

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLAUDE JOSEPH RUTHERFORD,

Defendant-Appellant.

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UNPUBLISHED

November 15, 2005

No. 255454

Allegan Circuit Court

LC No. 03-013347-FH

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of four to twenty years' imprisonment imposed on his plea-based conviction of manufacture of a controlled substance, MCL 333.7401c(2)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction stems from his manufacture of methamphetamine in a laboratory he operated on his mother's property. In response to a complaint of a heavy odor of ether and a generator running all night on the property, officers discovered various items and chemicals used in manufacturing methamphetamine, as well as quantities of the drug itself. Included in the large list of items were rubbing alcohol, empty cans of butane, drain cleaner, a twenty-pound propane tank, a 100-pound tank containing anhydrous ammonia, a gallon of Coleman fuel, a bottle of Muratic acid, three firearms, and two pipe bombs containing pyrodex powder. The bomb squad and a hazardous materials team removed the pipe bombs and hazardous waste.

Defendant challenges the scoring of twenty points for Offense Variable (OV) 1, MCL 777.31, aggravated use of a weapon. The trial court found that the score was appropriate due to the danger to the bomb squad and other officers, the danger to defendant's mother and other individuals who were present on the property, and the danger to the environment and the general public. MCL 777.31(1)(b). "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision "for which there is any evidence in support will be upheld." *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). Underlying questions of statutory interpretation are reviewed de novo. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004).

The trial court's scoring of twenty points for OV 1 was supported by the evidence. Defendant exposed police officers to explosive devices. MCL 777.31(3)(b). He further exposed

the officers, his mother, and a number of other individuals to various harmful chemical substances, especially when considered in combination,<sup>1</sup> including the odor of ether that neighbors smelled prior to making the initial complaint. MCL 777.31(3)(a); MCL 750.200h (h) & (i). Contrary to defendant's argument, OV 1 does contain a definition of victim; i.e., "each person who was placed in danger of injury or loss of life[.]" MCL 777.31(2)(a). This statutory language does not contain an exception for police officers or other professionals who, by necessity, must dispose of the dangerous substances on the property. Nor does the language limit a scoring of this variable to only overt terrorist activities. See MCL 777.49a. The trial court did not err when it scored OV 1 at twenty points.<sup>2</sup>

Affirmed.

/s/ William B. Murphy  
/s/ David H. Sawyer  
/s/ Patrick M. Meter

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<sup>1</sup> Fires and explosions caused by the operation of methamphetamine labs have become all too familiar occurrences in Michigan and elsewhere.

<sup>2</sup> With respect to defendant's argument that the scoring of the sentencing variables violated the principles enunciated in *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), our Supreme Court in *People v Claypool*, 470 Mich 715; 684 NW2d 278 (2004), determined that Michigan's sentencing system is not affected by *Blakely*. Although the United States Supreme Court has now issued *United States v Booker*, 543 US \_\_\_; 125 S Ct 738; 160 L Ed 2d 621 (2005)(federal sentencing guidelines subject to jury trial requirements of the Sixth Amendment), and our Supreme Court has decided to directly address *Blakely* and *Booker* and their application relative to sentencing in Michigan, *People v Drohan*, 472 Mich 881; 693 NW2d 823 (2005), we, for now, are guided by *Claypool*. Moreover, here plea admissions formed the basis for the scoring; therefore, there would be no need for jury resolution.