STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 25, 2012
v GEORGE CLINTON MOORE, Defendant-Appellant.	No. 297993 Shiawassee Circuit Court LC No. 09-009054-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v ANTIONNE MURPHY, Defendant-Appellant.	No. 298496 Shiawassee Circuit Court LC No. 09-009126-FH

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

In separate trials before the same judge, separate juries convicted defendant George Clinton Moore and defendant Antionne Murphy of first-degree home invasion, MCL 750.110a(2), and unarmed robbery, MCL 750.530. Defendants have established no error in the admission of challenged evidence, have proved no events so prejudicial that a mistrial was warranted, and have not shown that their sentences were unsupported by the record evidence. We therefore affirm both defendants' convictions and sentences in these consolidated appeals.

I. FACTS AND PROCEEDINGS

On January 29, 2009, defendants broke into the home of an elderly woman and robbed her. The victim, Virginia Graves, testified that two men banged on her back door, forced their way into her house and confronted her in the entryway. The first intruder, who had a cigarette in his mouth, pulled a tee shirt over her head. He then pushed her into the living room, forced her to lie on the floor, and buried her in pillows and blankets. Both men made multiple threats to kill

her. The men stole several items, including a television, a DVD player, electronic equipment, two shotguns, a rifle, and jewelry. One man brought Graves her purse and demanded she remove her cash. Before the men left, the first intruder "hogtied" Graves' wrists and ankles with a television cord. Graves was able to free herself shortly thereafter. Not realizing that she was witnessing the robbers escape, Graves' daughter, who was at a neighbor's house, noticed a small blue car become stuck in the snow in her mother's driveway. She watched as a man got out of the car and pushed it free.

Graves was unable to describe the first intruder well enough for a police artist to create a composite sketch. The police compiled a photographic array of the "usual suspects" and Graves identified an unrelated person as one of the perpetrators. Graves was first able to identify Moore through a closed circuit security camera while Moore sat in a holding cell awaiting his preliminary examination. At Moore's trial, Graves identified Moore from the stand as one of the perpetrators. Based on the earlier unduly suggestive identification procedure, however, the court struck the in-court identification and instructed the jury to disregard it.

Other evidence linked Moore to the scene of the crime. Investigating officers collected a cigarette butt from the floor of Graves' home. DNA found on the cigarette butt matched a DNA sample later obtained from Moore. Moore's girlfriend also provided the police with several pieces of jewelry Moore had given her after the charged offense, many of which were taken from Graves' home.

Evidence introduced at the trial established that on the morning of the Graves' home invasion, defendants had "cased" two other homes but apparently decided against robbing them. Julia Schafer testified that a man entered the "mud room" attached to her home without permission and asked for "Bancroft." When Schafer told the man that he was in the wrong house, he left and drove away in a small blue car occupied by another man. In the second incident, two men in a small blue car pulled into William and Sandra Taylor's driveway. One man approached the house and spoke to Sandra through a window. The man claimed that he was looking for "Bob" who had promised to install a hitch on his car. He asked Sandra for directions to Swartz Creek Road and left. At Moore's trial, Sandra identified Moore. However, she had selected a different individual from the photographic lineup conducted during the criminal investigation.

Police officers were ultimately able to connect defendants to the Graves' home invasion after a botched attempt to "case" a fourth home. Four days after the charged offense, two men in a small blue car pulled into the driveway of Christi Markwardt, an off-duty police officer. Markwardt observed the men snooping around the outside of her house. When Markwardt retrieved her service revolver, the men departed. Markwardt contacted an on-duty officer, Jay Rendon, and described these events. Rendon stopped a small blue car approximately two houses away. Moore was driving and Murphy was the passenger.

Moore was later arrested. In a police interview, he denied involvement in the offense, but implicated Murphy. Moore suggested that Murphy framed him by leaving the cigarette butt in Graves' house, because Murphy was romantically interested in Moore's girlfriend. Murphy was not arrested but agreed to a noncustodial police interview. Murphy initially denied involvement in the offense, but eventually admitted that he and Moore had driven to Graves' house. Murphy

maintained that he did not know what Moore intended to do at Graves' house, but later admitted that he accompanied Moore's foray inside.

II. DOCKET NO 297993—DEFENDANT MOORE

A. Other-Acts Evidence

Moore first challenges the admission of evidence regarding the uncharged incidents at the Markwardt, Schafer and the Taylor houses. Moore argues that this evidence was inadmissible under MRE 404(b)(1), which precludes use of "other acts evidence" except for limited purposes. Although Moore objected at trial to the evidence involving the incident at Markwardt's house, thereby preserving that issue, he did not object to the evidence regarding the incidents at the Schafer and Taylor homes, leaving those issues unpreserved. *People v Coy*, 258 Mich App 1, 12; 669 NW2d 831 (2003). We review preserved evidentiary issues for an abuse of discretion. *Id.* at 12. "An abuse of discretion occurs when the trial court chooses an outcome that falls outside the permissible range of principled outcomes." *People v Brown*, 294 Mich App 377, 385; 811 NW2d 531 (2011). We review unpreserved evidentiary challenges for plain error affecting a defendant's substantial rights. *Coy*, 258 Mich App at 12.

Contrary to Moore's contention, we need not consider whether the challenged evidence was admissible under MRE 404(b) as it was admissible as direct evidence of Moore's culpability. MRE 401 defines "relevant evidence" as "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." Moore's connection to a small blue car, like the one involved in the Graves' home invasion, tends to make Moore's identity as a perpetrator more probable.[1]

Despite that the prosecutor necessarily had to present evidence pertaining to other events, MRE 404(b) is not implicated here. *People v Hall*, 433 Mich 573, 583; 447 NW2d 580 (1989). In *Hall*, the Supreme Court noted, "Evidence of a defendant's possession of a weapon of the kind used in the offense with which he is charged is routinely determined by courts to be direct, relevant evidence of his commission of that offense." *Id.* at 580-581. Such evidence "link[s] the defendants to the crime" and "tend[s] to make their participation in the [crime] more probable . . . than it would be without the evidence." *Id.* (quotation marks and citation omitted).

In *Hall*, the witnesses to the charged armed robbery testified that the defendant drove a rust-colored Chevrolet Nova or Dodge Impala to the scene and carried a sawed-off shotgun in a large brown paper bag. *Id.* at 576-577. At trial, the prosecution presented evidence of a separate incident that occurred seven months later during which witnesses saw the defendant standing next to a rust-colored Nova, holding a large brown paper bag, which later proved to hold a sawed-off shotgun. *Id.* at 577-578. The Supreme Court found the evidence of the defendant's

[1] Moore also challenges the prosecution's failure to provide timely notice of its intent to present "other acts" evidence as required by MRE 404(b)(2). As the evidence was directly relevant and MRE 404(b) is inapplicable, we need not consider Moore's challenge.

possession of the gun and the car during the later incident admissible as it was clearly relevant to make the defendant's identity as the gunman in the charged robbery "'more probable . . . than it would be without the evidence.'" *Id.* at 582-583, quoting MRE 401.

In *People v Murphy (On Rem)*, 282 Mich App 571, 574; 766 NW2d 303 (2009), the defendant committed a carjacking using a sawed-off shotgun and arrived at the scene in a black Dodge Ram pickup truck. The next day, police followed a black Dodge Ram pickup from the scene of another carjacking to a nearby gas station. *Id.* at 575-576. One of the truck's passengers walked behind the gas station and a sawed-off shotgun was later found in a dumpster there. *Id.* 576. The defendant was also in the pickup. *Id.* This Court affirmed the admission of the evidence from the gas station. Although the evidence was only circumstantial as the defendant was not actually holding the weapon during the second incident, this Court concluded that the evidence "logically linked" the defendant to the implements of the charged offense and was therefore admissible without regard to MRE 404(b). *Murphy*, 282 Mich App at 580-582.

Here, the Taylors, Schafer, and Markwardt testified that two men drove to their houses in a small blue car. At least one of the men acted suspiciously, entering Schafer's house without permission and snooping around the perimeter of the Taylor and Markwardt houses. Sandra Taylor specifically identified Moore at trial. Rendon effectuated a traffic stop of the small blue car and positively identified Moore as connected to that vehicle. Whether viewed for an abuse of discretion in relation to the preserved challenges or plain error in relation to the unpreserved challenges, the evidence is relevant under MRE 401 to connect Moore to the charged offense without consideration of MRE 404(b).

Moore alternatively argues that defense counsel was ineffective for failing to object to Schafer's and the Taylors' testimony. Moore failed to preserve this claim by requesting a new trial or evidentiary hearing and our review is therefore limited to errors apparent on the existing record. *People v Brown*, 279 Mich App 116, 140; 755 NW2d 664 (2008). To prevail on a claim of ineffective assistance of counsel, Moore must show that: "(1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different; and (3) the resultant proceedings were fundamentally unfair or unreliable." *People v Mesik (On Reconsideration)*, 285 Mich App 535, 542-543; 775 NW2d 857 (2009). However, as these witnesses' testimony was admissible under MRE 401, any objection would have been futile. Accordingly, defense counsel was not ineffective for failing to object. *People v Moorer*, 262 Mich App 64, 76; 683 NW2d 736 (2004).

B. Mistrial

Moore next argues that the trial court erred in denying his motion for a mistrial after it determined that Graves' in-court identification of Moore was tainted by an improper pretrial identification procedure. This Court reviews a trial court's decision regarding a mistrial motion for an abuse of discretion. *People v Schaw*, 288 Mich App 231, 236; 791 NW2d 743 (2010).

On the first day of testimony, during defense counsel's cross examination of Graves, counsel learned for the first time that Graves was unable to identify Moore until he was in a holding cell pending the preliminary examination.[2] The following day, defense counsel raised a mistrial motion, or "at the very minimum, [to] strike" Graves' testimony regarding the "unduly suggestive" or "tainted" identification procedure. The trial court determined that a mistrial was "not needed" based on the other evidence supporting Moore's guilt. However, it decided to strike Graves' in-court identification testimony from the record. The court then informed the jury that it had struck Graves' identification of Moore from the record "so you are to assume and accept that she is unable to identify the Defendant in the courtroom as the perpetrator[.]" The court explained to the jury that the holding cell identification procedure described by Graves was improper.

A mistrial should be granted "only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *Id.* (quotation marks and citation omitted). The trial court instructed the jury to disregard Graves' in-court identification of Moore. "Jurors are presumed to follow instructions, and instructions are presumed to cure most errors." *People v Petri*, 279 Mich App 407, 414; 760 NW2d 882 (2008). Moreover, this was not a case based principally on the victim's identification testimony. Rather, there was substantial other evidence available to the jury to allow it to find that Moore was one of the perpetrators. The DNA evidence on the cigarette butt found at Graves' home provided objective scientific evidence that Moore was at the scene. The evidence that Moore's girlfriend possessed several pieces of jewelry that were stolen from Graves' home, which she stated she received from Moore, further established Moore's connection to the crime. Moreover, Schafer, Markwardt, Rendon and the Taylors provided testimony connecting Moore to the small blue car driven to Graves' house by the perpetrators. We further note that the jury was presented with evidence that Graves initially selected an unrelated individual as the perpetrator during a photographic line-up and therefore was already on guard that Graves' in-court identification was suspect.

Under these circumstances, there is no reasonable likelihood that Graves' identification testimony might have so unduly influenced the jury that it could not be expected to follow the trial court's instruction to disregard it. The trial court's decision to strike Graves' tainted identification and to instruct the jury to disregard her testimony, in lieu of declaring a mistrial, was reasonable, fell within the range of principled outcomes and, therefore, was not an abuse of discretion. *Schaw*, 288 Mich App at 236.

C. Scoring Of The Sentencing Guidelines

Moore next argues that he is entitled to resentencing because the trial court erred in scoring several offense variables (OVs). None of the scoring challenges were preserved with an objection at sentencing. MCR 6.429(C). Generally, "[t]he scoring of the sentencing guidelines variables is determined by reference to the record, using the preponderance of the evidence standard." *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008). "Scoring decisions

[2] Moore ultimately waived his preliminary examination and therefore this information was not revealed immediately.

for which there is any evidence in support will be upheld." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). An unpreserved scoring issue is reviewed for plain error affecting the defendant's substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004).

Because the trial court was authorized to impose consecutive sentences, it scored Moore's sentencing guidelines for both the home invasion and unarmed robbery convictions. Moore's total OV scores were 120 points for the home invasion conviction and 110 points for the unarmed robbery conviction, placing him in OV Level VI for both offenses. Moore's total prior record variable (PRV) score was 100 points for each offense, placing him in PRV Level F. Moore argues that the trial court erred in scoring OV 2 at 5 points, OV 8 at 15 points, and OV 10 at 5 points. Even if all three variables were reduced to zero points, Moore's OV Levels would not be affected. And if a scoring error does not affect the appropriate guidelines range, resentencing is not required. *People v Francisco*, 474 Mich 82, 89-90 n 8; 711 NW2d 44 (2006). Accordingly, we need not consider those challenges.

Moore also challenges the score of 50 points for OV 7, the negation of which would affect his OV Level for both offenses. MCL 777.37(1)(a) provides that 50 points are to be scored for OV 7 when "[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." Zero points are scored where the victim was not so treated. MCL 777.37(1)(b). "Sadism" is defined as "conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3). Moore argues that he did not treat Graves with sadism, torture, or excessive brutality because she was not tied up until the offense was nearly over and was able to easily free herself. Moore contends that none of his other acts during the offense constitute sadism, torture, or excessive brutality.

The trial court did not plainly err in scoring 50 points for OV 7. Although Moore minimizes his conduct, his treatment of Graves can be viewed as subjecting her to prolonged humiliation, inflicted to produce suffering or for Moore's gratification. The evidence showed that Moore pulled a tee shirt over Graves' head, pushed her to the floor, and buried her in pillows and blankets. When Moore and his accomplice could not find certain valuables after forcing Graves to reveal their locations, Moore called Graves a liar and repeatedly threatened to kill her. Moore possessed Graves' own guns at that time. Before leaving the house, Moore tied Graves up in an especially humiliating fashion. The fact that Graves was able to quickly escape does not lessen the nature of the treatment. Moore's repeated threats and the manner in which he hogtied Graves was sufficiently abusive and humiliating to support the trial court's scoring decision. As such, defendant is not entitled to resentencing.

III. DOCKET NO 298496—DEFENDANT MURPHY

A. Admissibility Of Statements To Police

Murphy argues that the trial court erred in denying his motion to suppress his statements to the police during his noncustodial interview on August 31, 2009, and his post-arrest statements on September 9, 2009. Murphy voluntarily came to the police station for an interview

on August 31, 2009. Detectives Mark Pendergraff and Scott Shenk questioned Murphy, beginning by informing him "you're not under arrest" and "you're free to leave at any time you want." Pendergraff told Murphy that Moore had implicated him in the crime. Pendergraff lied and told Murphy that DNA "from more than one person" was found at the scene and that Moore indicated the other sample would match Murphy. Pendergraff urged Murphy to cooperate so that the detectives could "go to bat" for him with the prosecution.

It was after this statement that Murphy slipped up. Murphy commented, "I would not even lower my standards to go in and break in an elderly woman house [sic]." Unfortunately for Murphy, the detectives had not described the victim in any manner. When Murphy still would not admit his role in the home invasion, Detective Shenk told Murphy that if "you cooperated, you told us 100% the truth," the officers would tell the prosecution that Moore was the leader in the offense because "we wanna help you." Shenk continued, "We're gonna go to the Prosecutor's and we're going to help you out. We're gonna send [Moore] back to prison. That's who we want to go back to prison is [Moore]." Murphy then changed gears and told the detectives that Moore had later bragged about the home invasion to him. Murphy altered his story again and admitted to being in the car when Moore committed the offense. Then Murphy quickly admitted that he went into Graves' house and provided details about the offense that the police did not know at that time. The detectives reminded Murphy that he had to be 100% honest or the prosecution would not help him. Despite the warning, Murphy never admitted that he had actually taken anything from Graves' house or threatened her in any way.

The police did not arrest Murphy until September 9, 2009. In the patrol car on the way to the police station, Murphy asked "some questions regarding the outstanding warrant for his arrest." Detective Michael Gillett testified that Murphy "started to essentially divulge some information," so Gillett stopped him and administered Murphy's *Miranda*[3] rights. Murphy waived his rights and told the detective that he was only Moore's passenger on the day of the offense and "had no idea" that Moore intended to commit a crime. Murphy also asked whether his cooperation would lead to a deal with the prosecution.

When a criminal defendant moves to suppress his statements made to law enforcement officials, we review the trial court's findings of fact for clear error and its ultimate ruling de novo. *People v Elliott*, 295 Mich App 623, 631; 815 NW2d 575 (2012), lv gtd 491 Mich 938 (2012). Statements made by an accused during a custodial interrogation are admissible only if the accused knowingly, voluntarily, and intelligently waived his or her Fifth Amendment rights against self-incrimination. *Miranda*, 384 US at 444; *People v Daoud*, 462 Mich 621, 633; 614 NW2d 152 (2000). While the interviewing officer need not read an individual his *Miranda* rights when the individual has not been taken into custody, a noncustodial interrogation may, in some situations, give rise to an involuntary statement. *Beckwith v United States*, 425 US 341, 347-348; 96 S Ct 1612; 48 L Ed 2d 1 (1976). A statement is made voluntarily "if it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *People v Gipson*, 287 Mich App 261, 264–265; 787 NW2d 126 (2010). The voluntariness of a

[3] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

defendant's statements is determined by examining the totality of the circumstances surrounding the interrogation. *Beckwith*, 425 US at 348; *Daoud*, 462 Mich at 633-634; *Gipson*, 287 Mich App at 264-265. In *People v Tierney*, 266 Mich App 687, 708; 703 NW2d 204 (2005), this Court described the test for voluntariness:

> In determining voluntariness, the court should consider all the circumstances, including: "[1] the age of the accused; [2] his lack of education or his intelligence level; [3] the extent of his previous experience with the police; [4] the repeated and prolonged nature of the questioning; [5] the length of the detention of the accused before he gave the statement in question; [6] the lack of any advice to the accused of his constitutional rights; [7] whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; [8] whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; [9] whether the accused was deprived of food, sleep, or medical attention; [10] whether the accused was physically abused; and [11] whether the suspect was threatened with abuse." *People v Cipriano*, 431 Mich 315, 334; 429 NW 2d 781 (1988). No single factor is determinative. [*People v*] *Sexton*, [461 Mich 746, 753;] 609 NW2d 822 [(2000)]. "The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." *Cipriano*, [431 Mich at 334].

Murphy was 36 years old at the time of his police interview. He had quit school after the ninth grade, but as he told the detectives, "I'm not stupid . . . . I can read between the lines." Murphy was not new to police procedures and told the officers that he had recently been released from prison. The court observed that the period of questioning was not unreasonable, and that Murphy was not deprived of food or drink during either the pre or post-arrest interviews. Murphy was not under the influence of any substances on either August 31 or September 9 and the record shows that the police in no way abused him.

The trial court did not specifically address Murphy's claim that he only made self-incriminating statements because of Detectives Shenk's and Pendergraff's promises that the prosecution would be lenient. Yet, "a promise of leniency is merely one factor to be considered in the evaluation of the voluntariness of a defendant's statements." *People v Givans*, 227 Mich App 113, 120; 575 NW2d 84 (1997). To require suppression, the defendant must show "that the inducements offered . . . overc[a]me the defendant's ability to make a voluntary decision to make a statement," *People v Conte*, 421 Mich 704, 754; 365 NW2d 648 (1984) (opinion by BOYLE, J.), or that his "'will was overborne.'" *Id.* at 753, quoting *Schneckloth v Bustamonte*, 412 US 218, 226; 93 S Ct 2041; 36 L Ed 2d 854 (1973). There is no record indication that Murphy was overcome by promises of leniency. The detectives promised to tell the prosecution about Murphy's cooperation but never claimed that Murphy could avoid prison time by confessing. Moreover, there is no indication that the detectives went back on their promises.

B. Other-Acts Evidence

Murphy also challenges the trial court's admission of Markwardt's testimony regarding the incident at her house four days after the charged offense, and Rendon's testimony regarding

his subsequent traffic stop of Moore and Murphy. Like Moore, Murphy argues that this testimony was inadmissible under MRE 404(b)(1). Just as in the consolidated appeal, we find Markwardt's and Rendon's testimony to be direct evidence linking Murphy to the same type of car used in the Graves' home invasion. That evidence is directly relevant and MRE 404(b) is not implicated.

C. Mistrial

Murphy contends that the trial court should have *sua sponte* declared a mistrial when a prospective juror indicated during voir dire that he was "active in our neighborhood watch" and:

> I don't . . . know . . . if it was in the commission of his crime but, . . . we were having a lot of problems in the neighborhood at the time and we were all on the watch of what was going on in our neighborhood, and I observed [Murphy] several times driving down our road very slow.

The court dismissed that potential juror for cause. A *sua sponte* decision to grant a mistrial "is within the sound discretion of a trial judge." *People v Clark*, 453 Mich 572, 581 n 6; 556 NW2d 820 (1996). "A mistrial should be granted only where the error complained of is so egregious that the prejudicial effect can be removed in no other way." *People v Gonzales*, 193 Mich App 263, 266; 483 NW2d 458 (1992).

To the extent that the prospective juror's comments can be characterized as a type of extraneous influence, Murphy would be entitled to relief only if there was "a real and substantial possibility that they could have affected the jury's verdict." *People v Budzyn*, 456 Mich 77, 89; 566 NW2d 229 (1997). This "is an objective inquiry." *Id.* at 89 n 10. To merit relief, Murphy must further show "that the extraneous influence is substantially related to a material aspect of the case and that there is a direct connection between the extraneous material and the adverse verdict." *Id.* at 89.

The trial court promptly dismissed the prospective juror for cause, so there was no opportunity for him to impress his views on the jurors that were impaneled. The trial court instructed the seated jury at the start of trial and again before the jury began its deliberations that it was required to decide the case solely on the evidence presented at trial, in accordance with the trial court's instructions. The jurors took an oath to comply with the court's instructions, which the jurors are presumed to have followed. *Petri*, 279 Mich App at 414. Moreover, Murphy admitted in his police statement that he and Moore had driven around together in Shiawassee County looking for work. This admission minimized any prejudicial effect of the prospective juror's comments on those jurors that were impaneled. Accordingly, the trial court did not err by failing to *sua sponte* declare a mistrial.

D. Scoring Of OV 7 Of The Sentencing Guidelines

Murphy lastly argues that the trial court erred in relying on an aiding and abetting theory to score 50 points for OV 7 on the basis of Moore's treatment of Graves. We agree that the trial court could not score OV 7 if Murphy had merely aided and abetted Moore's commission of the crime. See *People v Hunt*, 290 Mich App 317, 325-326; 810 NW2d 588 (2010). Murphy's score is independently supported, however, by evidence that he personally engaged in "conduct

designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a).

In *People v Glenn*, 295 Mich App 529, 533-534; 814 NW2d 686 (2012), this Court defined the type of conduct necessary to support a score of 50 points for OV 7 on this theory as "conduct designed to cause copious or plentiful amounts of additional fear." Murphy personally and repeatedly threatened to kill Graves. During Murphy's trial, Graves testified that Murphy demanded that she tell him the location of her guns. When he could not find the guns, he threatened to kill her. Murphy then forced Graves to tell him where she kept her cash. When he could not find the cash within Graves' purse, he again threatened to kill her. By that time, Murphy was in possession of Graves' own guns and was therefore capable of following through with his threats. At Moore's trial, Graves further testified that Murphy "yelled he was gonna' kill me repeatedly, and" accused her of "lying." During the offense, Murphy was aware that Graves' two mentally disabled sons were in the basement and that Graves was concerned the noise would frighten them. Accordingly, Murphy knew that his threats raised Graves' fear not only for her own safety but also for her children's well-being. Based on this record, the Court could support that Murphy's conduct was sufficiently "heinous," *id.* at 536, or "egregious," *id.* at 534, to support the OV 7 score.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause