STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 22, 2002
v	No. 234457 Oakland Circuit Court
LISA ANN JACKSON, Defendant-Appellant.	LC No. 99-169209-FH

Before: Jansen, P.J., and Holbrook, Jr., and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), and was thereafter sentenced as a second-offense habitual offender, MCL 769.10, to a term of eighteen months of probation with the first year in the county jail. Defendant appeals as of right, and we affirm.

Defendant first argues that there was insufficient evidence adduced at trial to support her conviction of first-degree home invasion. When determining whether sufficient evidence was presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

The first-degree home invasion statute provides:

> A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:
>
> (a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling. [MCL 750.110a(2).]

Consistent with the prosecutor's theory of the case, the trial court instructed the jury that in order to find defendant guilty of first-degree home invasion, it had to find beyond a reasonable doubt that (1) when defendant entered, was present in or was leaving the dwelling, she either intended to commit an assault or committed an assault, and (2) when defendant entered, was present in or was leaving the dwelling, she either was armed with a dangerous weapon or another person was lawfully present in the dwelling. In the present case, defendant had also been charged with felonious assault, but was acquitted of that offense. Defendant's contention is that because the jury acquitted her of the felonious assault charge, it found that defendant did not intend to commit or actually commit an assault when she was in the victim's house and, therefore, that she could not be convicted of first-degree home invasion.

The offense occurred on October 26, 1999. Defendant and the complainant knew each other because they had previously worked together. A year before the incident, defendant had left some clothing at the complainant's home, they subsequently had a "falling out" in January 1999, and defendant then wished to collect her clothing in October 1999. The complainant, however, had donated the clothing to a charity. Defendant called the complainant and demanded her clothes, and later went to the complainant's house and entered without knocking. According to the complainant, defendant demanded her coat, was loud and obnoxious, and the complainant saw a knife in defendant's back pants pocket. The complainant called the police and defendant proceeded to throw the complainant's clothing from a closet into the living room. Defendant then threatened the complainant with a knife and the complainant followed defendant upstairs. While upstairs, defendant again threatened the complainant with the knife while defendant scratched the complainant. The knife dropped to the floor, and defendant then ran into another room. The complainant picked up the knife, and defendant later came out of the room, at which point she again began to struggle with the complainant. The complainant then stabbed defendant with the knife.

Defendant's friend, who had gone with defendant to the complainant's house, ultimately entered the house when she noticed the struggle and attempted to separate the two women. The complainant's neighbor, who was also aware of the struggle, then entered the complainant's house with one of the complainant's dogs and was armed with a shotgun. The police arrived shortly thereafter and ended the fight.

Based on this evidence adduced at trial, the jury could have found the elements of first-degree home invasion beyond a reasonable doubt based on the theory that defendant committed an assault while she was present in the complainant's dwelling. The fact that the jury acquitted defendant of the felonious assault charge does not compel the conclusion that the jury did not find that defendant had the specific intent to commit an assault when she unlawfully entered the complainant's dwelling with respect to the first-degree home invasion charge. Here, the evidence was sufficient for the jury to find beyond a reasonable doubt that defendant was guilty of first-degree home invasion under the theory that defendant entered the complainant's dwelling without permission and committed an assault while armed with a knife in the dwelling. Moreover, even if the verdict is inconsistent, jury verdicts need not be consistent, and juries are allowed to exercise leniency. *People v Torres,* 452 Mich 43, 75; 549 NW2d 540 (1996); *People v Vaughn,* 409 Mich 463, 465-466; 295 NW2d 354 (1980).

Defendant also argues that the trial court erred when it failed to instruct the jury on imperfect self-defense with respect to the charge of first-degree home invasion. Defendant did not request this instruction below, nor was any objection lodged with respect to the instructions. Consequently, this issue has been forfeited. To avoid forfeiture, plain error must have occurred that affected defendant's substantial rights. *Carines, supra* at 763.

Plain error did not occur here because defendant did not proffer a defense of imperfect self-defense at trial and did not request such an instruction. Further, a theory of imperfect self-defense would not apply to a charge of first-degree home invasion. Imperfect self-defense applies only where a defendant would otherwise have been entitled to a self-defense claim had the defendant not been the initial aggressor. *People v Butler*, 193 Mich App 63, 67; 483 NW2d 430 (1992). Such a defense is simply inapplicable to a charge of first-degree home invasion; rather, it would apply to homicide or assault offenses. Accordingly, there was no error where no instruction was given on imperfect self-defense.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Jessica R. Cooper