

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
June 19, 2014

v

DUSTIN JAMES URIE,

No. 315005  
St. Joseph Circuit Court  
LC No. 12-017988-FH

Defendant-Appellant.

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

PER CURIAM.

Defendant appeals by leave granted his sentence for a plea-based conviction of one count of third-degree criminal sexual conduct (CSC III), MCL 750.520d (1)(a) (sexual penetration with a 13 to 15-year-old victim). Because defendant has not established that the trial court erred by scoring offense variable (OV) 10 at 15 points, we affirm.

Defendant's conviction arises out of penile-oral penetration with a 14-year old victim. The sole issue on appeal is whether the record supports the trial court's score of OV 10 at 15 points.<sup>1</sup> Offense variable 10 addresses exploitation of a vulnerable victim, and a sentencing court must assess 15 points if the offense involved predatory conduct. MCL 777.40(1)(a). "Predatory conduct" is defined as "preoffense conduct directed at a victim for the primary purpose of victimization." MCL 777.40(3)(a).

The record supports the trial court's finding of predatory conduct. First, we have held that a victim's age, 14-years-old at the time of the crime in this case, may make her more vulnerable to predatory conduct than an older victim. See *People v Johnson*, 298 Mich App 128, 133; 826 NW2d 170 (2012).

Second, despite the fact that defendant knew he was sexually attracted to middle school-aged girls and that the victim was in middle school, he befriended the victim. Defendant then confided in the victim by telling her his "biggest secret ever," which was that he was allegedly

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<sup>1</sup> We review defendant's unpreserved sentencing challenge for plain error affecting substantial rights. *People v Kimble*, 470 Mich 305, 309-312; 684 NW2d 669 (2004).

raped by his cousin; defendant then told the victim to keep her “mouth shut” about the secret. In the same conversation, defendant repeatedly threatened to commit suicide because of the alleged rape. When the victim begged defendant not to commit suicide, he told her that the only way to stop him from committing suicide was for her to show him her intimate parts. Fostering a relationship with a victim premised on secrets and overtures of trust supports a finding of predatory conduct. See *People v Waclawski*, 286 Mich App 634, 686; 780 NW2d 321 (2009) (affirming a score of 15 points for OV 10 where the defendant “befriended the victims and became a confidant to them so he could easily lure the victims” to the place where he assaulted them).

Third, defendant does not dispute that the offense occurred in a wooded area at 3:00 a.m. The timing and location of an offense can be evidence of predatory conduct. See *People v Huston*, 489 Mich 451, 467-468; 802 NW2d 261 (2011) (affirming a score of 15 points for OV 10 when the victim was walking alone at night), and *People v Kosik*, 303 Mich App 146, 160; 841 NW2d 906 (2013) (affirming a score of 15 points for OV 10 when the defendant waited to assault the victim until she was alone in an isolated area).

In sum, the record indicates that defendant engaged in preoffense, predatory conduct directed at a young victim for the primary purpose of victimization, including befriending the middle-school-aged victim, manipulating the victim to believe that she could only stop him from committing suicide by engaging in sexual acts with him, and committing the offense in an isolated location in the middle of the night. With regard to the application of the sentencing guidelines, a trial 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), and the record supports the trial court’s scoring of OV 10 at 15 points in defendant’s case.

Affirmed.

/s/ William B. Murphy  
/s/ Douglas B. Shapiro  
/s/ Michael J. Riordan