

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
June 21, 2012

v

WILLIE REGINALD RIDLEY,

Defendant-Appellant.

No. 303251
Berrien Circuit Court
LC No. 2009-003857-FC

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Following a jury trial, defendant appeals his convictions of unlawful imprisonment, MCL 750.349b, and of interfering with the reporting of a crime by using threats of death or injury, MCL 750.483a(2)(b). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to concurrent terms of 10 to 25 years' imprisonment for each offense. We affirm.

First, defendant challenges the sufficiency of the evidence. Appeals regarding the sufficiency of the evidence are reviewed de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When considering a claim of insufficient evidence, the "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 Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). Determinations as to the weight of the evidence and the credibility of witnesses remain within the province of the trier of fact. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). "[A]ll reasonable inferences must be drawn in favor of the prosecution." *Wolfe*, 440 Mich at 533.

Defendant was convicted of unlawful imprisonment under MCL 750.349b which requires that defendant knowingly restrain another person. In this case, the charge of unlawful imprisonment was premised on restraint "to facilitate the commission of another felony or to facilitate flight after commission of another felony." MCL 750.349b(1)(c). The statute defines "restrain" to mean "to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or without lawful

authority.” MCL 750.349b(3)(a). “The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.” MCL 750.349b(3)(a); *People v Railer*, 288 Mich App 213, 218-219; 792 NW2d 776 (2010).

At trial there was ample evidence presented to establish defendant restrained the victim. The victim, a woman with apparent cognitive difficulties, testified that defendant wrapped an arm around her throat, put an elbow in her chest, placed a hand on her throat, and pinned her arms and legs so she could not move. At some point she escaped from her apartment into the hallway. Defendant again caught her, grabbed her neck and shoulders, and then dragged her back to the apartment. The victim described physical injuries consistent with this attack, photographs of her injuries were admitted, a nurse who examined the victim described the victim’s injuries and testified to the details of the attack as told to her by the victim, and a police officer observed bruising on the victim’s legs consistent with her description of events.

The evidence was also sufficient to establish that the restraint was done to facilitate the commission of a felony. In this case, there was sufficient evidence of two possible felonies that defendant restrained the victim in order to accomplish. First, there was sufficient evidence to conclude the restraint was done to facilitate first-degree criminal sexual conduct. Although defendant was acquitted of criminal sexual conduct, a jury’s verdict as to a crime does not preclude it from reaching a different conclusion when the offense forms an element of another crime. *People v Goss (After Remand)*, 446 Mich 587, 599; 521 NW2d 312 (1994). Here, the victim testified that defendant was a stranger to her, but that she let him in her apartment to use her telephone. Corroborating her testimony, one of the victim’s neighbors testified that defendant, a stranger to her, was in the building on the day of the attack and also knocked on her door. The victim also let defendant use her bathroom. He then emerged from the bathroom naked and attacked her. She testified to two instances of sexual penetration that defendant accomplished through his use of restraint. She also testified that defendant bit her breast during the attack, which was corroborated by evidence of defendant’s DNA on her breast. She identified defendant as her attacker in a photographic array and at trial. Her physical injuries were also indicative of an attack, and were documented by photographs and other witness testimony. In addition to the injuries already discussed, the victim suffered vaginal tearing. In short, there was ample evidence to allow the conclusion that defendant restrained the victim to facilitate criminal sexual conduct.¹

Alternatively, there was sufficient evidence of a second felony that defendant’s restraint of the victim sought to facilitate: interfering with the reporting of a crime. Where threats to kill or injure someone are involved, interference with the reporting of a crime is a felony offense. MCL 750.483a(2)(b). To prove interference with the reporting of a crime, the prosecution was

¹ We also note that the word “facilitate” means only “to make easier or less difficult.” *Random House Webster’s College Dictionary* (1997). It does not necessarily require the prosecutor to prove the accomplishment of felony. Accordingly, in this case, a jury could have disbelieved a sexual penetration occurred but still found the restraint was aimed at facilitating the commission of criminal sexual conduct.

required to establish that: “(1) that a defendant prevented or attempted to prevent, (2) through the unlawful use of physical force, (3) someone from reporting a crime committed or attempted by another person.” *People v Holley*, 480 Mich 222, 228; 747 NW2d 856 (2008). In this case, to obtain a felony conviction, the prosecution had to establish that defendant threatened to kill or injure the victim. MCL 750.483a(2)(b). Notably, “the prosecution is not required to prove beyond a reasonable doubt that the underlying offense was committed or attempted.” *Holley*, 480 Mich at 230-231. In this case, testimony showed that defendant physically assaulted the victim, and that the victim then told defendant she was going to call the police. As detailed above, defendant physically restrained defendant and prevented her efforts to flee and seek help. Defendant also issued numerous threats including telling that victim that “if you run I’m going to hurt you for really,” and that he would kill her and no one would find her. There was ample evidence to show defendant’s threats and restraint were intended to prevent the victim from reporting a crime.

Related to his sufficiency challenge, defendant notes several inconsistencies in the victim’s testimony, and in her previous statements. He also argues that the physical evidence supports his version of events. Certainly, the DNA evidence on the victim’s breast, lack of DNA in the genital wipe, and defendant’s belongings in the apartment could be taken as consistent with defendant’s story. However, “the prosecutor need not negate every reasonable theory consistent with innocence,” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), and on appeal “all reasonable inferences must be drawn in favor of the prosecution,” *Wolfe*, 440 Mich at 533. Defendant essentially asks this Court to reconsider the credibility of witness testimony and to reevaluate the weight to be afforded to the evidence. However, credibility and weight of the evidence determinations rest with the jury. *Id.* at 514-515. In its role as fact-finder, “[a] jury has the right to disregard all or part of the testimony of a witness,” *People v Goodchild*, 68 Mich App 226, 235; 242 NW2d 465 (1976), and “to believe or disbelieve, in whole or in part, any of the evidence presented,” *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Moreover, we note that the victim never wavered from her claim that she had been attacked, restrained, threatened, and raped by defendant. This testimony was supported by evidence of her physical injuries, defendant’s DNA on her breast, defendant’s belongings in the apartment, her identification of defendant as her attacker, and a neighbor’s testimony that defendant was knocking on strangers’ doors in the building apparently looking for women who were home alone. This evidence forms a sufficient basis for defendant’s convictions.

Next, defendant argues it was a violation of double jeopardy to convict him of unlawful imprisonment while finding him not guilty of kidnapping. Unpreserved double jeopardy claims are reviewed for plain error affecting defendant’s substantial rights. *People v Matuszak*, 263 Mich App 42, 47; 687 NW2d 342 (2004). Whether the Legislature intended multiple punishments is evaluated under the *Blockburger* test. *People v Ford*, 262 Mich App 443, 448; 687 NW2d 119 (2004); *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932). “In general, the *Blockburger* test ‘inquires whether each offense contains an element not contained in the other; if not, they are the ‘same offence’ and double jeopardy bars additional punishment and successive prosecution.’” *Ford*, 262 Mich App at 448 (citation omitted). In this case, defendant argues that kidnapping requires proof of two things: (1) that defendant knowingly restrained the victim, and (2) that he did this with the intent to engage in criminal sexual penetration. Likewise, he contends unlawful imprisonment requires proof of two things: (1) that defendant knowingly restrained the victim, and (2) did this to facilitate the commission

of first-degree criminal sexual conduct. Defendant's argument lacks merit because it ignores that the "statutory elements, not the particular facts of the case, are indicative of legislative intent." *People v Ream*, 481 Mich 223, 235-238; 750 NW2d 536 (2008). The focus must be on the statutory elements. *Id.*

The statutory elements of kidnapping are found at MCL 750.349. The statutory elements of unlawful imprisonment are found at MCL 750.349b. As defendant indicates, both unlawful imprisonment and kidnapping require that the defendant knowingly restrain the victim. MCL 750.349(1); MCL 750.349b(1). However, the statutory definitions of "restrain" differ. In particular, unlawful imprisonment defines restrain as "to *forcibly* restrict a person's movements or to *forcibly* confine the person . . ." MCL 750.349b(3)(a). In contrast, kidnapping defines "restrain" as meaning "to restrict a person's movements or to confine the person . . ." MCL 750.349(2). Therefore, unlawful imprisonment includes a level of force not required of kidnapping. Additionally, kidnapping requires knowing restraint "with the intent" to do one of a number of acts. MCL 750.349(1). In contrast, unlawful imprisonment does not include the language "with the intent," but refers to knowing restraint "under any of the following circumstances." MCL 750.349b(1). Therefore, there is a specific intent requirement related to kidnapping that is not required for unlawful imprisonment. "[T]he Legislature is presumed to be aware of the consequences of the use, or omission, of language when it enacts the laws that govern our behavior." *People v Ramsdell*, 230 Mich App 386, 392; 585 NW2d 1 (1998). Moreover, there are numerous ways in which kidnapping and unlawful imprisonment can occur without implicating the other offense. Specifically kidnapping requires proof of intent to: "(a) Hold that person for ransom or reward; (b) Use that person as a shield or hostage; (c) Engage in criminal sexual penetration or criminal sexual contact with that person; (d) Take that person outside of this state; (e) Hold that person in involuntary servitude." MCL 750.349(1). None of these are required elements of unlawful imprisonment. MCL 750.349b. In contrast, unlawful imprisonment requires proof of one of the following circumstances: "(a) The person is restrained by means of a weapon or dangerous instrument; (b) The restrained person was secretly confined; (c) The person was restrained to facilitate the commission of another felony or to facilitate flight after commission of another felony." MCL 750.349b(1). None of these circumstances are required to prove kidnapping. Having found unique statutory elements, we conclude there was no double jeopardy violation. *Ream*, 481 Mich 235-238.

Defendant also argues that the jury verdicts rendered in this case were inconsistent.² Jury verdicts are inconsistent when they "cannot be explained on any rational basis." *People v Ware*, 97 Mich App 728, 729; 296 NW2d 164 (1980). We note that defendant's verdicts are not

² The jury found defendant not guilty of counts one through five: (1) first-degree criminal sexual conduct involving false imprisonment, MCL 750.520b; (2) first-degree criminal sexual conduct involving kidnapping, MCL 750.520b; (3 and 4) two counts of first-degree criminal sexual conduct involving personal injury or the use of force or coercion, MCL 750.520b, (and the lesser included offenses of third-degree criminal sexual conduct, MCL 750.520d); and (5) kidnapping, MCL 750.349.

inconsistent. As discussed, unlawful imprisonment requires restraint to facilitate another *felony*, MCL 750.349b(1)(c), it does not require completion of a sexual offense. As such, unlawful imprisonment based on interfering with the reporting of a crime is not inconsistent with not guilty verdicts regarding criminal sexual conduct and kidnapping premised on criminal sexual conduct. To the extent defendant argues his conviction for interference with the reporting of a crime cannot stand absent an underlying crime, his claim is without merit. Clearly because he was convicted of unlawful imprisonment, there is an underlying crime. Moreover, “the prosecution is not required to prove beyond a reasonable doubt that the underlying offense was committed or attempted.” *Holley*, 480 Mich at 230-231. It is a well recognized rule that consistency among verdicts is not necessary. *People v Vaughn*, 409 Mich 463, 465; 295 NW2d 354 (1980). Instead, each count is treated as a separate indictment. *Id.* “Juries are not held to any rules of logic nor are they required to explain their decisions.” *Id.* at 466; *Goss*, 446 Mich at 599 (“The jury’s decision regarding the predicate offense does not preclude it from reaching a different conclusion in the context of the compound offense.”). Accordingly, each charge in the present case was a separate offense which the jury was free to consider anew, and there was no error in any potential inconsistency. *Vaughn*, 409 Mich at 466.

Defendant next raises several claims of prosecutorial misconduct. Unpreserved claims of prosecutorial misconduct are reviewed for plain error. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). Moreover, prejudice from prosecutorial misconduct that could have been alleviated with a curative instruction does not amount to plain error warranting reversal. *Id.* at 329-330. Review of prosecutorial misconduct involves an evaluation of the prosecutor’s remarks as a whole, and in context, to determine whether the defendant received a fair and impartial trial. *Callon*, 256 Mich App at 330. “Generally, prosecutors are accorded great latitude regarding their arguments and conduct.” *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). The prosecutor is “free to argue the evidence and any reasonable inferences that may arise from the evidence.” *Id.* The propriety of comments offered during trial is determined case by case in light of the particular facts of the case, the defense presented, and the evidence admitted. *Callon*, 256 Mich App at 330.

First, defendant argues the prosecutor raised an impermissible civic duty argument and sought to elicit the sympathies of the jurors by referencing the “brutality” of the attack and mentioning defendant’s exploitation of the victim’s vulnerabilities. A review of the prosecutor’s comments as a whole and in context demonstrates there was no impermissible civic duty argument or plea for sympathy. The word “brutality” is arguably a “hard word,” however, a prosecutor may use “hard language,” and “emotional language,” and need not “phrase arguments in the blandest of all possible terms.” *People v Ullah*, 216 Mich App 669, 678; 550 NW2d 568 (1996). Moreover, the prosecutor argued that the victim was a vulnerable adult who unwittingly let defendant into her apartment. This was proper argument in response to the defense that the victim was a drug user with whom he often engaged in consensual sex. *Callon*, 256 Mich App at 330; *People v McGhee*, 268 Mich App 600, 630; 709 NW2d 595 (2005) (“[T]he prosecutor may argue from the facts that a witness should be believed.”). Moreover, any error was cured by instruction to the jury not to base their decision on sympathy or prejudice. *People v Unger*, 278 Mich App 210, 235, 237; 749 NW2d 272 (2008).

Defendant also argues the prosecutor commented on facts not in evidence when she made statements about “brutality” and exploitation of vulnerability. While a prosecutor may not argue

facts not in evidence, “a prosecutor is free to argue the evidence and any reasonable inferences that may arise from the evidence.” *Callon*, 256 Mich App at 330. The victim described two instances of forced sexual penetration, a thwarted escape attempt after which she was dragged back to her apartment, threats of death, and physical restraint. This testimony was corroborated by evidence of physical injuries. Regardless of the degree of injury, there was certainly evidence presented to support the use of the word “brutality.” *Random House Webster’s College Dictionary* (1997) (defining “brutal” as “savagely, cruel, inhuman”). Moreover, there was also a factual basis for arguing defendant exploited the victim’s vulnerabilities to gain access to the apartment. The jury viewed the victim’s demeanor; the trial court commented that it was clear the victim suffered cognitive difficulties, and the prosecutor offered evidence of the victim’s level of education, difficulty reading, reliance on her mother for help, and collection of SSI. Additionally, the jury was expressly instructed that a lawyer’s statements and argument are not evidence, thereby alleviating potential harm that the jury would rely on the prosecutor’s comments as facts. *Unger*, 278 Mich App at 235.

Defendant also claims that the prosecutor inserted her personal opinion into the trial by stating in her argument regarding the DNA evidence:

So if somebody doesn’t ejaculate, or as Ann Hunt testified, if they - - the seminal fluid doesn’t contain sperm cells, you’re not going to have DNA evidence there. And [the victim] said that the defendant told her he wasn’t going to. And *I believe*, based upon the way he committed this act, that’s a very possible scenario.

This was not improper interjection of personal opinion. The words “I believe” are not “magic words” necessarily indicative of prosecutorial error. *People v Cowell*, 44 Mich App 623, 628; 205 NW2d 600 (1973). There is no indication that the prosecutor used the prestige of her office to suggest the jury convict. *Bahoda*, 448 Mich at 286. Instead, the prosecutor presented an argument based on the evidence and reasonable inferences to the jury for their consideration. This was not improper. *Callon*, 256 Mich App at 330. Moreover, the jury was specifically instructed that it alone needed to decide the facts of the case; “[t]his is your job and nobody else’s.” Such instruction alleviated the risk that the jury might allow the prosecutor’s opinion to form the basis of their verdict. *Unger*, 278 Mich App at 235, 237.

Defendant also argues that the prosecutor sought to shift the burden of proof. Defendant references the following statement by the prosecutor: “Not only can’t Mr. Miller explain the injuries to you, ladies and gentlemen, he doesn’t have to explain them to you. But the defendant doesn’t have any explanation. What he tells you could not have possibly happened on a couple of different levels.” This is not the shifting of the burden of proof. It is merely a comment on the believability of defendant’s version of events, and the argument that his story does not fit with the evidence. Commenting on the weakness of defendant’s case or attacking the credibility of a theory advanced by defendant does not constitute shifting the burden of proof. *Callon*, 256 Mich App at 331; *People v Fields*, 450 Mich 94, 112; 538 NW2d 356 (1995). Even within the statement the prosecutor reminds the jury that defendant does not bear the burden—“he doesn’t have to explain them to you.” Moreover, the jury was properly instructed on the presumption of innocence and the burden of proof, thereby eliminating any potential prejudice. *Unger*, 278 Mich App at 235, 237.

Lastly, defendant suggests that the prosecutor's comment indicating he could not explain the injuries improperly denigrated him and the defense. There is nothing in the prosecutor's comment that disparaged defendant, his consent defense, or his defense counsel. The prosecutor's argument involved no "intemperate and prejudicial remarks." *Bahoda*, 448 Mich at 283. There were no personal attacks or character dispersions about defendant or his counsel. As discussed above, a prosecutor is free to attack the credibility of a theory advanced by defendant. *Callon*, 256 Mich App at 331. Moreover, jury instructions as to the burden of proof, presumption of innocence, consent as a defense, and the need to disregard sympathy or prejudice, cured any potential harm. *Unger*, 278 Mich App at 235, 237.

Next, defendant challenges the scoring of offense variables (OVs) 3, 4, 10, and 13. Defendant preserved his argument with a proper motion for resentencing. MCR 6.429(C); MCL 769.34(10). We review the scoring of offense variables for abuse of discretion to determine if the record offers adequate evidence in support of the score. *People v Wilson*, 265 Mich App 386, 397; 695 NW2d 351 (2005). Scoring decisions supported by "any evidence" will be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Scoring decisions involving the interpretation of the statutory sentencing guidelines present questions of law to be reviewed de novo. *Wilson*, 265 Mich App at 397.

We first note that defendant's *Blakely* argument is without merit. Michigan employs an indeterminate sentencing system unaltered by the principles announced in *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). See *People v Drohan*, 475 Mich 140, 159-161; 715 NW2d 778 (2006).

Second, we disagree that any of the challenged OVs were improperly scored. OV 3 was properly scored five points because "[b]odily injury not requiring medical treatment occurred to a victim." MCL 777.33(1)(e). Defendant admits the victim sustained injuries but argues that it is unclear when the injuries occurred. As defendant notes, "only conduct that relates to the offense being scored may be considered." *People v Sargent*, 481 Mich 346, 350; 750 NW2d 161 (2008). In this case, the scoring offense was unlawful imprisonment. Any injuries that occurred while defendant "restrained" the victim are part of unlawful imprisonment. MCL 750.349b(3)(a). Contrary to defendant's arguments, the evidence clearly established that in the course of "restraining" the victim, defendant bruised the victim's legs, thighs, and wrist. The victim also testified to pain in her neck and shoulder caused by defendant's restraint. To the extent defendant argues there is no proof that he caused the injuries, he ignores the victim's testimony on the record describing how he caused the injuries. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006) ("A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score.").

OV 4 was properly scored ten points. Ten points is an appropriate score for OV 4 if "[s]erious psychological injury requiring professional treatment occurred to a victim." MCL 777.34(1)(a). Ten points should be scored "if the serious psychological injury may require professional treatment." MCL 777.34(2). The statute expressly states that "the fact that treatment has not been sought is not conclusive." MCL 777.34(2). In this case, the trial court observed the victim's demeanor and noted "it was not difficult for me in the context of seeing this victim's testimony, reaction to the defendant in the courtroom, the way she testified, the way she appeared significantly intimidated, I believed even she was crying, or did cry, that there was

a significant psychological impact on her.” Moreover, the victim testified at trial that she was afraid during the attack, and was still afraid at the time of trial. Given the length of time between the attack and the trial, her testimony established that she had been living in fear for almost a year and a half. It is within the range of principled outcomes to conclude that fear of such duration is “serious” psychological injury. Therefore, it was not an abuse of discretion to score OV 4 at ten points based on the victim’s long-lived fear and her demeanor as observed by the trial court. *People v Waclawski*, 286 Mich App 634, 681; 780 NW2d 321 (2009) (discussing the trial court’s observation of demeanor evidence); *People v Davenport (After Remand)*, 286 Mich App 191, 200; 779 NW2d 257(2009) (finding the victim’s expression of fear a sufficient basis for the scoring of OV 4).

OV 10 was properly scored ten points. It is scored at ten points when the court finds “[t]he offender exploited a victim’s physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status.” MCL 777.40(1)(b). The existence of one of the factors “does not automatically equate with victim vulnerability.” MCL 777.40(2). Vulnerability refers to the “readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.” MCL 777.40(3)(c). As used in the statute, “exploit” means to “manipulate a victim for selfish or unethical purposes.” MCL 777.40(3)(b). In scoring ten points the trial court opined that it was readily apparent the victim suffered from a mental disability. Because she “does not process things the way other people do,” the trial court determined she was especially susceptible to persuasion. Defendant exploited this vulnerability by using threats designed to guarantee the victim’s cooperation. Additionally, because of her cognitive difficulties the trial court found the victim was especially “timid,” and noted that she “not at all assertive because of those cognitive defects.” The trial court noted that when confronted with defendant in the hallway, the victim responded with timidity which enabled defendant to drag her back into the apartment. Defendant’s use of threats to exploit the victim’s susceptibility to persuasion and his physical restraint of someone so timid formed a reasonable basis for the scoring of ten points under OV 10.

Lastly, it was not an abuse of discretion to score OV 13 at 25 points. OV 13 must be scored 25 points when “[t]he offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person.” MCL 777.43(1)(c). In determining whether a pattern of activity exists, “all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction.” MCL 777.43(2)(a). “[T]he sentencing offense *must* be included in the five-year period;” in other words, consideration of a five-year period not including the sentencing offense is precluded. *People v Francisco*, 474 Mich 82, 87; 711 NW2d 44 (2006). In this case, the trial court scored defendant 25 points for OV 13 based upon his current convictions for unlawful imprisonment and interfering with the reporting of a crime as well as a “theft from person”³ that occurred in Houston, Texas four days after the crimes at the victim’s apartment. Nevertheless, defendant

³ “Theft from person” would appear to correspond to Michigan’s “larceny from person” codified at MCL 750.357.

argues OV 13 was improperly scored because the Texas offense occurred *after* the sentencing offense.

In analyzing the statute, this Court begins with the plain language and enforces unambiguous language as written. *People v Barrera*, 278 Mich App 730, 736; 752 NW2d 485 (2008). Courts may not read meaning into a statute that is “not within the manifest intention of the Legislature as derived from the words of the statute itself.” *People v Ventura*, 262 Mich App 370, 375; 686 NW2d 748 (2004). Defendant argues for the rule of lenity which “provides that courts should mitigate punishment when the punishment in a criminal statute is unclear.” *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997). However, the rule of lenity applies “only in the absence of a firm indication of legislative intent.” *People v Poole*, 218 Mich App 702, 713 n 2; 555 NW2d 485 (1996).

In this case, the rule of lenity is inapplicable because the statute is unambiguous. The plain language of the statute tasks the trial court with determining “a *pattern* of felonious criminal activity.” MCL 777.43(1)(c). This pattern must occur “within a 5-year period.” The only limit on the five-year period is that it must include the sentencing offense. *Francisco*, 474 Mich at 87. There is no requirement that the five year period run before the sentencing offense, or that the sentencing offense be the last offense in a pattern of criminal activity. In interpreting statutes, we follow the plain language of a statute, and will not add meaning the Legislature did not include. *Ventura*, 262 Mich App at 375. We note that the term “a” is an indefinite article with an “indefinite or generalizing force,” as compared to the word “the” which is a definite article with a “specifying or particularizing effect.” *People v Huston*, 489 Mich 451, 458; 802 NW2d 261 (2011). Where the Legislature has not specified a specific five-year period, any five-year period, provided it includes the sentencing offense, falls within the Legislature’s intent of scoring a pattern of felonious criminal activity. *Francisco*, 474 Mich at 87. While analysis of different five year periods could lead to different scores under OV 13 for a defendant, this is not the creation of an ambiguity, as the Legislature clearly instructed the courts to score the highest points appropriate. MCL 777.43(1). In this case, the trial court appropriately selected the five-year period including the scoring offense that would result in the highest level of points. MCL 777.43(1). There was no abuse of discretion. Because all the offense variables were properly scored and his sentence falls within the appropriate guidelines sentence range, his sentence is affirmed. MCL 769.34(10).

Finally, defendant challenges the accuracy of information in the presentence investigation report (PSIR). “This Court reviews a trial court’s response to a defendant’s challenge to the accuracy of a PSIR for an abuse of discretion.” *People v Uphaus*, 278 Mich App 174, 181; 748 NW2d 899 (2008). If defendant challenges the accuracy of the information in the PSIR the trial court must respond. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003).

The court may determine the accuracy of the information, accept the defendant’s version, or simply disregard the challenged information. Should the court choose the last option, it must clearly indicate that it did not consider the alleged inaccuracy in determining the sentence. If the court finds the challenged information inaccurate or irrelevant, it must strike that information from the PSIR before sending the report to the Department of Corrections. [*Id.*]

In this case, defendant asserts that the agent's description of events in the PSIR is inaccurate insofar as it includes reference to the criminal sexual conduct. The trial court found the challenged information accurate and declined to strike the information, concluding it was part of the circumstances surrounding the sentencing offense. We find the trial court's determination was not an abuse of discretion. Defendant's challenges fail because the information challenged is accurate. For instance, it is undisputed that the victim went to the hospital for a CSC examination. The other information defendant challenges relates to statements made by the victim. It is uncontested that the victim said a rape occurred. There is therefore nothing inaccurate in reporting that she reported criminal sexual conduct to the police. Moreover, the PSIR clearly reflects that defendant was found not guilty of the charged criminal sexual conduct offenses. There has been no misrepresentation of the facts to lead to the conclusion that he was in fact found guilty of criminal sexual conduct. The information, as part of the circumstances surrounding the offense was required to be included in the report. MCR 6.425(A)(1)(b). The trial court did not err in declining to strike the information.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens