

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

STEVEN W. PATROWIC,

Defendant-Appellee.

UNPUBLISHED

March 6, 2007

No. 267864

Wayne Circuit Court

LC No. 05-008942

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant appeals by right his convictions and sentences for first-degree home invasion, MCL 750.110a(2), and assault with intent to do great bodily harm less than murder, MCL 750.84. He was sentenced to concurrent prison terms of 95 months to 20 or 10 years. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arose from an incident in which he pushed his way into his sister's apartment on the morning of August 22, 2005. When she refused defendant's request for money and told him she had to leave, he threatened to kill her and struck her numerous times with his fists and a length of metal pipe.

On appeal, defendant first contends there was insufficient evidence to support his conviction of first-degree home invasion. We review de novo a challenge to the sufficiency of the evidence for a conviction. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

A defendant is denied due process of law if convicted on the basis of less than legally sufficient evidence. *In re Winship*, 397 US 358; 90 S Ct 1068; 25 L Ed 2d 368 (1970). The prosecution must introduce evidence sufficient to justify a rational trier of fact in concluding that all of the essential elements of the crime were proved beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). When reviewing a challenge to the sufficiency of the evidence, we must examine the evidence in the light most favorable to the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). This includes all determinations as to the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Under MCL 750.110a(2), a person commits first-degree home invasion if he enters a dwelling without permission; commits a felony, larceny, or assault at any time while entering, present in, or exiting the dwelling; and another person is lawfully present in the dwelling. In the instant case, defendant asserts that because the evidence shows he completed the crime of assault with intent to do great bodily harm less than murder in the hallway outside the apartment, no rational jury could have convicted him of first-degree home invasion. We disagree. The complainant testified that the incident began when defendant came up behind her and pushed her into the apartment. Thus, a rational jury could have determined that defendant assaulted the complainant while he was in the process of entering her dwelling.

Further, assault with intent to do great bodily harm is a specific intent crime. *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). To convict a person of this offense, the prosecution must establish “(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). Here, the complainant testified she spoke with defendant after he pushed her into the apartment. He did not threaten or begin to strike her until she refused his request for money and told him she had to leave. Based on this evidence, the trier of fact could have found that defendant did not develop the requisite intent and thus did not commit an assault with intent to do great bodily harm until after he had entered the dwelling.

Viewing the evidence in the light most favorable to the prosecution, a rational jury could have found beyond a reasonable doubt that (1) defendant entered the complainant’s apartment without her permission, (2) he committed the felony of assault with intent to do great bodily harm less than murder either while entering or while present in her apartment, and (3) this occurred while the complainant was lawfully present. Consequently, we affirm defendant’s first-degree home invasion conviction.

In the second issue on appeal, defendant asserts the trial court erred when computing his minimum sentence under the sentencing guidelines. Specifically, defendant asserts the court abused its discretion in assessing 10 points for offense variable 10 (OV 10) because no evidence existed to support a finding that he exploited a domestic relationship.

The proper construction or application of statutory sentencing guidelines presents a question of law that this Court reviews de novo. *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001). A sentencing court has discretion in determining the number of points to be scored under an offense variable, provided that evidence on the record adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Under MCL 769.34(10), this Court is required to affirm sentences within the legislative guidelines’ range unless the trial court erred in scoring the sentencing guidelines or relied on inaccurate information in determining the defendant’s sentence. The facts relied on by a trial court when assessing a particular score under the sentencing guidelines need not have been found by the jury when rendering its verdict. *People v Drohan*, 475 Mich 140, 143, 164; 715 NW2d 778 (2006). “Rather, all that is required is that evidence exists that is adequate to support a particular score.” *People v Williams*, 191 Mich App 269, 276; 477 NW2d 877 (1991). This

Court will uphold a sentencing court's scoring decision if there is any evidence in the record to support it. *People v Spanke*, 254 Mich App 642, 647; 658 NW2d 504 (2003).

In construing the statutory sentencing guidelines, courts must discern and give effect to the intent of the Legislature. *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999). The process begins an examination of the plain language of the statute. *Id.* at 330. When that language is unambiguous, Courts must "presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." *Id.*

OV 10 deals with the exploitation of vulnerable victims. MCL 777.40. A sentencing court properly assesses ten points under MCL 777.40(1)(b) if:

The offender exploited a victim's physical disability, mental disability, youth or agedness, or a *domestic relationship*, or the offender abused his or her authority status. [Emphasis added.]

As used in the statute, the term "exploit" means to "manipulate a victim for selfish or unethical purposes." MCL 777.40(3)(b).

The sentencing guidelines do not define "domestic" or "domestic relationship." If a statute does not provide a definition for a particular term, courts must "give the term its plain and ordinary meaning." *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 522; 676 NW2d 207 (2004). "When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate." *Id.* Random House Webster's College Dictionary defines "domestic" as "1. of or pertaining to the home, family, or household affairs. 2. devoted to home life." Based on these definitions, to have a "domestic relationship," there must be a familial or cohabitating relationship.

Contrary to defendant's argument on appeal, the record contains some evidence to support a finding that a domestic relationship existed between defendant and the complainant. A familial relationship exists in that the complainant is the defendant's sister. Although defendant did not reside in the apartment at the time of the incident and had not spent the night there in over a year, he had at one point lived there for several months. Defendant continued to keep a pair of pants and a coat at the apartment with the complainant's permission. Further, he took part in household affairs, coming over regularly to help care for the cats living in the apartment, several of which belonged to him.

Additionally, the complainant's testimony provides evidence that defendant acted to exploit this relationship. After pushing her into the apartment, defendant asked the complainant for money and said he wanted some coffee. When she refused, he threatened and beat her. Based on this testimony, the trial court could have concluded that defendant's actions were an attempt to manipulate his sister for his own selfish purposes.

Because evidence to support a finding that defendant exploited a domestic relationship with the complainant exists on the record, we must uphold the trial court's decision to assess ten points for OV 10. *Spanke*, *supra* at 647. In addition, because defendant's minimum sentence

falls within the guidelines' range and the trial court did not err in scoring the sentencing guidelines, we must affirm defendant's sentence. MCL 769.34(10).

We affirm.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Kurtis T. Wilder