

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL RAY ANDERSON,

Defendant-Appellant.

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UNPUBLISHED  
February 24, 2009

No. 283131  
Genesee Circuit Court  
LC No. 07-021495-FH

Before: Whitbeck, P.J., and O’Connell and Owens, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of one count of first-degree home invasion, MCL 750.110a(2), and was sentenced as a fourth habitual offender, MCL 769.12, to 20 to 40 years’ imprisonment. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he was denied his due process right to be sentenced based on accurate information. He asserts that the trial court improperly scored Offense Variable (OV) 4 at ten points. A trial court may score ten points for OV 4 when “[s]erious psychological injury requiring professional treatment occurred to a victim.” MCL 777.34(1)(a). The trial court is directed to “[s]core 10 points if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.” MCL 777.34(2). Defendant concedes that the victim testified that she was “scared and shaken up.” However, defendant argues that the victim did not suffer any psychological injury, much less a serious psychological injury. We disagree.

We review a trial court’s scoring decision for an abuse of discretion. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). If any evidence supports the trial court’s scoring decision, that decision will be upheld on appeal. *Id.* An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The victim testified that she was standing with a neighbor in the neighbor’s driveway when she and her neighbor saw defendant walk up to the victim’s home, open the front door, and walk inside. An elderly family friend for whom the victim provided care was asleep inside the victim’s home. The victim testified that when she witnessed a stranger walk into her home, she felt “afraid,” “shaken up,” “frightened,” “helpless,” “shocked,” “frantic,” and “upset.” The

victim's testimony "that she was fearful during the encounter with defendant . . ." is sufficient evidence to support the trial court's decision to score ten points for OV 4. *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004). Throughout her testimony, the victim made it clear that she was fearful after watching defendant enter and remain inside her home. The trial court's scoring is supported by the victim's repeated references to her fear during the crime. Although no evidence was presented indicating that the victim actually required professional treatment, the victim's testimony concerning her mental state at the time of the home invasion is sufficient to permit the trial court to conclude that she suffered serious psychological injury that may require professional treatment.

Moreover, the trial court was able to observe the victim as she testified, and it listened to the victim describe the events that she witnessed. The prosecution played a recording of the 911 call that the victim made when defendant was inside her home. The trial court determined that the victim had suffered a serious psychological injury that may require professional treatment, and we affirm the decision because it is supported by the victim's testimony. *Hornsby*, *supra* at 468-469. Therefore, the trial court did not abuse its discretion by scoring OV 4 at ten points.

Affirmed.

/s/ William C. Whitbeck  
/s/ Peter D. O'Connell  
/s/ Donald S. Owens