

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 20, 2012

v

DANA JOHN MARKLEY,

Defendant-Appellant.

No. 302627
Allegan Circuit Court
LC No. 09-016537-FH

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Defendant appeals as of right his first-degree home invasion, MCL 750.110a(2), jury conviction. We affirm.

On July 8, 2009, Donald Holden argued on the telephone with his sister, Tonya Markley, who was also defendant's wife. About an hour later, defendant arrived at Donald's house, squealing his vehicle's tires. Donald's teenage daughter, who overheard the heated telephone call, saw defendant arrive and specifically told defendant not to go into their house. She was afraid that defendant was there to cause trouble. Defendant ignored her and proceeded into the house, opening some of the doors in the house with such force that the doorknobs cracked the paneling on the adjacent walls. Upon seeing defendant, Donald told him to leave the house. Defendant then punched Donald in the face and, when Donald fell to the ground, defendant jumped on top of him. After Donald's daughter struck defendant in the back with a golf club, Donald was able to get to his feet, grab a canoe paddle, and chase defendant out of the house.

On appeal, defendant argues that there was insufficient evidence to support his first-degree home invasion conviction because (1) he had permission to enter the home and (2) he lacked intent to commit an assault upon entering the home. We disagree.

This Court reviews de novo a claim of insufficient evidence. *People v Erickson*, 288 Mich App 192, 195; 793 NW2d 120 (2010). We view the evidence presented in the light most favorable to the prosecution and determine whether a rational trier of fact could have found, including through reasonable inferences from the evidence, that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

There are three alternative elements of first-degree home invasion. MCL 750.110a(2); *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010). The first element is satisfied if the defendant either: (i) breaks and enters a dwelling or (ii) enters a dwelling without permission. The second element is satisfied if the defendant either: (i) intends when entering to commit a felony, larceny, or assault or (ii) actually commits a felony, larceny, or assault while present in, or while entering or exiting the dwelling. The third element is satisfied if, while the defendant is entering, present in, or exiting the dwelling, either: (i) the defendant is armed with a dangerous weapon or (ii) another person is lawfully present in the dwelling. See *id.*

Here, when viewed in the light most favorable to the prosecution, the evidence was sufficient to satisfy the elements of first-degree home invasion. First, the evidence was sufficient to enable a rational trier of fact to conclude that defendant entered the home without permission. While defendant may have had permission to enter the home on previous occasions, the evidence at trial was sufficient to show that defendant did not have permission to enter the home on the day of this incident. Donald's daughter—who overheard the argument on the telephone and saw defendant arrive at their house squealing his vehicle's tires—was worried that defendant was angry and going to cause trouble so she specifically told defendant not to enter the house. Her younger brother heard her tell defendant not to enter. Defendant entered anyway. And when Donald saw defendant in the house, he immediately told defendant to leave. Defendant did not leave. When viewed in a light most favorable to the prosecution, there was sufficient evidence to establish that defendant entered the house without permission.

Second, the evidence was sufficient to show that defendant intended, when entering Donald's home, to commit an assault. Defendant arrived at Donald's house squealing his vehicle's tires, ignored demands that he not enter the house, proceeded to open doors in the house with such force that the doorknobs cracked paneling on adjacent walls, ignored Donald's demand to leave, and almost immediately punched Donald in the face. A jury may infer a defendant's intent based on his actions and words. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). And, in any case, defendant did, in fact, actually commit an assault while in Donald's home. See *Wilder*, 485 Mich at 43. Third, defendant does not contest that other persons were lawfully present in Donald's house when defendant entered it and punched Donald in the face. Accordingly, the evidence was sufficient to support defendant's conviction.

In his supplemental brief, defendant also argues that he was denied the effective assistance of counsel because his trial counsel failed to “timely file a complete witness list of all known witnesses and failed to prepare for trial.” Because defendant failed to preserve this issue, our review is limited to mistakes apparent on the record. See *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007).

To establish a claim of ineffective assistance of counsel a defendant must show that: (1) counsel's performance fell below an objective standard of reasonableness, (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and (3) the resultant proceedings were fundamentally unfair or unreliable. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000); *People v Sabin (On Second Remand)*, 242 Mich App 656, 659; 620 NW2d 19 (2000).

First, defendant claims that his counsel's "failure to timely investigate, to interview witnesses and secure witnesses for trial deprived [defendant] of his right to the effective assistance of counsel." Second, defendant claims that his counsel was not prepared for trial. However, defendant fails to explain or rationalize either claim. That is, defendant does not allege who was missing from the witness list, what they allegedly would have testified about, or how that testimony would have been beneficial to him. And defendant does not indicate how, or demonstrate that, his attorney was unprepared for trial. We will not discover and rationalize the basis of his claims; thus, this issue is abandoned. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). In any case, nothing in the record supports defendant's claims or suggests that he was prejudiced in any way by counsel's performance. In fact, defendant was acquitted of a second charge. Accordingly, defendant has failed to establish that he was denied the effective assistance of counsel. See *Toma*, 462 Mich at 302; *Sabin (On Second Remand)*, 242 Mich App at 659.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Henry William Saad