

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONTE ALEXANDER STITT,

Defendant-Appellant.

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UNPUBLISHED

May 12, 2009

No. 284097

Oakland Circuit Court

LC No. 2007-215314-FH

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of first-degree home invasion, MCL 750.110a(2),<sup>1</sup> for which he was sentenced to ten to 20 years in prison. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence presented at trial was insufficient to convict him because it did not establish that he committed an assault while entering, exiting, or present within the dwelling. We disagree.

When reviewing the sufficiency of the evidence in a criminal case, we view the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v James*, 267 Mich App 675, 677, 705 NW2d 724 (2005); *People v Osantowski*, 274 Mich App 593, 612-613; 736 NW2d 289 (2007), rev'd in part on other grounds 481 Mich 103; 748 NW2d 799 (2008). We are required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

The elements of first-degree home invasion are: (1) the defendant broke into and entered a dwelling without permission, (2) while intending to commit or actually committing a felony, larceny, or assault while entering, exiting, or present within the dwelling, and (3) another person was lawfully present in the dwelling or the defendant was armed with a dangerous weapon.

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<sup>1</sup> Defendant also was convicted of domestic violence, MCL 750.81(2), and resisting arrest, MCL 750.81d(1). After the jury was unable to reach a verdict on a count of aggravated stalking, MCL 750.411i, the prosecution dismissed that charge.

MCL 750.110a(2); *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004). An assault is an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery. *People v Reeves*, 458 Mich 236, 240; 580 NW2d 433 (1998). A battery is defined as “the willful touching of the person of another by the aggressor or by some substance put in motion by him; or, as it is sometimes expressed, a battery is the consummation of the assault.” *People v Bryant*, 80 Mich App 428, 433; 264 NW2d 13 (1978), quoting *Tinkler v Richter*, 295 Mich 396, 401; 295 NW 201 (1940).

On April 5, 2007, at approximately 3:30 a.m., the victim left her home to go to work. As the victim walked to her car, defendant appeared and told the victim to go back inside the home.<sup>2</sup> The victim testified that she was frightened and told defendant that she did not want to do so. When the victim refused his demand, defendant grabbed her and started pulling her toward the porch. Defendant told her that he would stab her if she screamed. The victim continued to struggle as defendant tried to wrestle her up the porch. The victim refused to unlock the door or give defendant her keys, so he bit her on her cheek. The victim finally released her grip on the keys, and defendant opened the door and pulled her inside of the home with him. A neighbor testified that he saw the struggle outside and saw someone push the victim inside the home. The neighbor called the police.

Once inside, defendant told the victim in an angry tone to remove all her clothes. The victim testified that she complied because she knew there would be consequences if she did not obey defendant. Defendant put a crack pipe to the victim’s lips and told her she would die if she did not smoke the crack.

A short while later, the police knocked on the door. Defendant told the victim to get on the floor so that they could crawl to the bathroom. While in the bathroom, the victim’s cellular telephone rang. The victim convinced defendant that she had to answer the phone because it might be her employer, and if she did not answer the call, her employer would most likely call the police to check on her. The phone call was actually from the police, but the victim talked to them as if she was talking to her employer in order to avoid upsetting defendant. After the phone call, the police officers entered the home, found defendant hiding in a closet, and arrested him.

Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). We must view the evidence in a light most favorable to the prosecution, *Tombs, supra* at 459; *Osantowski, supra* at 612-613, and must resolve all conflicts in the evidence in favor of the prosecution. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

“It is for the trier of fact, not the appellate court, to determine what inferences may fairly be drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Questions of credibility and

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<sup>2</sup> The victim and defendant had known each other for approximately 12 years. They married on July 9, 2004, but separated in March 2006.

intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). We are required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *Nowack, supra* at 399.

We find that the prosecution presented sufficient evidence at trial to prove to a rational jury beyond a reasonable doubt that defendant committed first-degree home invasion. Defendant surprised the victim at 3:30 a.m., grabbed her, wrestled her to the top of the porch, and threatened to stab her if she screamed; defendant bit the victim on the cheek in order to get her keys so that he could unlock her door; defendant either pushed or pulled the victim inside the home; once inside, defendant ordered the victim to remove all her clothes; and defendant forced her to smoke crack, telling her that she would either do so or die.

The jury could have found that defendant, by grabbing the victim, wrestling her to the top of the porch, threatening to stab her if she screamed, and biting her to get her keys, was committing these unlawful acts to place the victim in fear of receiving an immediate battery while defendant was attempting to enter the home. The jury could have found that defendant, by physically pushing or pulling the victim inside the home, committed this unlawful act to place the victim in fear of receiving an immediate battery while defendant was actually entering the home. The jury could have found that defendant, by forcing the victim to smoke crack, and by threatening to kill her if she did not smoke it, was committing an unlawful act to place the victim in fear of receiving an immediate battery while defendant was present within the home. The evidence adduced at trial was sufficient for the jury to find defendant guilty beyond a reasonable doubt of first-degree home invasion.

Affirmed.

/s/ David H. Sawyer  
/s/ Christopher M. Murray  
/s/ Cynthia Diane Stephens