

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY JOSEPH MITCHELL,

Defendant-Appellant.

UNPUBLISHED

August 28, 2001

No. 225875

Monroe Circuit Court

LC No. 99-030058-FH

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for second-degree home invasion, MCL 750.110a. We affirm.

Defendant's conviction arises out of a break-in at the house of one of his clients. On appeal, he asserts that there was insufficient evidence to support his conviction. We disagree.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

The testimony showed that defendant was scheduled to come to complainant's house to give her an estimate for cutting down two trees. Defendant arrived minutes after complainant left for work. When complainant returned home the next day, she found the side door of the house was broken in, and jewelry, a cell phone, and lingerie were missing. A neighbor had observed defendant at the house for approximately forty-five minutes. Before he left, defendant told the neighbor that it looked like complainant's house had been broken into. Viewed in a light most favorable to the prosecution, the evidence was sufficient to allow the jury to find defendant guilty beyond a reasonable doubt.

Defendant argues that he was denied the effective assistance of counsel by the manner in which trial counsel conducted voir dire. To establish an ineffective assistance of counsel claim,

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

defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

There is no showing that any alleged deficiencies in conducting voir dire resulted in prejudice to defendant. The jurors who were impaneled uniformly expressed the ability to impartially perform their duties. There is no showing that counsel made a mistake so serious that he was not functioning as an attorney as guaranteed under the Sixth Amendment. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel