STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 23, 2010
v	No. 290045 Shiawassee Circuit Court
DARIN CYRIL FORD, Defendant-Appellant.	LC No. 08-007183-FC

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Defendant pleaded guilty of first-degree criminal sexual conduct, MCL 750.520b(1)(b)(ii), and was sentenced to 130 to 240 months' imprisonment. He appeals by delayed leave granted. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that resentencing is required because the trial court erred in scoring 15 points for offense variable (OV) 8 of the sentencing guidelines. We disagree. We review a trial court's scoring decision "to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009) (citation omitted). A trial court's scoring decision will be upheld if there is any evidence to support the score. *Id.*

Fifteen points are to be scored for OV where "[a] victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense." MCL 777.38(1)(a). Although "asportation" is not defined, it does not require force. *Steele*, 283 Mich App at 490; *People v Spanke*, 254 Mich App 642; 647; 658 NW2d 504 (2003). But the requisite movement must not be incidental to the commission of the underlying offense. *Id*.

In *Spanke*, this Court upheld a trial court's score of 15 points for OV 8 where the victims were voluntarily moved to the defendant's home and the "crimes could not have occurred as they did without the movement of defendant and the victims to a location where they were secreted from observation by others." *Id.* at 647-648. Similarly, in *People v Cox*, 268 Mich App 440; 709 NW2d 152 (2005), this Court upheld a score of 15 points where the victim of criminal sexual conduct, a 17-year-old mentally incapacitated person, was transported to the defendant's home, where the victim had been on previous occasions. This Court concluded that "in light of

the sexual acts that subsequently occurred there, the transportation of the victim was to a place of greater danger." *Id.* at 454.

In this case, the offense was committed by defendant while exercising parenting time with the victim at his home. There was evidence that defendant would pick up the victim at school or her mother's home to exercise his parenting time. We reject defendant's claim that his repeated use of his home to exercise parenting time precludes a score for 15 points for OV 15. As the trial court explained, a parent would presumptively look after the child's best interests during parenting time at a residence. Indeed, the Child Custody Act provides that parenting time is granted in accordance with a child's best interests. MCL 722.27a(1). By transporting the victim to an unfit home environment, where defendant was able to secret the victim from the observations of others and commit the crime, defendant asported the victim to a place or situation of greater danger. As in *Spanke,* 254 Mich App at 648, the crime could not have occurred without the movement. Further, as in *Cox,* 268 Mich App at 454, it is immaterial that the victim had been at defendant's residence on prior occasions. The evidence supports the trial court's 15-point score for OV 8.

Defendant also argues that the trial court's reliance on facts not found by a jury or admitted by him violates *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). Defendant did not raise a *Blakely* issue in the trial court. Therefore, we review this unpreserved issue for plain error affecting defendant's substantial rights. *People v McCuller*, 479 Mich 672, 695; 739 NW2d 563 (2007). Defendant has not shown any error, plain or otherwise. As our Supreme Court reaffirmed in *People v Harper*, 479 Mich 599, 615; 739 NW2d 523 (2007), *Blakely* does not apply to Michigan's indeterminate sentencing scheme. This Court is bound by our Supreme Court's decisions. *People v Tierney*, 266 Mich App 687, 713; 703 NW2d 204 (2005).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis