STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 19, 2012
v	No. 303854 Midland Circuit Court
PAUL ARTHUR RIVARD, Defendant-Appellant.	LC No. 10-004647-FH

Before: BECKERING, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

A jury convicted defendant of second-degree home invasion, MCL 750.110a(3), and larceny in a building, MCL 750.360. The trial court sentenced defendant as a fourth-offense offender, MCL 769.12, to prison terms of 120 months to 25 years for the home invasion conviction and 95 months to 15 years for the larceny conviction. Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction of second-degree home invasion. When considering a claim of insufficient evidence, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201. We do not second-guess the jury's assessment of the weight and credibility of the evidence and testimony. *People v Bulmer*, 256 Mich App 33, 36; 662 NW2d 117 (2003). Our review of the evidence is deferential, and we draw all reasonable inferences in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

The prosecution must prove two elements for the crime of second-degree home invasion: (1) defendant entered a dwelling, either by a breaking or without permission, and (2) defendant either had the intent to commit or actually committed a felony, larceny, or assault. See *People v Nutt*, 469 Mich 565, 593; 677 NW2d 1 (2004).

Defendant does not deny that the crime actually occurred. Defendant only contends that insufficient evidence established his identity as the perpetrator of the crime and, in the alternative, that insufficient evidence established that he intended to commit a felony or larceny. We disagree. Evidence was presented that defendant began showing the complainant unwanted and odd attention shortly after the complainant and her family moved into the home next door to

defendant's home. The complainant testified that defendant informed her that he knew her husband's schedule[1] and that he paid close attention to the vehicles that came to and went from her home. She testified that defendant made unwelcome comments about her body, mowed her lawn without being asked, and offered to have a friend fix her van after the windows in the van had been broken. The complainant additionally described observing defendant walking down their adjacent driveways while zipping up his pants early one morning, then later that morning observing a man masturbating on her front porch. Though she did not see the face of the man on the porch, the complainant noted that the man was wearing the same clothing that defendant was had been wearing earlier that morning. In the approximate two months after the complainant moved into the home, her house was broken into eight or nine times. The break-ins all occurred when no one was home and while the complainant's husband was out of town. The complainant testified that defendant called her "bitch," among other names, and that after one of the break-ins "bitch" was carved on the top of the deadbolt on the door. Police officers eventually recovered a belt and shirt from defendant's fire pit. The complainant and her husband identified the items as their property. Defendant admitted to burning the items. The complainant also testified that she found a baby monitor under her dresser that did not belong to her family, and that defendant had made comments regarding complainant's private conversations that had taken place in her bedroom. Viewed in the light most favorable to the prosecution, this evidence was sufficient to allow the jury to infer that that defendant entered the home in question without permission and that while inside he took a belt and shirt. The evidence was sufficient to support each element of the offense of second-degree home invasion.

Defendant next argues that his convictions for second-degree home invasion and larceny in a building violate his double jeopardy protection against multiple punishments for the same offense. We disagree. Both the United States Constitution and the Michigan Constitution protect against being twice placed in jeopardy for the same offense. US Const, Am V; Const 1963, art 1, § 15. The Double Jeopardy Clause protects a defendant against (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *People v Conley*, 270 Mich App 301, 311; 715 NW2d 377 (2006). Regarding multiple punishments, "a defendant's protected interest is in 'not having more punishment imposed than that intended by the Legislature. The intent of the Legislature, therefore, is determinative.'" *Id.*, quoting *People v Robideau*, 419 Mich 458, 485; 355 NW2d 592 (1984). Thus, "there is no multiple punishment double jeopardy violation if there is a clear indication of legislative intent to impose multiple punishments for the same offense." *Conley*, 270 Mich App at 311. Defendant's double jeopardy rights were not violated because the express language of MCL 750.110a(9) provides: "Imposition of a penalty under this section does not bar imposition of a penalty under any other applicable law." Although the elements of larceny in a building are included in those of second-degree home invasion, the Legislature specifically provided for multiple punishments in cases like this. *Conley*, 270 Mich App at 311-312; *People v Shipley*, 256 Mich App 367, 378; 662 NW2d 856 (2003). Therefore, defendant's double jeopardy rights were not violated.

[1] The complainant's husband attended school out of town and came home on the weekends.

Defendant also argues that he was denied a fair trial by the admission of irrelevant and highly prejudicial testimony regarding his parole status. We disagree. After a police officer's unresponsive testimony that defendant was on parole, the trial court held a side bar and then instructed the jury to ignore the testimony regarding defendant's parole status. At the end of that day's proceedings, when asked by the trial court if the attorneys were satisfied with the curative instruction, defense counsel expressed satisfaction with the instruction. Because defense counsel approved the curative instruction, defendant has waived this issue on appeal. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000); *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001).

Defendant further argues that he was denied a fair trial by the admission of irrelevant and prejudicial testimony regarding his odd behavior toward the complainant. We disagree. Because defendant did not object to the testimony, we review this unpreserved evidentiary issue for plain error affecting substantial rights. *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004). Because the testimony regarding defendant's behavior enabled the jury better to understand the circumstances surrounding the relationship between defendant and his neighbors, see *People v Malone*, 287 Mich App 648, 662; 792 NW2d 7 (2010), and was relevant to show defendant's plan, scheme, or intent, *Knox*, 469 Mich at 509, the trial court did not plainly err by failing to *sua sponte* exclude this testimony.

Finally, defendant's argument that he is entitled to resentencing because Prior Record Variables (PRV) 7 and 13 were improperly scored is premised upon this Court agreeing with his argument that double jeopardy principles precluded his convictions of both second-degree home invasion and larceny in a building. Because we have rejected defendant's double jeopardy argument, defendant's challenges to the scoring of PRV 7 and PRV 13 are without merit. We need not address defendant's argument regarding PRV 2 because defendant concedes that a reduction in the scoring of this variable alone would not change the recommended range for his minimum sentence under the guidelines. Resentencing is not required if the erroneous scoring does not alter the minimum range. *People v Phelps*, 288 Mich App 123, 136; 791 NW2d 732 (2010). Accordingly, any error in the scoring of PRV 2 would be harmless.

Affirmed.

/s/ Jane M. Beckering
/s/ E. Thomas Fitzgerald
/s/ Cynthia Diane Stephens