

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KATRINA FAYE LOCKETTE,

Defendant-Appellant.

UNPUBLISHED

March 14, 1997

No. 189331

Wayne Circuit Court

LC No. 94-012950

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

PER CURIAM.

Defendant appeals by right her bench trial conviction of home invasion in the second degree, MCL 750.110a(3); MSA 28.305a(3), and her enhanced sentence as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. The court sentenced defendant to a term of imprisonment of five to fifteen years for her second-degree home invasion conviction. The court then vacated that sentence and sentenced defendant to a term of imprisonment of ten to fifteen years as an habitual offender. We affirm defendant's conviction but remand for the limited purpose of a reconciliation of the sentencing transcript with the Judgment of Sentence.

Defendant first contends that the trial court's findings of fact and conclusions of law improperly shifted the burden of proof from the prosecution to defendant. We disagree.

In a bench trial, the trial court must find the facts specially and state separately its conclusions of law. MCR 6.403. A trial court's findings are sufficient if the record reflects that the trial court was aware of the issues and correctly applied the law. *People v Jackson*, 390 Mich 621, 627; 212 NW2d 918 (1973); *People v Legg*, 197 Mich App 131, 134-135; 494 NW2d 797 (1992).

Second-degree home invasion, which requires a breaking and entering (or an entering without permission) with intent to commit a felony or larceny, is a specific intent crime. See *People v Cannoy*, 136 Mich App 451, 453; 357 NW2d 67 (1984); *People v Blankenship*, 108 Mich App 794, 798;

* Circuit judge, sitting on the Court of Appeals by assignment.

310 NW2d 880 (1981). Voluntary intoxication may be a defense to a specific intent crime if the degree of intoxication is so great as to render the accused incapable of entertaining the requisite specific intent. *People v Mills*, 450 Mich 61, 82-83; 537 NW2d 909, modified and remanded on other grounds 450 Mich 1212; 539 NW2d 504 (1995); *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). The burden of persuasion regarding defendant's specific intent remains on the prosecution and defendant is not required to prove his or her intoxication. See *People v McKinley*, 168 Mich App 496, 508-509; 425 NW2d 460 (1988). The essential issue, then, is whether the trial court required the prosecution to prove defendant's specific intent beyond a reasonable doubt.

A trial court's findings of fact in a bench trial serve a function paralleling the judge's charge to the jury in a jury case, which is that of revealing the law applied by the factfinder. *Jackson*, *supra* at 627. The trial court's comment that defendant failed to prove her intoxication suggests that the court improperly may have placed the burden of proof on defendant. *McKinley*, *supra* at 508-509. The court's subsequent finding, however, that the prosecution proved beyond a reasonable doubt that defendant broke and entered the dwelling with intent to commit larceny shows that the trial court properly placed the burden of proof on the prosecution. A trial judge is presumed to know the law. *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). Even in a jury trial, specific instructional misstatements do not merit reversal where, taken as a whole, the instructions fairly present the issues and sufficiently protect the defendant's rights. *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995). Therefore, the trial court's misstatement regarding defendant's intoxication defense was not error requiring reversal where it later found that the prosecution proved defendant's specific intent beyond a reasonable doubt. *Jackson*, *supra* at 627; *Legg*, *supra* at 134.

Defendant next avers that the prosecution failed to present sufficient evidence of a breaking to support a conviction of second-degree home invasion. We disagree. When reviewing the sufficiency of the evidence in a criminal case, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 Mich 748, amended 441 Mich 1201 (1992).

MCL 750.110a(3); MSA 28.305a(3) defines a person guilty of second-degree home invasion as one "who breaks and enters a dwelling with intent to commit a felony or a larceny in the dwelling or . . . who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling . . ." In Michigan, the use of any force, including the opening of a door, is sufficient to constitute the element of breaking. *People v Wise*, 134 Mich App 82, 88; 351 NW2d 255 (1984).

In this case, the complainant heard a noise coming from inside his apartment and noticed that his door, which had been locked, was open and that someone had tampered with the lock. His apartment was in disarray. He heard noise from the back. The back door, which also had been locked, was open. The complainant discovered defendant outside of his back door in an enclosed stairwell that could be entered only by way of the apartments. In the stairwell area near defendant, the complainant found his pillowcase containing two vases from his apartment. Also, defendant admitted to both the complainant and the investigating officer that she had been inside the apartment. Viewed in a light most

favorable to the prosecution, a rational trier of fact could find that defendant entered the apartment through the locked front door and gained entry to the back stairwell area by way of the apartment. *Wolfe, supra* at 515. Therefore, the evidence established a breaking beyond a reasonable doubt. *Wise, supra* at 88.

Defendant also argues that, because of a discrepancy between the Judgment of Sentence and the transcript of her sentencing hearing, this Court should remand this case for resentencing or clarification of her sentence. Resentencing is not required here. Nonetheless, we agree that the trial court should correct the sentencing hearing transcript.

The discrepancy between the Judgment of Sentence and the transcript of defendant's sentencing hearing presents a choice between a rational possibility and one that is absurd. The variation must be due to an error in the transcript, as the trial court could not have sentenced defendant to a term of imprisonment with a *minimum* of ten years and a *maximum* of five years. A court speaks through its orders rather than its verbal decisions. *People v Kennedy*, 384 Mich 339, 343; 183 NW2d 297 (1971); *People v Hill*, 69 Mich App 41, 42; 244 NW2d 357 (1976). The Judgment of Sentence reflects that the court sentenced defendant to a term of imprisonment of ten to fifteen years. Therefore, the discrepancy should be resolved in favor of the Judgment of Sentence and we remand so that the trial court may correct the error in the transcript. MCR 6.435.

Defendant next asserts that the trial court abused its discretion when it sentenced her to ten to fifteen years as an habitual offender. We disagree. We review sentencing decisions by applying an abuse of discretion standard. *People v Milbourn*, 435 Mich 630, 634-635; 461 NW2d 1 (1990). A sentence constitutes an abuse of the trial court's discretion if it violates the principle of proportionality. *Id.* at 636. The principle of proportionality requires sentences to be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.* This court's review of an habitual offender sentence is limited to considering whether the sentence violates the principle of proportionality without reference to the sentencing guidelines. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).

The purpose of habitual offender sentence enhancements is to deter recidivism by increasing the punishment for subsequent offenders. *People v Doyle*, 451 Mich 93, 102; 545 NW2d 631 (1996). Defendant's convictions for three prior felonies reflect the need for deterrence. As an habitual offender, defendant was subject to a maximum penalty of life in prison, MCL 769.12(1)(a); MSA 28.1084(1)(a); however, the court sentenced defendant to a term of imprisonment of only ten to fifteen years. Defendant's sentence did not violate the principle of proportionality and was not an abuse of discretion. *Milbourn, supra* at 634-636.

Finally, defendant argues that the trial court did not sufficiently articulate its reasons for the imposed sentence. Defendant did not raise this issue in her statement of questions involved as required by MCR 7.212(C)(5). Thus, the issue is not properly before this Court. Therefore, we decline to review defendant's articulation argument. *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990).

Defendant's conviction is affirmed, but we remand to the trial court to correct the sentencing hearing transcript. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard Ryan Lamb