

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 18, 2012

v

VAUGHN EDWARD STECKER,
Defendant-Appellant.

No. 305519
Livingston Circuit Court
LC No. 10-018924-FH

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

PER CURIAM.

Defendant pleaded guilty to second-degree home invasion, MCL 750.110a(3), and two counts of aggravated stalking, MCL 750.411i. The trial court sentenced him to seven years and two months to 15 years' imprisonment for his second-degree home invasion conviction and to 40 months to 15 years' imprisonment for each of his aggravated stalking convictions. Originally, this Court denied defendant's delayed application for leave to appeal, but the Supreme Court remanded the case for consideration as on leave granted. *People v Stecker*, 490 Mich 967; 806 NW2d 502 (2011). We affirm.

Defendant had an ongoing dispute with his neighbors, the victims in this case. He solicited Michael Luxton to go to the victims' home to scare or annoy the victims. The victims' audio and video surveillance system recorded defendant on the telephone, while outside a service door to his garage, stating, in part:

Whatever you can do, I don't know. I'm about 100% sure that there is nobody in the home. I don't see the dog outside. The door is unlocked to the garage. You've got to entrance [sic] to the garage . . . um, Yes, it's right acrost [sic]. Yep, make sure you don't come down, the kids didn't go to school or something. I don't know. She left about a half hour ago.

Investigation revealed that defendant was on the telephone with Luxton at the time.¹ Luxton subsequently broke into the home. At the time, the victims' 13-year-old child was home alone.

¹ According to Luxton, defendant also previously asked him to set fire to the home and break the legs of the victims, but Luxton declined.

At sentencing and in a motion for resentencing, defendant challenged the scoring of Offense Variable (OV) 10 at 15 points and the scoring of OV 19 at 15 points. The trial court rejected the objections at sentencing and denied the motion for resentencing. Defendant raises the same challenges on appeal, arguing that he must be resentenced.

Defendant's arguments are preserved. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004). We review do novo the interpretation and application of the statutory sentencing guidelines. *People v Francisco*, 474 Mich 82, 85; 711 NW2d 44 (2006). A scoring decision should be upheld if any evidence exists supporting the challenged score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

OV 10 is properly scored at 15 points when there has been exploitation of a vulnerable victim and “[p]redatory conduct was involved.” 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). “Vulnerability” is defined as “the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.” MCL 777.40(3)(c). In sum, to score OV 10 at 15 points, a defendant must engage in conduct before the commission of the offense; the conduct must be directed at a victim who suffers from the readily apparent susceptibility to injury, physical restraint, persuasion, or temptation; and the defendant's primary purpose for engaging in the preoffense conduct must have been victimization. *People v Huston*, 489 Mich 451, 458-460; 802 NW2d 261 (2011); *People v Cannon*, 481 Mich 152, 162; 749 NW2d 257 (2008).

Preoffense, predatory conduct does not have to be directed at a specific victim, but a victim. *Huston*, 489 Mich at 459-460. The predatory conduct must be conduct that is “commonly understood as being ‘predatory’ in nature, e.g., lying in wait and stalking” *Id.* at 462. Additionally, to score OV 10 at 15 points, the preoffense conduct must be for the primary purpose of victimization, or “causing that person to suffer from an injurious action or to be deceived.” *Cannon*, 481 Mich at 161. Finally, a victim may be vulnerable due to the “victim's relationships or circumstances.” *Huston*, 489 Mich at 464. In other words, the required vulnerability need not arise solely from a victim's inherent characteristics but can arise from outside factors. *Id.* at 466.

The trial court properly scored OV 10 at 15 points. The record supports that from his position as a neighbor, defendant observed and monitored the victims before the crime to determine when to break into the home and then provided this information to Luxton. He admitted at the plea proceedings that he provided Luxton with information about the victims' dog and “told him when the people were home and not home and so forth” He engaged in preoffense, predatory conduct, akin to “lying in wait and stalking.” *Id.* at 462. By way of his actions, defendant was targeting and stalking the family as a whole and attempting to make them suffer an injurious action, and he engaged in predatory conduct in order to achieve his aims. Defendant admitted that his purpose was to scare or annoy the victims, and this was sufficient to establish that the preoffense conduct was for the primary purpose of victimization. Finally, the victims were vulnerable by virtue of their relationships and the conditions. *Id.* at 464. They were defendant's neighbors, and because of where they lived, they could not escape defendant's observations and monitoring and instead were vulnerable to them and to defendant's criminal

actions. Defendant capitalized on this vulnerability to coordinate the break-in. We conclude that the trial court properly scored OV 10 at 15 points.

Regarding OV 19, defendant concedes on appeal that a score of 10 points under this variable was appropriate because of his false statements to police. See MCL 777.49(c) (providing for a score of 10 under OV 19 if the offender “interfered with . . . the administration of justice”). As such, we need not address defendant’s argument that the trial court improperly assessed 15 points for this variable. Indeed, even accepting defendant’s arguments as valid and using a score of 10, instead of 15, for OV 19, defendant’s offense would fall into the same guidelines cell under MCL 777.64, providing for a guidelines range of 43-86 months. Resentencing is not warranted. *Francisco*, 474 Mich at 89 n 8.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Mark T. Boonstra