STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 18, 2017 APPROVED FOR PUBLICATION August 31, 2017 9:05 a.m.
v	No. 332734 Eaton Circuit Court
JAMES DAVID URBAN, Defendant-Appellant.	LC No. 15-020176-FH

Before: MARKEY, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

BOONSTRA, J.

Defendant appeals by right his convictions, following a jury trial, of unlawful imprisonment, MCL 750.349b, assault with a dangerous weapon, MCL 750.82, and domestic violence, MCL 750.812, as a lesser included offense of aggravated domestic violence, MCL 750.81a(2). Defendant was acquitted of an additional assault with a dangerous weapon charge and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of 7 to 15 years' for the unlawful imprisonment conviction, 2 to 4 years for the assault with a dangerous weapon conviction, and 93 days for the domestic violence conviction. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Defendant's convictions relate to his extended confinement and assault of his girlfriend, MH, in his home. During the period of confinement, defendant choked and kicked MH, attempted to force her to drink alcohol, threatened to rape and kill her, hit her with a handgun and liquor bottle, and held the handgun to her face and chest, and in her mouth. MH testified that defendant was armed with both a handgun and a sawed-off shotgun during the incident. She further testified that defendant forced her to unload and reload the magazine of the handgun several times. At some point, defendant tripped while taking off his pants and underwear, and MH was able to grab the handgun and escape to a neighbor's house to call the police. Eaton County Sheriff Deputies arrested defendant and recovered a loaded handgun, but could not locate a shotgun.

At trial, a forensic scientist testified that DNA taken from saliva found on the handgun contained a mix of donors and could not be conclusively matched. However, DNA taken from blood on a tank top and from blood on a door in defendant's home matched that of MH, and DNA taken from a blood-stained pillowcase matched that of defendant. MH testified that, at times during the incident, defendant spoke in Arabic and made statements relating to the Islamic religion. Defendant argued that MH was exaggerating, and described the incident as a "brawl" between defendant and MH that had resulted in injuries to both parties. Outside the view of the jury, defense counsel had MH load the magazine of the handgun that had been found in defendant's home. The trial court instructed the jury that the victim had demonstrated that she had the physical strength to load the magazine of the handgun.

The jury convicted defendant as described. At sentencing, the trial court scored offense variables (OVs) 4 (psychological injury to the victim) and 7 (aggravated physical abuse) at 10 and 50 points respectively. This appeal followed.

II. ADMISSION OF DNA EVIDENCE

Defendant argues on appeal that the trial court improperly admitted DNA evidence because the prosecution failed to present the required statistical analysis. We disagree. Defendant did not object to the admission of this evidence at trial; we therefore review defendant's challenge to its admission for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Reversal is warranted only if the plain error resulted in the conviction of an innocent defendant or if "the error seriously affected the fairness, integrity, or public reputation of judicial proceedings independent of the defendant's innocence." *Id*.

In *People v Coy*, 243 Mich App 283, 294; 620 NW2d 888 (2000), this Court concluded that evidence of a potential match between a subject's DNA sample and DNA found on evidence was "inadmissible absent some accompanying interpretive evidence regarding the likelihood of the potential match." That is, "some qualitative or quantitative interpretation must accompany evidence of [a] potential [DNA] match." *Id*. at 302. The Court reasoned that the scientific evidence of a possible DNA match between a defendant and DNA found on evidence would not assist the jury, consistent with MRE 702, without "some analytic or interpretive evidence concerning the likelihood or significance of a DNA profile match." *Id*. at 301.[1] Alternatively, the Court held that evidence of a potential DNA match had "minimal probative value absent accompanying interpretive statistical analysis evidence," and should be excluded, in accordance

[1] MRE 702 states, "If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise."

with MRE 403, when weighed against the danger of unfair prejudice emanating from the jury giving the DNA evidence undue weight. *Id*. at 303.[2]

In this case, a forensic scientist testified that the DNA profiles on the tank top, MH's leggings, and the bedroom door matched MH's DNA profile, with defendant being excluded as the donor, and that the DNA profile on a pillowcase matched defendant's DNA, with MH being excluded as a donor. The witness was not asked at trial to provide any empirical data to define the statistical parameters of a DNA "match." However, her report was admitted into evidence, and it contained the testing methodology used, as well as her conclusions and interpretations of the data. Following each conclusion, and for each item indicating a match with the DNA of either defendant or MH, the report contained language stating that "in the absence of identical twins or close relatives, it can be concluded to a reasonable degree of scientific certainty that the DNA profile of the major donor to item [number and description of item tested] and from [number and description corresponding to either defendant or MH] is from the same individual."

We conclude that the scientist's report constitutes "some analytic or interpretive evidence concerning the likelihood or significance of a DNA profile match." *Coy*, 243 Mich App at 301-302. Unlike the expert witness in *Coy*, who explicitly testified that no statistical interpretation was performed on the samples in question, *id*. at 294, the scientist's report in this case indicates that she analyzed and interpreted the samples that were suitable for analysis and concluded "to a reasonable degree of scientific certainty" that they matched samples taken from defendant and the victim. We are satisfied that there was no plain error in the admission of this evidence. *Carines*, 460 Mich at 763.

Further, even if the evidence was admitted in error, the admission did not affect defendant's substantial rights. MH described a three-and-a-half- to four-hour episode during which defendant confined her in his house with a handgun and a sawed off shotgun while assaulting her with his hands and feet, a liquor bottle, and a handgun. She told a doctor that she had been struck in the head by a firearm and had been hit on other parts of her body, and she had injuries consistent with that description of the incident. An officer photographed MH's injuries. The same officer photographed defendant, who had a bruise on his arm and scratches on his neck, left elbow, and right wrist. Officers searched defendant's home and found a handgun, which MH identified, as well as an empty liquor bottle, a blood-stained tank top, a blood-stained pillowcase, blood on the door, pictures of MH's children, and MH's phone, purse, and car keys.

The evidence against defendant was therefore substantial, even apart from the DNA evidence. The DNA evidence merely established that MH's blood was found on items recovered from the bedroom, and it therefore served as some corroboration of her testimony. However, even under defendant's theory of the case, there was a "brawl" that resulted in injuries to both parties. And the fact that DNA from saliva on the handgun barrel was inconclusive was arguably supportive of defendant's claim that the handgun was not involved in the incident. For all of

[2] 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 jury." MRE 403.

these reasons, defendant has not established that the admission of the DNA evidence, even if erroneous, affected his substantial rights and requires reversal. *Carines*, 460 Mich at 763.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant also argues that his trial counsel provided ineffective assistance in several ways. We disagree. Because defendant did not move the trial court for a new trial or evidentiary hearing regarding his counsel's effectiveness, our review is limited to errors apparent on the record. *People v Unger* (*On Remand*), 278 Mich App 210, 253; 749 NW2d 272 (2008). A claim of ineffective assistance of counsel is a mixed question of fact and law. *Id*. at 242. We review the trial court's factual findings for clear error, but we review de novo the constitutional question of whether an attorney's ineffective assistance deprived a defendant of his right to counsel. *Id*.

A defendant's right to counsel is guaranteed by the United States and Michigan Constitutions. US Const, Am VI; Const 1963 art 1, § 20. This "right to counsel encompasses the right to the effective assistance of counsel." *People v Cline*, 276 Mich App 634, 637; 741 NW2d 563 (2007). In order to demonstrate ineffective assistance of counsel, a defendant must show (1) "that counsel's performance was deficient" and (2) "that counsel's deficient performance prejudiced the defense." *People v Taylor*, 275 Mich App 177, 186; 737 NW2d 790 (2007). A counsel's performance is deficient if "it fell below an objective standard of professional reasonableness." *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). The "effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise." *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). Deficient performance prejudices the defense if it is reasonably probable that, but for counsel's error, "the result of the proceeding would have been different." *Jordan*, 275 Mich App at 667.

Defendant argues that his trial counsel provided ineffective assistance by failing to object to admission of the DNA evidence. Defense counsel's decisions are presumed to be sound trial strategy, *Taylor*, 275 Mich App at 186, and we will not substitute our judgment of that strategy with the benefit of hindsight. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004).

In this case, it is likely that defendant's trial counsel did not think it necessary to dispel the notion that his or MH's DNA was found on the items in defendant's home. Defendant did not deny that an altercation with MH had occurred, and he conceded that she (as well as he) had sustained injuries. The presence of their respective DNA on items found in the home would therefore be unsurprising, and the purpose of challenging the evidence establishing the presence of the DNA would therefore seem to be questionable. Instead, defense counsel argued that defendant had not held the victim captive or assaulted her with the firearms or liquor bottle, and that defendant had consequently been overcharged. Further, defendant was able to argue from the DNA evidence that the DNA testing on saliva found on the barrel of the handgun was inconclusive, supporting his defense. Therefore, it may well have been a strategic decision for counsel not to challenge the admission of the DNA evidence. We conclude that counsel's actions were within an objective standard of professional reasonableness. *Jordan*, 275 Mich App at 667. Further, the admission of the DNA evidence did not prejudice defendant because it in essence established that both MH and defendant were injured in the home, which was consistent with defendant's "brawl" theory. Accordingly, even if defense counsel had objected to the admission of the DNA evidence and successfully argued for its exclusion, there is no reasonable probability that the result of the trial would have been different. *Jordan*, 275 Mich App at 667.

Defendant further argues that his trial counsel provided ineffective assistance because he elicited testimony from MH about defendant's possession of an illegal sawed-off shotgun. However, MH had already testified during direct examination that defendant was holding a handgun and shotgun when he entered her room and told her that she could not leave. MH testified that she was familiar with the shotgun because defendant had previously sent her a text message indicating that he was going to shoot himself, and he had attached a picture, which was admitted, showing him holding the shotgun to his chin. MH was asked during direct examination to describe the shotgun, and she recalled that it had been altered by being sawed off and painted with markings and glow-in-the-dark paint. She also stated that defendant had displayed the shotgun during one of their romantic encounters a couple of weeks before the incident and that she had taken a video of the previous encounter with her phone; the video was played for the jury.

Nonetheless, defense counsel did elicit that possessing this firearm was "illegal" and that defendant had told her that possessing it was illegal. This elicitation may well have been strategic. Counsel sought to show that MH was familiar with a unique shotgun, and that she knew it had been in the house. Defense counsel argued that the shotgun was not in the home at the time of the assault, but that MH had reported that it was there based on her having previously seen it in the home. Establishing that the shotgun was illegal may have supported defendant's theory that MH wanted to get defendant in as much legal trouble as possible by fabricating a story involving an illegal weapon. And defense counsel repeatedly emphasized that the shotgun was not found in the house. This strategy may have been partially successful, inasmuch as the jury found defendant not guilty of a second count of assault with a dangerous weapon (handgun or shotgun) and of felony-firearm, which suggests that the jury may not have believed beyond a reasonable doubt that defendant possessed the shotgun at the time of the incident. Further, since the video showing defendant with the shotgun had already been played, defense counsel may have simply tried to "get ahead" of the issue of whether defendant's possession of such a weapon was illegal, rather than leaving the jury to speculate in ways that may have prejudiced his client. A common defense tactic is to acknowledge incriminating evidence that was strongly supported while denying other elements of the crime. *People v Wise*, 134 Mich App 82, 97-99; 351 NW2d 255 (1984). We conclude that defendant has not demonstrated that his trial counsel's elicitation of testimony regarding the shotgun fell below an objective standard of professional reasonableness or that defendant was prejudiced by the questions posed. *Jordan*, 275 Mich App at 667.

Next, defendant argues that his trial counsel was ineffective in failing to object to the prosecution's questions concerning his religious beliefs. We disagree. MH testified that during the incident defendant said Islamic prayers and "Muslim things" in Arabic; she also stated that she "hated the fact that he felt he was a bad person" and "the fact that [Muslims had] made him this way." Defendant argues that this testimony was irrelevant and prejudicial.

"Generally, all relevant evidence is admissible at trial." MRE 402; *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001). Evidence is relevant if it has "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. "Under this broad definition," evidence that is useful in shedding light on any material point is admissible. *Aldrich*, 246 Mich App at 114. The "relationship of the elements of the charge, the theories of

admissibility, and the defenses asserted govern." *People v Yost*, 278 Mich App 341, 403; 749 NW2d 753 (2008).

Much of the testimony regarding defendant's religion was relevant to demonstrate his state of mind as observed by MH during the time that he was alleged to have unlawfully confined her. MH testified that defendant was becoming more emotional and upset as they spoke about personal matters. The prosecution's theory of the case was that defendant committed the crimes because he had become upset at recent losses in his life; MH'S testimony reflects defendant's emotional turmoil. MH also testified that she was afraid that defendant's mental state was worsening and that she was in danger of being more severely hurt or killed if she did not attempt to flee.

The testimony was also not unfairly prejudicial. Relevant evidence may be excluded if its "probative value is substantially outweighed by the danger of unfair prejudice." MRE 403; *Aldrich*, 246 Mich App at 114. "All relevant evidence is prejudicial; it is only unfairly prejudicial evidence that should be excluded." *People v McGhee*, 268 Mich App 600, 613-614; 709 NW2d 595 (2005). "Unfair prejudice may exist where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence." *People v Gipson*, 287 Mich App 261, 263; 787 NW2d 126. Evidence that is unfairly prejudicial goes beyond the merits of the case to inject issues broader than the defendant's guilt or innocence, like the "jury's bias, sympathy, anger, or shock." *McGhee*, 268 Mich App at 614.

Defendant argues that the jury could have been inflamed by references to the Islamic religion. However, evidence that defendant engaged in prayer and religious practices and was severely emotionally distressed during the commission of the crime was unlikely to inflame the jury to the extent that they could not evaluate the case based on the evidence presented. *McGhee*, 268 Mich App at 614.

Relatedly, defendant argues that defense counsel was ineffective for failing to object to the prosecution's questions concerning defendant's religious statements on the grounds that they were intended to inflame the jury. We disagree. The test for prosecutorial misconduct[3] is "whether a defendant was denied a fair and impartial trial." *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546, lv den 480 Mich 897 (2007). A fair trial for a defendant "can be jeopardized when the prosecutor interjects issues broader than the guilt or innocence of the accused." *Id*. at 63-64. Prosecutorial comments must be read as a whole and evaluated in context, including the

[3] We have discussed the difference between "prosecutorial error" and "prosecutorial misconduct." *People v Cooper*, 309 Mich App 74, 87–88; 867 NW2d 452 (2015). Here, defendant's argument that the prosecution deliberately and repeatedly sought to inflame the jury with religious prejudice would appear to be fairly characterized as a claim for prosecutorial misconduct, rather than the "technical or inadvertent" errors that are "more fairly presented as claims of prosecutorial error." *Id*.; see also MRPC 8.4. Nonetheless, regardless of "what operative phrase is used," we must look to see whether the prosecution "committed errors during the course of trial that deprived defendant of a fair and impartial trial." *Id*. (citation omitted).

arguments of the defense and the relationship they bear to the evidence. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004).

Here, the prosecution asked MH questions regarding what actions and statements defendant was making as he kept her confined. Most of the statements referring to defendant's religion were relevant and reflected factual descriptions of her continued confinement. It does not appear from the record that the prosecution sought to insert religion into the case in order to arouse possible prejudice in the jury, but rather as a factual description of the events. Therefore, an objection by defendant's trial counsel on the grounds of prosecutorial misconduct would have been futile. *Dobek*, 274 Mich App at 63. Counsel was not ineffective for failing to make a futile objection. *In re Archer*, 277 Mich App 71, 84; 744 NW2d 1 (2007).

Next, defendant argues that his trial counsel should have objected to the trial court's instructions to the jury following the demonstration of MH loading ammunition into the magazine of the handgun. The trial court instructed the jury that defense counsel had requested a demonstration of MH loading the handgun's ammunition magazine with eight bullets outside the presence of the jury. The trial court instructed that she had demonstrated "the physical strength to load the ammunition into the magazine," and that "she was able to put the rounds into the magazine."

However, during the demonstration, MH initially appeared to struggle to load the magazine and only had success after defendant's trial counsel informed her that she had been loading the ammunition backwards. Defendant therefore argues that defense counsel should have objected to the instruction and requested that the trial court include a statement that MH had required assistance to load the magazine. We disagree. Defense counsel's theory was that, contrary to MH's testimony, she lacked the strength to load the magazine of the handgun found in defendant's home. Because defense counsel requested the demonstration expressly for the purpose of demonstrating whether MH had the strength to load the magazine, the trial court's instruction to the jury regarding the demonstration was accurate. Even if MH did require a brief verbal prompt while attempting to load a magazine in front of a trial judge and multiple officers of the court, she demonstrated that she had the strength to load the magazine. And the fact that she required such a prompt was not dispositive of whether she had previously loaded the magazine. Given these circumstances, it is doubtful that an objection to the trial court's instruction regarding the demonstration would have been successful. Trial counsel is not required to make futile objections. *Archer*, 277 Mich App at 84. And even if successful, it is doubtful the exclusion of this evidence would have resulted in a different outcome; defendant has thus not demonstrated he was prejudiced by his counsel's lack of objection. *Jordan*, 275 Mich App at 667.

Defendant also argues that his trial counsel failed to object to testimony characterizing the state of defendant's home. Defendant's mother testified that she had previously observed that his home was "a mess," with dog hair on everything, and a detective described the home on the day of the incident as having "a really bad odor," with some broken doors, holes in some walls, and some things painted on the wall. A photograph of two obscene words painted on the master bedroom wall was admitted.

Defendant argues that this evidence was irrelevant. However, defense counsel had objected previously to the relevance of similar testimony from MH. The trial court had allowed

the testimony after plaintiff argued that it was relevant to demonstrate the theory that defendant had been losing control of his emotional state and to show his activities immediately preceding the crimes. Any objection to similar testimony from defendant's mother and the detective likely would have been similarly unsuccessful because it was also relevant to the prosecution's theory that defendant's deteriorating emotional state, as evidenced by his neglecting and defacing of his home, contributed to his commission of the charged crimes. Counsel was not ineffective for failing to make a futile objection. *Archer*, 277 Mich App at 84.

IV. SENTENCING

Finally, defendant argues that the trial court erroneously scored OVs 4 and 7. We disagree. "Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *Id*. See also *People v Calloway*, ___ Mich ___; ___ NW2d ___ (May 19, 2017). We review for clear error the trial court's factual determinations at sentencing. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013).

The trial court must consult the advisory sentencing guidelines and assess the highest amount of possible points for all offense variables. *People v Lockridge*, 498 Mich 358, 392 n 28; 870 NW2d 502 (2015). The trial court's determinations must be supported by a preponderance of the evidence. *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008).

Defendant argues that OV 4 was erroneously scored at 10 points because there was no demonstrated serious psychological injury to MH. OV 4 provides for a "[s]core [of] 10 points if the serious psychological injury may require professional treatment," and "the fact that treatment has not been sought is not conclusive." MCL 777.34(2). OV 4 is scored at zero points when "[n]o serious psychological injury requiring professional treatment occurred to a victim[.]" MCL 777.34(1)(b). Here, defendant argues that the trial court improperly scored OV 4 at 10 points based on the nature of the crime, rather than on evidence of serious psychological injury. See *People v Lockett*, 295 Mich App 165, 183; 814 NW2d 295 (2012) ("The trial court may not simply assume that someone in the victim's position would have suffered psychological harm"). However, the trial court in fact scored OV 4 at 10 points based on MH's fear that she was going to die, on the fact (elicited at trial) that she wanted to look at pictures of her children as she died, and on "all of the things that happened that [the court] heard firsthand from her and observed firsthand in the courtroom." The trial court also found that MH's victim impact statement confirmed the psychological injury. The victim impact statement indicated that MH had been seeing a therapist through a domestic violence shelter because she was feeling unlovable and disgusting because of the abuse she had endured. She also mentioned nightmares and flashbacks to the day "he decided to take my life," and a daily struggle with emotional stability as a result of the trauma. At trial, MH testified that she cried for the three and a half hours that she was confined in the room at gunpoint, and that she thought she was going to die. Further, a neighbor described MH as shaking and crying after she escaped from defendant, a detective stated that she was upset to the extent that she had difficulty communicating, the emergency room physician said that she was upset, and another officer stated that he tried to calm her down while she was crying. Ample evidence supported the trial court's scoring of OV 4.

OV 7, MCL 777.37, aggravated physical abuse, is scored at 50 points if "[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." It is scored at zero points where there was no victim treated in the manner described. The trial court found that defendant had engaged in sadism[4] or egregious conduct designed to cause additional pain, grief, and anxiety. To support the scoring, the trial court referred to defendant's use of guns and his continuous threats to rape and kill MH, causing fear and anxiety that were beyond the elements of defendant's crimes. In determining the scoring of OV 7, the trial court should "determine whether the defendant engaged in conduct beyond the minimum necessary to commit the crime, and whether it is more probable than not that such conduct was intended to make the victim's fear or anxiety increase by a considerable amount." *Hardy*, 494 Mich at 443. Defendant argues that his conduct was not sufficiently egregious to justify a score of 50 points and that MH's conduct demonstrates this because she did not find his threats to be credible. While MH initially may not have believed defendant's threats, the record is clear that by the time she made her escape she was convinced that defendant was serious and that her life was at risk. More importantly, OV 7 is scored based on defendant's conduct and his intent, not whether the victim felt sufficiently threatened. See MCL 777.37.

Defendant was convicted of assaulting MH, unlawfully imprisoning her, and misdemeanor domestic violence. A conviction for unlawful imprisonment requires that "(1) a defendant must knowingly restrain a person, and (2) the restrained person must be secretly confined." *People v Railer*, 288 Mich App 213, 217; 792 NW2d 776 (2010). "The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007).

The record contains substantial evidence supporting the conclusion that defendant's prolonged behavior, which appeared to be designed to keep MH captive emotionally as well as physically, and that was beyond the bounds of his crimes, was egregious and sadistic. MH stated that he confined her for three-and-a-half to four hours, threatened her with guns, and assaulted her with his hands and feet, a liquor bottle, and a handgun. He choked and kicked her, and then left the room to retrieve his two guns. She stated that he told her that she could not leave and that he was going to drink liquor and smoke cigarettes before he killed them both. She reported that defendant threatened to rape her, told her that she should have believed the stories he had told her of bad things he had done to other women, and struck her while she was in the fetal position and not responsive to him. Defendant did not allow MH to stand and would point the gun at her head when she resisted, and he made her repeatedly load the gun, telling her that he wanted the bullet that killed him to have her fingerprints. Defendant also forced MH to put the gun in her mouth. Ample evidence supported the trial court's scoring of OV 7.

[4] Sadism means conduct that "subjects the victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification." MCL 777.37(3).

Affirmed.

/s/ Mark T. Boonstra
/s/ Jane E. Markey
/s/ Amy Ronayne Krause