

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARRLIS DEWAYNE REEVES,

Defendant-Appellant.

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UNPUBLISHED

July 15, 2003

No. 240138

Genesee Circuit Court

LC No. 01-008051-FC

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(c), one count of second-degree CSC, MCL 750.520c(1)(c), and one count of first-degree home invasion, MCL 750.110a(2). He was sentenced as a third habitual offender to concurrent terms of 540 to 810 months for the first-degree CSC convictions, fifteen to thirty years for second degree CSC, and forty years for home invasion. He appeals as of right, and we affirm.

Defendant first claims that reversal is required because the trial court abused its discretion by permitting the prosecutor to cross-examine him about a prior conviction of breaking and entering an automobile. We disagree.

Given the overwhelming evidence of defendant's guilt, we are satisfied that the admission of the prior conviction had no impact on the outcome of the trial, and thus any error was harmless. *People v Whittaker*, 465 Mich 422, 427; 635 NW2d 687 (2001).

Defendant also argues that the trial court's failure to give a specific unanimity instruction denied him his right to a unanimous verdict, under the circumstance that the prosecution offered alternative theories of guilt regarding one of the offenses charged. We disagree.

As defendant did not preserve this issue, our review is for manifest injustice. *People v Sabin (On Second Remand)*, 242 Mich App 656, 657-658; 620 NW2d 19 (2000). "[W]hen a statute lists alternative means of committing an offense, which means in and of themselves do not constitute separate and distinct offenses, jury unanimity is not required with regard to the alternate theories." *People v Gadomski*, 232 Mich App 24, 31; 592 NW2d 75 (1998).

MCL 750.110a provides alternative means of committing first-degree home invasion: under a breaking and entering theory or an entering without permission theory. The prosecution contended that while the victim was sleeping, defendant entered her house without her permission, through a closed door between the house and the garage. These facts, all involving a single act by defendant, would support a conviction under either theory. The jury was thus not required to unanimously decide which theory defendant violated. *Gadomski, supra*.

Defendant cites several cases in which a specific unanimity instruction was required, but those cases are distinguishable because the prosecutor was unable to prove one of the alternate theories. “Where one of two alternative theories of guilt is legally insufficient to support a conviction, and it is impossible to tell upon which theory the jury relied, the defendant is entitled to a reversal of his conviction and a new trial.” *People v Grainger*, 117 Mich App 740, 755; 324 NW2d 762 (1982). That is not the case here. In the instant case, the prosecutor presented sufficient evidence to support a conviction under either a breaking and entering theory or an entering without permission theory.

Defendant also argues that he received ineffective assistance of counsel where counsel failed to object to the scoring of offense variables (OV) 3, 4, 7 and 10. To establish a claim of ineffective assistance of counsel, the defendant must show (a) counsel’s performance fell below an objective standard of reasonableness, and (b) defendant was prejudiced as a result. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). “To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different.” *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

We agree that counsel was ineffective in failing to challenge the scoring of OV 3;<sup>1</sup> however, we conclude that defendant has failed to show the requisite prejudice. Defendant scored 140 OV points, placing him in OV level VI. In order to reduce his OV score sufficiently to place him in the next lowest level (V), defendant must show that he was erroneously assessed forty-one of his 140 points. OV 3 was erroneously scored at ten points, rather than zero points. Additionally, it is arguable that OV 10 was misscored at fifteen points. However, we find no error in the court’s scoring ten points for OV 4, serious psychological injury, where the victim testified that she stayed with her neighbors for three weeks after the crime, and began to question her ability to care for herself. At the time of trial, a year after the crime, the victim still did not perceive herself as back to normal. Further, we find no error in the scoring of OV 7, victim subjected to terrorism, sadism, torture, or excessive brutality. There was testimony that defendant asked for money in a “sinister” voice, that when the victim did not have the money he wanted, defendant told her he would hurt her, that he put his arm around the victim’s neck so she could not breathe, and that he told her that either he or someone else would come back if she told the police. Because there was adequate support for the scoring of OV 7 and 4, counsel was not ineffective in failing to object. As to the remaining variables, defendant cannot show the requisite prejudice.

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<sup>1</sup> The prosecutor presented no evidence that the victim had suffered physical injury, and concedes on appeal that OV 3 was misscored. Because no evidence was presented to support the trial court’s scoring of this variable, defense counsel should have objected.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Helene N. White