

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 6, 2011

v

COREY JAMAL HAMILTON,
Defendant-Appellant.

No. 298944
Kent Circuit Court
LC No. 09-012635-FH

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

RONAYNE KRAUSE, J. (*concurring*).

I concur in the result reached by the majority, but I write separately to express my concerns regarding OV 3.

I find it inconceivable that the victim here did not sustain a “bodily injury” under the circumstances of the assault in this case, and the evidence shows that she was taken to the hospital and examined by a sexual assault nurse. OV 3 should be scored at ten points if “[b]odily injury requiring medical treatment occurred to a victim.” MCL 777.33(1)(d). “[B]odily injury” encompasses anything that the victim would, under the circumstances, perceive as some unwanted physically damaging consequence.” *People v McDonald*, ___ Mich App ___, ___; ___ NW2d ___ (2011). However, on the basis of the record we have before us, I reluctantly conclude that the trial court abused its discretion by scoring OV 3 at ten points on the basis of this record. No additional evidence was put into the record of what occurred at the hospital beyond the bare fact of that examination, and no evidence at all was put into the record showing that the victim had, in fact, sustained a “bodily injury.” The prosecutor asserts that if defendant had objected, as defendant should have, such evidence would have been presented. I do not doubt it. However, I am constrained to the record as it actually is, and that record does not contain the evidence necessary to score OV 3 at ten points.

I concur.

/s/ Amy Ronayne Krause