

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 13, 2012

v

PATRICK JOSEPH MORRISSEY,

Defendant-Appellant.

No. 306901
Kent Circuit Court
LC No. 09-013459-FH

Before: WILDER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Defendant Patrick Joseph Morrissey appeals as of right his convictions for extortion, MCL 750.213, and using a computer to commit a crime, MCL 752.796; MCL 752.797(3)(f). The trial court sentenced defendant to 60 to 240 months' imprisonment for each offense. The sentences are to be served concurrently. We affirm.

I. BASIC FACTS

Defendant's convictions arose from his efforts to extort money from his former employer, Steelcase, by sending numerous threatening e-mails under the pseudonym "Crazy Chrissy" to members of Steelcase's board of directors. Chrissy threatened to release materials related to defendant's termination from Steelcase, which "she" claimed would be harmful to Steelcase.¹ To stop the release of information, Chrissy demanded money and insisted that Steelcase rectify defendant's allegedly wrongful termination by putting him through the severance process.

II. JURY INSTRUCTIONS

On appeal, defendant challenges the jury instructions relating to the elements of extortion. However, defendant approved the jury instructions and thereby waived appellate review. *People v Kowalski*, 489 Mich 488, 503-505 n 28; 803 NW2d 200 (2011). Waiver

¹ Chrissy was later identified as defendant and defendant readily admitted that he was Chrissy during trial.

extinguishes any error and there is no claim for this Court to review. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Nevertheless, we conclude that the instructions provided to the jury were a correct statement of the law.

“Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them.” *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). On appeal, jury instructions are reviewed in their entirety. *People v Milton*, 257 Mich App 467, 475; 668 NW2d 387 (2003). Even somewhat imperfect jury instructions will be upheld if they “fairly presented the issues to be tried and sufficiently protected the defendant’s rights.” *Id.* Additionally, “[t]he failure of the court to instruct on any point of law shall not be ground for setting aside the verdict of the jury unless such instruction is requested by the accused.” MCL 768.29; see also *People v Anstey*, 476 Mich 436, 453; 719 NW2d 579 (2006).

In this case, the trial court followed CJ2d 21.1, the pattern jury instruction for extortion, and read relevant portions of MCL 750.213, the statute governing extortion.

A. CORPORATION IS A “PERSON” FOR PURPOSES OF EXTORTION

Defendant challenges the instructions by arguing that it was error to use Steelcase as the name of the complainant because Steelcase is not a “person.” We disagree. In full, MCL 750.213 provides that:

Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse *another* of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child *of another* with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the *person* so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years or by a fine of not more than 10,000 dollars.

MCL 750.213 does not provide a definition of “person” or “of another” as they are used in reference to the victim of extortion. However, under the general provisions of the penal code, “[t]he words ‘person,’ ‘accused,’ and similar words include, unless a contrary intention appears, public and private corporations, copartnerships, and unincorporated or voluntary associations.” MCL 750.10. Similarly, the Legislature has enacted general rules of construction to govern “construction of the statutes of this state.” MCL 8.3. Under these general rules of construction, “[t]he word ‘person’ may extend and be applied to bodies politic and corporate, as well as to individuals.” MCL 8.3l. “When the Legislature has provided a definition, it is binding and the courts cannot ‘look afield’ for their meaning elsewhere.” *People v Washpun*, 175 Mich App 420, 425; 438 NW2d 305 (1989). In keeping with the Legislature’s definition, we have repeatedly held that “person” extends beyond human persons to include corporations. See, e.g., *People v Hock Shop, Inc*, 261 Mich App 521, 525; 681 NW2d 669 (2004); *People v Gen Dynamics Land Sys, Inc*, 175 Mich App 701, 703; 438 NW2d 359 (1989).

We are not persuaded by defendant's argument that the Legislature's definition of "person" should be used only in regards to those accused of a crime. Instead, "identical language in various provisions of the same act should be construed identically." *People v Wiggins*, 289 Mich App 126, 128-129; 795 NW2d 232 (2010). Given the Legislature's express definitions of "person" and "similar words," we conclude that MCL 750.213 includes corporations as a "person" who may be the victim of extortion. As such, there was no error in using Steelcase as the complainant when giving the jury instructions.

B. "SERIOUS THREAT"

Defendant also argues that the trial court should have instructed the jury that the action defendant sought to extort from Steelcase had to be "serious." Defendant correctly recognizes that, in enacting the extortion statute, "[t]he Legislature did not intend punishment for every minor threat." *People v Fobb*, 145 Mich App 786, 791; 378 NW2d 600 (1985). Instead, extortion cases involving demands for action against the victim's will have involved "serious demands." *Id.* at 792. However, because defendant failed to request an instruction relating to this theory that his demand was not "serious," the trial court was not required to present such an instruction to the jury and failure to give such an instruction is not grounds for reversal. *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995); MCL 768.29. Moreover, the trial court instructed the jury that defendant must intend to make Steelcase "do something against its will" and "against its will" was defined as to be forced "to make a choice and it has to choose the lesser of two evils." The phrase "lesser of two evils" imparts the severity of the demand required to commit extortion, and as such, the instructions as given were a correct statement of the law. *Fobb*, 145 Mich App at 791. To the extent defendant's argument suggests that the prosecutor misstated the law, his claim is also without merit. Any potential error in the prosecution's legal argument was cured by the trial court's explanation of the law and instructions that the jury should follow the court's explanation of the law. *People v Grayer*, 252 Mich App 349, 357; 651 NW2d 818 (2002).

III. POWER POINT PRESENTATION

Defendant asserts that the trial court abused its discretion by excluding a Power Point presentation prepared by defendant that depicted his understanding of why and how he was fired from Steelcase.

The decision to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). A trial court abuses its discretion "when its decision falls outside the principled range of outcomes." *People v Blackston*, 481 Mich 451, 460; 751 NW2d 408 (2008). "[A] trial court's decision on a close evidentiary question ordinarily cannot be an abuse of discretion." *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). Where an evidentiary decision involves a preliminary question of law, such as whether a rule of evidence precludes admissibility, the question of law is reviewed de novo. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

"Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). We agree with defendant that the Power Point presentation was not hearsay because defendant did

not seek to prove the truth of the matter asserted therein. The presentation consisted of defendant's version of events relating to his termination from Steelcase. However, defendant did not seek to introduce the presentation to prove he was wrongfully terminated as described in the presentation. Instead, he sought to establish that the information was not threatening and could not pose a risk of "injury" to Steelcase within the meaning of MCL 750.213. Because defendant was not seeking to establish the truth of the contents contained in the Power Point presentation, it did not constitute hearsay.

Nevertheless, we conclude that the trial court did not err in excluding the evidence as it was irrelevant and its probative value was substantially outweighed by the risk of confusion and the needless presentation of cumulative evidence.² "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. In this case, defendant was charged with extortion on the theory that he threatened injury to Steelcase's property with the intent to extort money or compel action from Steelcase. MCL 750.213. The crime of extortion is complete at the time the threat is made. *People v Percin*, 330 Mich 94, 99; 47 NW2d 29 (1951). An overt act is not required, nor is the victim required to feel intimidated. *Id.*; *People v Poindexter*, 138 Mich App 322, 332; 361 NW2d 346 (1984). Likewise, there is no requirement in the plain language of MCL 750.213 that defendant possess the means to accomplish his threat. In this case, the Power Point presentation was not the threat; the e-mails were the threat. The e-mails contained an express threat to make information regarding defendant's termination public, specifically information that Chrissy claimed would make Steelcase look like "morons," "anger [Steelcase's] current employees," "start up a scandal at Steelcase," and impede Steelcase's efforts at recruiting new employees. The e-mails were the threat and it was the e-mails that were relevant to determining whether defendant threatened "injury" to Steelcase's property. At most, the Power Point presentation contained the means by which defendant intended to bring ruination upon Steelcase. Whether the release of the information in the Power Point may or may not have accomplished the injury defendant threatened is irrelevant to whether he, in fact, threatened injury. Accordingly, the Power Point presentation was irrelevant and properly excluded. MRE 402.

Moreover, even if the Power Point was relevant, it was properly excluded under MRE 403, which provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403. "Rule 403 determinations are best left to a contemporaneous assessment of the presentation, credibility, and effect of testimony by the trial judge." *People v Bahoda*, 448 Mich 261, 291; 531 NW2d 659 (1995). In this case, the trial court determined that the Power Point presentation could confuse the issues, pose difficulty in presenting the material to the jury, and was already incorporated in defendant's own testimony. Because the Power

² Although the trial court based its decision mainly on hearsay grounds, this Court will affirm a court's decision where it reached the "right result for a wrong reason." *People v Mayhew*, 236 Mich App 112, 118 n 2; 600 NW2d 370 (1999).

Point presentation had no bearing on whether the e-mails expressed a threat, the probative value of the presentation was minimal. Additionally, the information in the Power Point consisted of defendant's version of events surrounding his termination, facts to which he testified during trial. As such, introduction of the Power Point was the needless presentation of cumulative evidence. It also posed a risk of diverting the jury's attention from the criminal matters at issue by confusing them with irrelevant contentions from defendant's civil litigation.

We also reject defendant's contention that the Power Point presentation should have been admitted under MRE 106 because it was attached to one of his Crazy Chrissy e-mails. Because defendant did not raise this argument before the trial court, it is unpreserved, *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001), and reviewed for plain error affecting his substantial rights, *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Under MRE 106 "when a writing . . . or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." However, MRE 106 "does not automatically permit an adverse party to introduce into evidence the rest of a document once the other party mentions a portion of it." *People v Herndon*, 246 Mich App 371, 412 n 85; 633 NW2d 376 (2001). Rather, MRE 106 logically limits the supplemental evidence to evidence that "ought in fairness to be considered contemporaneously with it." *Id.* MRE 106 is "designed to prevent unfairness which may result if a statement is taken out of context." See *Moody v Pulte Homes, Inc.*, 125 Mich App 739, 747; 337 NW2d 283 (1983), rev'd on other grounds 423 Mich 150 (1985). Here, defendant did not seek to have the prosecutor introduce the Power Point at the time that she introduced the e-mails or to introduce the presentation in conjunction with the e-mails. MRE 106. Because defendant did not make a request "at that time," MRE 106 is inapplicable. Moreover, defendant has not shown that "fairness" required the contemporaneous consideration of the Power Point and the e-mails. The Power Point presentation was prepared weeks before the e-mails were sent and added nothing to the context of the e-mails that was not apparent from defendant's own testimony about his supposedly wrongful termination.

IV. DEFENDANT'S REQUEST FOR AN ADJOURNMENT

Next, defendant asserts that the trial court should have sanctioned the prosecution by way of an adjournment for violation of MCL 767.40a(5) for failing to serve a witness whom defendant wanted to call. Defendant preserved the issue of whether an adjournment was appropriate by moving to have the case postponed until the witness in question could be located. *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000). A trial court's decision to deny an adjournment is reviewed for an abuse of discretion. *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002). "In addition, a defendant must show prejudice as a result of the trial court's abuse of discretion." *Snider*, 239 Mich App at 421. However, insofar as defendant now argues that the prosecution violated MCL 767.40a(5) by not providing reasonable assistance in serving witnesses, defendant's claim is unpreserved because he failed to raise this issue before the trial court. See *People v Dixon*, 217 Mich App 400, 409; 552 NW2d 663 (1996). Accordingly, defendant's claim relating to MCL 767.40a(5) is unpreserved and reviewed for plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763-764.

Here, defendant requested an adjournment until the CEO of Steelcase could be located and served for trial. Pursuant to MCR 2.503(C)(2), "[a]n adjournment may be granted on the

ground of unavailability of a witness or evidence only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence.” In asking for an adjournment, defendant indicated that the witness would testify to the contents of e-mail correspondence with defendant dating from 2005 and early 2009. Based on this information, the trial court reasonably determined that “at best [the witness’] testimony would be irrelevant and at worst a waste of time and needless harassment.” We agree that previous e-mail correspondence had no bearing on whether threatening e-mails sent by defendant constituted extortion. Additionally, defendant’s previous counsel (from before defendant decided to proceed in propria persona) stated that testimony from the witness in question “would be a disaster” for defendant’s case. Based on these facts, we conclude that the witness’ testimony was not material to the proceedings and it was not an abuse of discretion to decline defendant’s motion for an adjournment. Likewise, defendant suffered no prejudice from denial of an adjournment which merely had the effect of precluding irrelevant hearsay evidence which would have damaged his case. *People v Coy*, 258 Mich App 1, 18-19; 669 NW2d 831 (2003).

To the extent defendant now argues an adjournment was an appropriate sanction for the prosecution’s noncompliance with MCL 767.40a(5), we disagree. Contrary to defendant’s argument, MCL 767.40a(5) does not require “numerous or diligent” efforts by the prosecution. Instead, MCL 767.40a(5) requires, upon request from defendant, “reasonable assistance” in locating and serving witnesses. *People v Koonce*, 466 Mich 515, 521; 648 NW2d 153 (2002). Although the trial court did not expressly consider MCL 767.40a(5), in denying defendant’s motion for an adjournment, the court appeared to conclude that the prosecution offered reasonable assistance by particularly noting that “[t]he prosecution is doing what it can to assist you in this regard.” A trial court’s determinations regarding the prosecution’s efforts to produce witnesses will not be reversed unless clearly erroneous. *People v Watkins*, 209 Mich App 1, 4; 530 NW2d 111 (1995). Based on the record, we cannot conclude that the trial court clearly erred in concluding the prosecution was making reasonable efforts. There was no violation of MCL 767.40a(5) and no need for the sanctions that defendant now insists were appropriate. Moreover, defendant was not prejudiced by the prosecution’s failure to serve the witness in question because, as discussed, the witness’ testimony constituted irrelevant, damaging hearsay.

V. RIGHT TO PRESENT A DEFENSE

Defendant argues that the trial court committed numerous errors which violated defendant’s right to present a defense relating to his “intent” and whether Steelcase was threatened with “injury.” In particular, defendant argues that trial court denied him his right to present a defense by excluding the Power Point, not enforcing an order to have witnesses served, declining to stipulate that court records are publically available, and excluding the testimony of two witnesses who would have testified to defendant’s difficulty in obtaining employment after he was terminated from Steelcase. Defendant did not challenge the trial court’s evidentiary decisions on the grounds that they violated his right to present a defense. Accordingly, defendant’s due process claim is unpreserved. See *People v Geno*, 261 Mich App 624, 630; 683 NW2d 687 (2004) (finding evidentiary objections were insufficient to preserve a constitutional claim). Whether defendant’s right to present a defense was violated presents a question of law which this Court reviews de novo. *People v Unger*, 278 Mich App 210, 247; 749 NW2d 272 (2008). However, unpreserved constitutional claims are reviewed for plain error affecting defendant’s substantial rights. *Carines*, 460 Mich at 763-764.

“A criminal defendant has a state and federal constitutional right to present a defense.” *Unger*, 278 Mich App at 250. However, these rights are not absolute and “may thus bow to accommodate other legitimate interests in the criminal trial process.” *Id.* “The accused must still comply with ‘established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.’” *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984) (citation omitted). State criminal trial and procedure rules “do not abridge an accused’s right to present a defense so long as they are not ‘arbitrary’ or ‘disproportionate to the purposes they are designed to serve.’” *Unger*, 278 Mich App at 250 (citation omitted). However, “erroneous evidentiary rulings can, in combination, rise to the level of a due process violation.” *Montana v Egelhoff*, 518 US 37, 53; 116 S Ct 2013; 135 L Ed 2d 361 (1996).

As previously discussed, the Power Point presentation was properly excluded because it was irrelevant to whether defendant intended a threat of injury. Further, it posed a risk of confusing the jury and it was cumulative. Similarly, the 2005 and early 2009 e-mail correspondence was irrelevant. Accordingly, the trial court did not err in declining defendant’s request for an adjournment until the witness could be located or in excluding defendant’s testimony about the e-mail correspondence. Defendant was not denied the right to present a defense by the proper exclusion of inadmissible and irrelevant evidence. *People v Danto*, 294 Mich App 596, 604; ___ NW2d ___ (2011). Likewise, defendant’s difficulty in gaining employment had no bearing on whether he sent threatening e-mails to Steelcase with the intent to extort money or compel some action from Steelcase. The trial court did not violate defendant’s constitutional rights by excluding this irrelevant testimony from the two proffered witnesses. Moreover, not all defenses are recognized as viable defenses in Michigan. See *People v Kevorkian*, 248 Mich App 373, 442-443; 639 NW2d 291 (2001). In arguing for the admission of evidence, defendant insisted it was for the jury to decide whether his efforts at extortion were necessitated by a need to provide for his family. The need to provide for one’s family constitutes neither duress nor necessity and is not a defense in Michigan. See *People v Dupree*, 284 Mich App 89, 100; 771 NW2d 470 (2009) (duress involves threat of death or serious bodily harm); *People v Hubbard*, 115 Mich App 73, 77-78; 320 NW2d 294 (1982). Testimony concerning a defense that has not been recognized by the Legislature is properly excluded. *Kevorkian*, 248 Mich App at 442-443. Moreover, defendant did, in fact, testify and argue in his closing statement, that he did not have the intent to commit extortion and that he never threatened “injury” to Steelcase. Because he in fact presented this defense, the trial court’s evidentiary decisions did not deny him the right to present a defense. *People v Mesik (On Reconsideration)*, 285 Mich App 535, 538; 775 NW2d 857 (2009).

Defendant also argues he was denied the opportunity to present a defense when the trial court refused to take judicial notice of certain information. Defendant points to no authority which requires the trial court to take judicial notice of any fact. In actuality, a trial court’s decision to take judicial notice of a fact is generally discretionary. See MRE 201(c); MRE 202(a). It is mandatory only where a party asks the court to take judicial notice of a law and the party gives the court sufficient information to enable it to comply with the request. MRE 202(b). Here, defendant wanted the trial court to take judicial notice of the holding in this Court’s prior ruling relating to defendant’s civil efforts to sue Steelcase. The trial court properly declined because it had not read this Court’s opinion and did not want to mischaracterize it. Moreover, defendant wanted judicial notice taken that his civil trial records relating to the Steelcase suit

were “readily available” to the public. Defendant offered no proof of the procedures for obtaining court records and the prosecution disputed the availability of records by asserting that records were only available “upon request” and were confined to the building. Because it did not know the practices of the clerk’s office or how “readily available” civil court records were to the public, the trial court properly declined to take judicial notice. Moreover, the jury knew of the lawsuit’s existence, and the trial court’s decision not to take judicial notice did not deny defendant the opportunity to argue the information was publically available and therefore harmless.

We are also not persuaded that the trial court’s evidentiary rulings which appeared favorable to the prosecution somehow denied defendant a right to present a defense. A prosecution witness testified, without objection from defense, that the Power Point inaccurately depicted Steelcase. Given that defendant did not object to this testimony during trial, it is inapposite to now argue that the trial court approved this testimony. MRE 103(a)(1). Moreover, defendant did in fact testify that he created the Power Point with the intent of describing his termination from Steelcase. Accordingly, both parties had the opportunity to explain to the jury how they perceived the information in the Power Point and there can be no claim that the prosecution was afforded an opportunity denied to defendant. Defendant also argues the trial court was inconsistent in its willingness to recognize civil suits as public records. However, defendant’s claim conflates two distinct inquiries and confuses two different civil suits. In a pretrial ruling, the court determined that records related to a Jane Doe lawsuit were “public records.” In making its pretrial ruling, the trial court determined only that the records of the Jane Doe suit were generally “public records” within the meaning of MRE 803(8). In contrast to this general pretrial determination, at trial, the trial court declined to take judicial notice of the specific holding of this Court’s opinion in defendant’s civil suit against Steelcase (because the court had not read this Court’s opinion) and specific procedures relating to the public availability of the Steelcase court records such as whether the records were “readily available” or available upon request. There is no inconsistency in the trial court’s rulings and defendant has not shown how these proper evidentiary rulings denied him the right to present a defense.

To the extent defendant argues the prosecution’s comments during her closing argument were improper, his claim is not contained in his questions presented. It is therefore improperly presented and we need not consider it. MCR 7.212(C)(5). Nevertheless, we note that his claim is without merit. Defendant argues it was improper for the prosecution to argue that there was “no evidence” defendant intended to release only the information contained in the Power Point presentation. However, given that the e-mails consistently referred to a video (not a Power Point presentation), Chrissy continuously claimed her son was working on the material that would be released, and that one of the e-mails specifically attached the presentation as a “part” of what Chrissy was threatening to release, it was reasonable for the prosecution to argue that defendant’s claim that he only intended to release the Power Point was unsupported by the evidence. *People v Callon*, 256 Mich App 312, 330; 662 NW2d 501 (2003) (“the propriety of a prosecutor's remarks will depend upon the particular facts of each case.”). Likewise, the prosecution did not disparage defendant’s defense by suggesting he had an “obsession” with Steelcase and continued trying to disseminate negative information about Steelcase during trial. Given that over the course of several years defendant filed a civil suit against Steelcase, repeatedly e-mailed Steelcase executives, created a 38 page Power Point to distribute to Steelcase employees, invented an alter ego to extort money from Steelcase, and then, at trial,

proceeded to offer extensive testimony as to how he was wronged by Steelcase, the prosecution's argument was a reasonable inference from the evidence. *Id.* Lastly, in context, the prosecution's admission that the trial was "hard to watch," was a fair response to defendant's pleas to the jury to "please set me free of these charges," "I hope you understand that I've suffered enough already." Based on defendant's plea for sympathy, it was appropriate for the prosecution to argue that defendant's alleged hardships did not excuse the jury from their obligation to return a true and just verdict. *People v Rodriguez*, 251 Mich App 10, 32; 650 NW2d 96 (2002). Moreover, prejudice from the prosecution's conduct could have been cured with an appropriate jury instruction. *Id.* Indeed, any error was cured when the jury was properly instructed that the prosecution's arguments were not evidence. *Unger*, 278 Mich App at 235, 237.

VI. OFFENSE VARIABLES

Defendant challenges the scoring of offense variables (OVs) 10, 13, and 19. Defendant preserved his scoring claims by objecting to the scoring of these variables during sentencing. MCR 6.429(C); *People v McGuffey*, 251 Mich App 155, 164-166; 649 NW2d 801 (2002). Scoring of offense variables is reviewed 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 decision supported by "any evidence" will be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Findings of fact made by the trial court during sentencing are reviewed for clear error. *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008). Scoring decisions may involve statutory interpretation, which is a question of law to be reviewed de novo. *Wilson*, 265 Mich App at 397.

A. OV 10

We agree that the trial court abused its discretion in scoring OV 10 at 15 points. OV 10 relates to the exploitation of a vulnerable victim. The court should assess 15 points when "predatory conduct was involved." MCL 777.40(1)(a). The term "predatory conduct" refers to "preoffense conduct directed at a victim for the primary purpose of victimization." MCL 777.40(3)(a). "[T]o be considered predatory, the conduct must have occurred *before* the commission of the offense." *People v Cannon*, 481 Mich 152, 160; 749 NW2d 257 (2008) (emphasis added). Moreover, when scoring predatory conduct, "points should be assessed under OV 10 only when it is apparent that a victim was 'vulnerable.'" *Id.* at 157-158. Here, the court suggested that the e-mails groomed Steelcase for the purposes of bending Steelcase's will; however, the e-mails themselves formed the basis of the extortion offense, and accordingly, there was no preoffense conduct. Moreover, there was also no evidence that Steelcase, a successful corporate entity, was a "vulnerable" victim, susceptible to injury, physical restraint, persuasion, or temptation. MCL 777.40(3)(c); *Cannon*, 481 Mich at 157-158. As such, the trial court abused its discretion in scoring OV 10 at 15 points for predatory conduct.

Although the trial court erred in scoring OV 10, resentencing is not required. The trial court calculated defendant's minimum sentence range based on an OV score of 50 points and a PRV score of 10 points. Extortion is a class B felony, MCL 777.16l, and under MCL 777.63, the minimum sentence range under the legislative guidelines as calculated by the trial court was 51 to 85 months (level V). Reducing defendant's total OV score from 50 to 35 alters the minimum sentence guideline range from 51 to 85 months to 45 to 75 months (level IV). MCL 777.63.

Generally, where a scoring error alters the appropriate guidelines range, resentencing is appropriate. *People v Francisco*, 474 Mich 82, 89; 711 NW2d 44 (2006). However, resentencing is “not required where the trial court has clearly indicated that it would have imposed the same sentence regardless of the scoring error and the sentence falls within the appropriate guidelines range.” *Id.* at 89 n 8; *People v Mutchie*, 468 Mich 50, 52; 658 NW2d 154 (2003). In this case, the 60-month minimum sentence falls within the appropriate 45 to 75 month range. Moreover, the trial court considered the possibility that it might have erred in scoring the OVs and that potentially level IV, rather than level V, was correct. The court concluded that either level “encompass[ed] a range that I think is truly appropriate, having presided over this case and heard the evidence from the witnesses.” From the trial court’s comments, it is clear it believed 60 months was an appropriate minimum sentence, regardless of whether defendant’s OV score fell into level IV or level V. Accordingly, despite the scoring error relating to OV 10, resentencing is not required. *Francisco*, 474 Mich at 89 n 8.

B. OV 13

The trial court did not abuse its discretion in scoring 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). Multiple concurrent offenses arising from the same incident are properly used in scoring OV 13. *People v Harmon*, 248 Mich App 522, 532; 640 NW2d 314 (2001). In deciding whether an offense was a “crime against a person,” it is appropriate to rely on the six named offense category designations found in MCL 777.5. *People v Bonilla-Machado*, 489 Mich 412, 416; 803 NW2d 217 (2011). In this case, defendant was convicted of extortion, which is a crime against a person, MCL 777.16l, and using a computer to commit a crime, which is a variable category offense, MCL 777.17c. Because the underlying offense involves a crime against a person, using a computer to commit a crime is also a “crime against a person.” MCL 777.17c(2). As crimes categorized as a “crime against a person,” both these convictions were properly scored under OV 13. *Bonilla-Machado*, 489 Mich at 416.

In addition to these two crimes against a person, the trial court determined that defendant committed numerous additional acts of extortion and using a computer to commit a crime. We agree. Following the first e-mail (which constituted extortion and using a computer to commit a crime), defendant sent additional e-mails in which he threatened to raise his price and “spread this story much more than we are saying already” if Steelcase did not cease contact with the authorities. Likewise, in another e-mail, Chrissy stated “[m]ake no mistake, this video will go out all over the internet on Thursday should Steelcase not come through.” Because each instance of extortion is complete at the time the threat was made, each additional threat and demand by defendant can be viewed as an independent act of extortion. Similarly, because defendant used a computer, each additional extortion e-mail was also another instance of using a computer to commit a crime. Because defendant committed more than three crimes against a person, he was properly scored 25 points under OV 13.

C. OV 19

The trial court did not abuse its discretion in scoring OV 19 at 10 points. Under OV 19, a score of ten points is appropriate if “the offender otherwise interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). “Interfered with or attempted to interfere with the administration of justice” is a “broad phrase” that includes within its scope the activities of law enforcement officers. *People v Barbee*, 470 Mich 283, 288-289; 681 NW2d 348 (2004). Efforts to prevent a victim from seeking justice are properly scored under OV 19. *People v Steele*, 283 Mich App 472, 493; 769 NW2d 256 (2009). In this case, a review of the e-mails sent by defendant supports the trial court’s assessment of 10 points. In particular, in one of the e-mails from Chrissy, defendant stated:

Don’t be dumb, Steelcase. We had a policeman contact us. This was not very wise. If you do that again, we will raise our price. Do not have any authorities bother Pat or us in any way.

Even if you would find out who we are, a friend of ours would release the video. You would lose much worse. We would spread this story much more than what we are saying already. It would go straight to the major newspapers. Do not be dumb. We have copies with other people we know. Just do what we ask and this will be over soon.

In contesting the scoring of OV 19, defendant now attempts to draw a distinction between telling a victim not to speak with the police and telling the victim not to have the police contact defendant. This distinction is unavailing. Defendant’s e-mail was “a clear and obvious attempt by him to diminish his victims’ willingness and ability to obtain justice.” *Steele*, 283 Mich App at 493. Ten points was appropriately scored.

VII. EVIDENCE OF DEFENDANT’S CIVIL SUIT

Finally, defendant argues the trial court denied defendant due process by relying on information from defendant’s civil suit during sentencing that was not contained in the PSIR or discussed during trial. Defendant’s claim is unpreserved and reviewed for plain error. *People v Kimble*, 470 Mich 305, 311-312; 684 NW2d 669 (2004); MCL 769.34(10); MCR 6.429(C). Use of inaccurate information at sentencing may violate a defendant’s due process rights. *People v Hoyt*, 185 Mich App 531, 533; 462 NW2d 793 (1990). However, due process does not require courts to follow the rules of evidence during sentencing and courts may properly rely on information that would otherwise be inadmissible. *People v Uphaus*, 278 Mich App 174, 183; 748 NW2d 899 (2008). However, defendant correctly asserts that he is entitled to “an adequate opportunity to rebut any matter that he believes to be inaccurate.” *Id.*

In this case, defendant’s claim fails for several reasons. First, if defendant wanted to contest the accuracy of the information, it was “incumbent” upon him to challenge the information during sentencing. *Callon*, 256 Mich App at 334. Second, defendant attempts to create a right not only to challenge the information, but to limit the trial court’s use of information to that found in the PSIR. We know of no such right. Rather, a court has “broad discretion in the sources and types of information to be considered when imposing a sentence.” *People v Waclawski*, 286 Mich App 634, 691-92; 780 NW2d 321 (2009); *People v Albert*, 207 Mich App 73, 74; 523 NW2d 825 (1994). Third, defendant has not shown how he was

prejudiced by the information from the civil trial. See *Callon*, 256 Mich App at 334-335. Indeed, on appeal, defendant only argues that he had a right to challenge the accuracy of the information; he does not actually contend that the trial court relied on inaccurate information. Lastly, contrary to defendant's claim, the trial court did not actually rely on the information during sentencing. The trial court delved into the circumstances surrounding defendant's termination, not as a factor in defendant's sentencing, but to provide defendant's family with some understanding of the nature of defendant's actions and to explain to defendant's family that defendant was not an innocent victim of corporate oversight. The court specifically stated: "I'm only saying that for your family's sake. *It has nothing to do with the guidelines.*" Because the trial court did not rely on the challenged information in sentencing defendant, there can be no claim of error and resentencing is not required.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly