STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY SPENCER,

Defendant-Appellant.

UNPUBLISHED
December 29, 2009

No. 289895
Wayne Circuit Court
LC No. 08-009276-FH

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of 85 months to 20 years. He appeals as of right. We affirm.

The complainant testified that she allowed defendant, a former boyfriend, to spend the night at the house where she was living. She told him that he would have to leave in the morning. When she asked him to leave the following morning, an argument ensued, and defendant shoved her. The complainant repeatedly asked him to leave and he walked out of the door. The complainant then locked the doorknob to the security gate and, after listening to defendant scream for a minute or two, closed the inner white door. Defendant knocked on the door. The complainant opened the inner white door and defendant continued to scream at her. She asked him to stop, shut the white door again, and called the police.

Defendant walked around to the side of the house and tore down an awning. The complainant saw him with a stick in his hand. Defendant repeatedly threatened her, so she called the police again. The complainant then heard a noise that sounded like the unlocking of the security door. The lock on the door handle was accessible from the outside because of an area of glass that was previously broken. The complainant retrieved a shotgun, loaded a shell into it, and put another shell by the table. When defendant came through the inner white door, the complainant raised the gun up. Defendant advanced, and the complainant fired a shot to get him to leave. Defendant attempted to grab the gun from her. The complainant unsuccessfully tried to load the second shell, but raised the gun as if to shoot again. She asked defendant to leave, and he

did. When defendant was stopped by the police, he was bleeding profusely from his face. He acknowledged that he had been shot, but claimed that he did not know who shot him.

On appeal, defendant argues that the evidence was insufficient to support his conviction because the complainant gave him permission to enter her residence and he had not left the curtilage before the incident occurred.

In evaluating a challenge to the sufficiency of the evidence at a bench trial, "this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. Findings of fact by the trial court may not be set aside unless they are clearly erroneous." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006) (citations omitted).

In this case, defendant's first-degree home invasion conviction was premised on "enter[ing] a dwelling without permission," rather than breaking and entering a dwelling. See MCL 750.110a(2). "'Without permission' means without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling." MCL 750.110a(1)(c). "'Dwelling' means a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter." MCL 750.110a(1)(a). We disagree with defendant's argument that the complainant's earlier grant of permission to allow him to enter the dwelling was an irrevocable grant to re-enter at will until he left the curtilage. The complainant testified that she did not give defendant permission to re-enter after she told him to leave. Further, the evidence showed that after defendant left, the complainant closed the door and locked it, thereby signaling that defendant did not have permission to enter. The trial court's finding that defendant entered the home without permission is supported by the evidence and is not clearly erroneous.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brian K. Zahra