

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

SAMUEL JAMES,

Defendant-Appellant.

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UNPUBLISHED

September 10, 2002

No. 233759

LC No. 00-012155

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3), and was sentenced to a prison term of three to fifteen years. Defendant appeals as of right. We affirm.

Defendant argues that the evidence presented was insufficient to support his conviction. Specifically, defendant argues that the evidence presented failed to establish that the residence where the offense occurred was a “dwelling” at the time of the offense. We disagree.

A person who breaks and enters a dwelling with intent to commit a felony or a larceny in the dwelling or a person who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling is guilty of second-degree home invasion. MCL 750.110a(3). A “dwelling” is defined as “a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure.” MCL 750.110a(1)(a). A residence does not need to be occupied when the crime takes place in order to be defined as an occupied dwelling. *People v Hider*, 135 Mich App 147, 151; 351 NW2d 905 (1984). The duration of an absence does not matter; rather, it is the intent to return to the residence that controls. *Id.* at 151-152.<sup>1</sup>

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<sup>1</sup> Although *Hider* involved the offense of breaking and entering an occupied dwelling, in 1994 the breaking and entering statute, MCL 750.110, was amended to provide for the separate offense of home invasion, MCL 750.110a; MSA 28.305(a). *People v Warren*, 228 Mich App 336, 348 n 4; 578 NW2d 692 (1998), aff’d in part and rev’d in part on other grounds 462 Mich 415 (2000). By amending the statute, the Legislature effectively replaced the former offense of breaking and entering an occupied dwelling with intent to commit a felony or larceny therein with the more broadly defined offense of home invasion. *Id.* at 352. Thus, the analysis is

Viewed in the light most favorable to the prosecution, *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1991), the evidence showed that the owner of the home intended to “live there and die there” and that she was merely temporarily absent from the home at the time the offense occurred. This evidence was sufficient to allow a rational trier of fact to find that the residence was a dwelling. *Wolfe, supra*.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

/s/ Hilda R. Gage

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equally applicable in this case.