does not always clearly indicate its intent with regard to the permissibility of multiple punishments." *Id*. at 19. When the Legislature's "intent is not clear, Michigan courts apply the 'abstract legal elements' test" to determine whether the Legislature intended multiple punishments. *Id*. Under this test, multiple convictions do not violate double-jeopardy protection if each offense has an element that the other offense does not. *Id*. See also *People v Ream*, 481 Mich 223, 225-226; 750 NW2d 536 (2008).

After defendant committed these offenses, the Legislature amended MCL 750.84(3), the section of the Michigan Penal Code penalizing AWIGBH to explicitly recognize that "This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section." Before that amendment, the AWIGBH statute did not clearly evince the Legislature's intent regarding multiple punishments. See, e.g., *People v McKewen*, 516 Mich 23, 41 n 55; 33 NW3d 307 (2024).[4] In *McKewen*, 516 Mich at 37, the Court stated that "it appears obvious that MCL 750.84(3) was specifically designed to inform the judiciary's application of double-jeopardy principles by allowing cumulative punishments that would otherwise have been unauthorized." Therefore, although "AWIGBH and felonious assault contain[ed] conflicting intent requirements that might otherwise indicate the Legislature's intent to prohibit multiple punishments," MCL 750.84(3) authorized multiple punishments. *Id*. at 40-41. When the Legislature's intent was clear, the Court did not need to apply the abstract-legal-elements test. *Id*. The Court continued however, by explaining:

> Even if we were to conclude that MCL 750.84(3) is not dispositive as to the Legislature's intent to authorize multiple punishments in light of the conflicting intent requirements in MCL 750.84(1)(a) and MCL 750.82(1), these considerations taken together would at most render the Legislature's intent unclear, or "a draw," in the words of the dissent, requiring this Court to proceed to apply the abstract-legal-elements test to ascertain the Legislature's intent. And applying that test, we would again conclude that the Legislature intended to authorize punishment for

[4] Like aggravated domestic violence, MCL 750.81a, the felonious-assault statute, MCL 750.82(1), includes the phrase "without intending to commit murder or to inflict great bodily harm less than murder."

> both AWIGBH and felonious assault given that MCL 750.84 and MCL 750.82 each contain an element that the other does not. [*Id*. at 41 n 55 (citations omitted).]

In this case, as the trial court found, AWIGBH, but not aggravated domestic violence, required that defendant had the intent to commit great bodily harm less than murder. See *Brown*, 267 Mich App at 147. Aggravated domestic violence, but not AWIGBH, required that defendant inflicted a serious injury and that he and the victim had some sort of domestic relationship. See MCL 750.81a(2). Because each offense requires an element that the other does not, defendant's conviction did not violate double-jeopardy protections. See *Ream*, 481 Mich at 225-226.

Finally, the Michigan Supreme Court directed this Court to address whether MCL 750.84(3) is applicable to this case when defendant committed these offenses before it became effective. The prosecution concedes that the subsection does not apply in this case, although this Court need not accept a party's concession. See *People v Reed*, 449 Mich 375, 395; 535 NW2d 496 (1995).

The Legislature's intent determines whether courts apply statutes retroactively or prospectively. *Conyer*, 281 Mich App at 529. There exists a presumption that statutes operate prospectively unless the Legislature clearly evinces a contrary intent. *Id*. There is an exception to this presumption, however, if the statute is remedial or procedural. *People v Link*, 225 Mich App 211, 214; 570 NW2d 297 (1997). "A statute is remedial if it is designed to correct an existing oversight in the law or redress an existing grievance, or if it operates in furtherance of an existing remedy and neither creates nor destroys existing rights." *Conyer*, 281 Mich App at 529. When a statute affects or creates substantial rights, it is not remedial. *Id*.

In this case, first, there was no clear manifestation that the Legislature intended MCL 750.84(3) to apply retroactively. See *People v Doxey*, 263 Mich App 115, 121; 687 NW2d 360 (2004). It is possible that the Legislature enacted MCL 750.84(3) "to correct an existing oversight in the law." *Conyer*, 281 Mich App at 529. Defendant's convictions of AWIGBH and aggravated domestic violence do not violate the Double Jeopardy Clause. Accordingly, the subsection potentially clarifies the Legislature's intent to allow for those multiple convictions. Considering that Subsection (3) applies to "*any* other violation of law arising out of the same conduct," MCL 750.84(3) (emphasis added), however, it affects an individual's substantial rights. Accordingly, MCL 750.84(3) is not remedial, and courts should not apply it retroactively. See *Conyer*, 281 Mich App at 530-531.

MCL 750.84(3) does not, therefore, apply retroactively. Regardless, defendant committed two separate offenses and, even if he had not, his convictions for one count of AWIGBH and one count of aggravated domestic violence did not and do not violate double-jeopardy protections.

B. OV 1

Defendant argues that the trial court erred by assessing 10 points for OV 1.

We review de novo whether the trial court properly interpreted and applied the sentencing guidelines. *People v McGraw*, 484 Mich 120, 123; 771 NW2d 655 (2009). We review for clear error, however, a trial court's factual findings under the sentencing guidelines, and the findings

must be supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). A defendant is entitled to resentencing when the trial court made an error calculating sentencing guidelines. *People v Francisco*, 474 Mich 82, 90-91; 711 NW2d 44 (2006).

Although sentencing guidelines are no longer mandatory, a trial court must still consider the guidelines when determining an appropriate minimum sentence. *People v Lockridge*, 498 Mich 358, 365; 870 NW2d 502 (2015).

OV 1 addresses a defendant's aggravated use of a weapon. MCL 777.31. A trial court properly assesses 10 points if the defendant touches the victim with "any other type of weapon" that is not identified in other subsections. MCL 777.31(1)(d). A weapon is an article or instrument that a person used for assault or in defense. *People v Hutcheson*, 308 Mich App 10, 14; 865 NW2d 44 (2014). An "article" is a "thing or person of a particular and distinctive kind or class." *Id*. (quotation marks and citation omitted). Further, an "instrument" is "one used by another as a means or aid." *Id*. (quotation marks and citation omitted). To constitute a weapon for purposes of OV 1, the defendant need not have planned or prepared that item. *People v Lange*, 251 Mich App 247, 255; 650 NW2d 691 (2002).

In this case, there was a preponderance of evidence to support the trial court's finding that defendant assaulted the victim with the shoe as a weapon. Witnesses saw defendant with an item in his hand, including Bledsoe, who saw defendant holding a shoe as if he were going to hit the victim. Ripley saw defendant hitting the victim in the head with a black-and-white object. Krueger saw defendant hit the victim with an object at least one time. Photographs from the scene showed one of defendant's shoes covered in blood. Therefore, the trial court did not err by finding that defendant used a shoe when assaulting the victim, which constituted using a weapon for purposes of OV 1. See MCL 777.31(1)(d); *Lange*, 251 Mich App at 257.

C. OV 4

Next, defendant argues that the trial court erred by assessing 10 points for OV 4.

OV 4 addresses a victim's psychological injury. MCL 777.34(1). A trial court properly assigns 10 points if the victim experiences "[s]erious psychological injury requiring professional treatment . . . ." MCL 777.34(1)(a). Ten points are warranted "if the serious psychological injury may require professional treatment," but "the fact that treatment has not been sought is not conclusive." MCL 777.34(2). A trial court may not assess points under OV 4 on the basis that a reasonable person would have suffered serious psychological injury in the same circumstances, but, rather, the psychological injury must have occurred to the victim. *People v White*, 501 Mich 160, 163; 905 NW2d 228 (2017).

The trial court correctly concluded that the victim suffered serious psychological injury that might require professional treatment. See MCL 777.34(1)(a). The victim testified during the evidentiary hearing about the emotional impact of the incident and other witnesses, including her mother and the victim's friend, testified about the impact on the victim, including her participation in counseling, nightmares regarding the incident, increased timidity and fear in social settings, and difficulty navigating relationships. MCL 777.34 does not require evidence of a professional diagnosis. In this matter, this victim engaged in counseling because of this incident "for years."

This situation is completely different from that in *White*, 501 Mich at 162, in which the Michigan Supreme Court held that a trial court may not assess points for OV 4 merely because a victim would *normally* suffer serious psychological injury in the situation. The evidence in *this* case supported the trial court's finding that *this* victim suffered serious psychological injury requiring treatment. See *People v Rosa*, 322 Mich App 726, 745; 913 NW2d 392 (2018).

D. OV 7

Defendant also challenges the trial court's assessment of 50 points for OV 7.

OV 7 addresses aggravated physical abuse. MCL 777.37(1). At the time of defendant's offense, MCL 777.37(1)(a) provided that a trial court properly assigns 50 points for OV 7 if a defendant treated a victim "with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense[.]" OV 7 addresses "particularly heinous" incidents in which a defendant acted to increase significantly a victim's fear. *People v Rodriguez*, 327 Mich App 573, 578; 935 NW2d 51 (2019) (quotation marks and citation omitted). A trial court may rely on the severity of the injuries that the victim suffered in determining whether the defendant acted with brutality in excess of that which the offense requires. See *People v McFarlane*, 325 Mich App 507, 534; 926 NW2d 339 (2018).

In this case, the trial court did not err by assessing 50 points under OV 7. The record demonstrates that this was an excessively brutal offense designed to increase the victim's fear. See MCL 777.37(1). Defendant punched the victim in the face, knocking out at least one tooth, and then dragged her away from other people and the pub. Defendant repeatedly hit the victim, including with a shoe, and broke bones in her face. The trial court stated that, with its almost 40 years' experience, "if this [was] not excessive brutality, this court is unable to ascertain what is." The photograph of the victim's face shows that she was thoroughly covered in blood, witnesses reported how injured the victim was, and the victim testified about her eyes being swollen. As the trial court stated, AWIGBH did not require any actual brutality or injury. See MCL 750.84. Defendant, however, beat the victim well beyond what was necessary to support the conviction. Therefore, the trial court did not err by assessing 50 points for OV 7.

E. OV 8

Next, defendant argues that the trial court erred by assessing 15 points under OV 8.

A trial court properly assigns 15 points under OV 8 if the defendant asported the victim "to another place of greater danger or to a situation of greater danger" or held the victim "captive beyond the time necessary to commit the offense[.]" MCL 777.38(1)(a). "A victim is asported to a place or situation involving greater danger when moved away from the presence or observation of others." *People v Chelmicki*, 305 Mich App 58, 70-71; 850 NW2d 612 (2014). Asportation may include movement of the victim that is incidental to the commission of the underlying offense. *People v Barrera*, 500 Mich 14, 21; 892 NW2d 789 (2017).

In this case, the trial court was correct in assessing 15 points under OV 8. The record demonstrated that defendant dragged the victim away from other individuals, who could have intervened, and toward his mother's home. Moreover, Riggs saw defendant pin the victim to a garage door and heard the victim yell for defendant to let her go. Therefore, the trial court did not

err by finding that defendant dragged the victim away from other people, to a place of greater danger toward his mother's house. See *Chelmicki*, 305 Mich App at 70-71.

F. OV 12

Finally, defendant argues that the trial court erred by assessing five points for OV 12.

OV 12 addresses "contemporaneous felonious criminal acts." MCL 777.42(1). The trial court properly assigns five points if "[o]ne contemporaneous felonious criminal act involving a crime against a person was committed[.]" MCL 777.42(1)(d). A felonious criminal act is contemporaneous if the act occurred within 24 hours of the sentencing offense and it has not, and will not, result in a separate conviction. MCL 777.42(2)(a). The trial court may assess points under OV 12 on the basis of uncharged conduct if the sentencing offense can be separated from the other distinct acts. See *People v Teike*, 348 Mich App 520, 530-531; 19 NW3d 733 (2023). The contemporaneous felonious criminal act may not simply be another method for classifying the sentencing offense. *Id*. at 530. MCL 750.349b(1)(c) provides that a person commits unlawful imprisonment when he or she restrains a person "to facilitate the commission of another felony."

In this case, the trial court did not err by assessing five points under OV 12 because the record demonstrated that defendant committed the offense of unlawful imprisonment contemporaneously to committing AWIGBH. See MCL 777.42(1)(d). The record demonstrated that defendant dragged the victim away from the bar and pinned her against a garage wall. Throughout this time, defendant hit the victim many times, committing AWIGBH. Accordingly, the evidence demonstrated that defendant restrained the victim to facilitate the commission of another felony, AWIGBH, see MCL 750.349b(1)(c), and defendant is not entitled to resentencing.

Affirmed.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney