

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM BRIAN O'CONNOR,

Defendant-Appellant.

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UNPUBLISHED

July 6, 2001

No. 221033

Huron Circuit Court

LC No. 99-004051-FH

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), and second-degree criminal sexual conduct (CSC II), MCL 750.520c (sexual contact during commission of a felony). He was sentenced to concurrent sentences of five to twenty years' imprisonment for the home invasion conviction, and four to fifteen years' imprisonment for the CSC II conviction. We affirm.

Defendant first argues that insufficient evidence was presented to support his conviction for first-degree home invasion. When considering a claim of insufficient evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find the elements of the crime were proved beyond a reasonable doubt. *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000).

To convict defendant of first-degree home invasion, the prosecution was required to prove that defendant broke into and entered the complainant's residence while armed with a dangerous weapon or while a person other than defendant was lawfully within the dwelling, with the intent to commit a larceny or other felony. MCL 750.110a(2). The underlying felony charged here was assault with intent to do great bodily harm less than murder, MCL 750.84, which requires proof of (1) an attempt or threat with force or violence to do corporal harm to another, and (2) an intent to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

Defendant's sole claim of error with regard to this issue is that insufficient evidence was presented to support the jury's finding that at the time he and his co-defendant at trial, David Taylor, entered the complainant's home, they possessed the requisite intent to do great bodily harm less than murder. Defendant asserts that the evidence was not sufficient to show intent

because he and Taylor took no weapons or weapon-like items into the house with them and because the injuries sustained by the complainant were minor. This argument fails, however, because (1) possession or use of a weapon is not necessary to a conviction for this crime; bare hands are sufficient, *People v VanDiver*, 80 Mich App 352, 356; 263 NW2d 370 (1977), and (2) no actual physical injury is necessary to satisfy the elements of the crime. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992); see also CJI2d 17.7. Further, the testimony of the officers who arrived at the scene during the assault and the testimony of the complainant and his wife concerning the assault and threats made during the assault was sufficient to establish the intent to do great bodily harm less than murder. Additionally, the evidence supported an inference that defendant possessed the requisite intent when he entered the home.

Defendant next argues that he was denied a fair trial due to the ineffective assistance of counsel because his counsel failed to object to the testimony offered by two witnesses, both law enforcement officers who responded to the scene, with regard to whether sexual assault victims generally delay reporting alleged sexual assaults. Because defendant did not move for a new trial or *Ginther*<sup>1</sup> hearing, our review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). To establish ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced defendant that he was denied the right to a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). To establish prejudice, "a defendant must demonstrate 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different . . .'" *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000), quoting *People v Mitchell*, 454 Mich 145, 167; 560 NW2d 600 (1997).

Although the record shows that defense counsel did object to the testimony of the first witness on the ground that the testimony was irrelevant, and that the objection was overruled, defendant claims on appeal that defense counsel was ineffective for not objecting on the basis that the witnesses were providing "expert testimony" when they were not qualified as experts. Even assuming error, however, defendant has not shown that but for that error, the outcome of the proceedings would have been any different. Defense counsel skillfully cross-examined both witnesses and revealed for the jury the limited experience the witnesses possessed with regard to the opinions they expressed. Thus, reversal is not warranted on the basis of ineffective assistance of counsel.

Finally, defendant argues that he was denied a fair trial because the trial court refused to allow a witness, whom defendant listed only one day before trial and well after the cutoff date established in the court's pretrial order, to testify on his behalf, because the witness could have been disclosed sooner. We review a trial court's decision regarding the late endorsement of a witness for an abuse of discretion. *People v Sullivan*, 97 Mich App 488, 491; 296 NW2d 81 (1980).

Defendant contends that the excluded testimony would have established that at the time defendant and Taylor left a bar on the night of the assault, they were in good spirits and planning

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<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

to attend a party at the bartender's home, thus drawing into question their intent to invade the complainant's home and assault him. However, both defendant and Taylor testified that it was only after leaving the bar that they decided to go to the complainant's home. Thus, even assuming that the trial court abused its discretion in refusing to admit the proffered testimony on the basis that the witness could have been disclosed sooner, because defendant has not demonstrated that any error in the exclusion of the testimony undermined the reliability of the verdict, reversal on this basis is not warranted. *People v Rodriguez*, 463 Mich 466, 474; 620 NW2d 13 (2000); *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Affirmed.

/s/ Richard A. Bandstra  
/s/ Helene N. White  
/s/ Jeffrey G. Collins