STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAROLD ELLIOT BURSEY,

Defendant-Appellant.

UNPUBLISHED
December 16, 2003

No. 241709
Wayne Circuit Court
LC No. 00-008313-01

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Following a bench trial, defendant appeals by right his convictions of one count of first-degree home invasion, MCL 750.110a(2); four counts of assault with a dangerous weapon, MCL 750.82; and one count of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

I. Facts and Proceedings

Defendant's convictions arise out of incidents on June 16 and June 17, 2000, in Highland Park. Fannie Taylor (Mrs. Taylor) testified at trial that on June 16, 2000, while she and her husband, Louis Taylor (Mr. Taylor), were standing on the sidewalk between her home at 190 Colorado Street and the residence at 182 Colorado Street, Mr. Taylor asked defendant why he had the gas service turned off at 190 Colorado. Defendant denied the accusation, briefly left, and returned with a gun. When he returned, defendant argued with Mr. Taylor, pointed the gun at him, and threatened to kill him. According to Mrs. Taylor, defendant then asked his friend to retrieve a tire iron from his car. After defendant grabbed the tire iron, defendant turned and saw Mrs. Taylor, approached her with the gun, threatened her, and walked her back to her front porch with the gun at her back. Defendant then got into his car with his friends and left the scene after telling Mr. and Mrs. Taylor that he would kill them if they called the police. Despite defendant's threats, Mr. and Mrs. Taylor called the police and reported the incident.

Mrs. Taylor further testified that defendant returned to her home around 11:00 a.m. the next day with two of his friends and kicked the front door open. Upon entering the home, defendant, who was armed with a baseball bat, ordered his friend "Denard," who was armed with a gun, to shoot Mr. and Mrs. Taylor because they called the police and reported the first incident. When defendant began jabbing the bat into Mrs. Taylor's side, Mr. Taylor reached for a metal pole on the floor to use in their defense. Denard, however, threatened to shoot Mr. Taylor, and

Mrs. Taylor pleaded with Mr. Taylor not to fight back. Then, when defendant swung the bat at Mrs. Taylor's head, she reached up to stop the bat and the bat hit her hand, breaking every bone in every finger of her hand. Eventually, defendant's other friend, who had previously remained on the front porch, entered and told defendant and Denard that they all should leave. Mr. and Mrs. Taylor then went to a neighbor's house and called the police and EMS.[1]

Mr. and Mrs. Taylor further testified that the home where they lived was owned by Ronald Widemon, who also resided at 190 Colorado.[2] Mr. and Mrs. Taylor said they paid rent to Widemon in cash and did not have a written lease for the premises. At the time of the incidents, they had lived in Widemon's house for approximately four years. According to Mrs. Taylor, on June 16, 2000, Widemon was in Henry Ford Hospital in a coma, as he had been since the end of May 2000.[3] After the altercation on June 17, 2000, Mr. and Mrs. Taylor moved out of the residence at 190 Colorado because they feared for their safety.

Defendant testified that he purchased the home at 190 Colorado from Widemon in March 2000 and that Widemon deeded the property to him by quit claim deed in March.[4] Defendant also testified that the property was vacant at the time he purchased it and that he changed the locks in June 2000. Until June 16, 2000, defendant said, he was unaware that Mr. and Mrs. Taylor were living in the house. On that date, he walked up onto the front porch of the home, attempted to open the door, and discovered it was locked. Mr. and Mrs. Taylor opened the door, and defendant asked them why they were in the house. When they responded with "a whole bunch of riffraff," defendant left, but did not tell them that they could not live there. Additionally, defendant testified that on June 16, 2000, while he was in the living room of 182 Colorado with Mr. Taylor's granddaughter, LaTara Taylor (LaTara), who lived at 182 Colorado with Mr. Taylor's ex-wife, Mr. Taylor knocked on the door and accused defendant of having the gas and electricity turned off at 190 Colorado, which defendant denied.

Defendant testified that on June 17, 2000, he went to 190 Colorado around noon to work on the house, but that Mr. and Mrs. Taylor still had the door locked. According to defendant,

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[1] Mr. Taylor also testified to substantially the same sequence of events on June 16 and 17, 2000.

[2] The prosecution pursued this line of questioning in apparent anticipation of the defendant's theory of the case.

[3] Detective John Bennett of the Highland Park Department of Public Safety, testified that he contacted the Henry Ford Hospital during his investigation and learned that Widemon was in a coma at the time of these incidents, as he had been since sometime in May 2000. Testimony taken during the post-trial hearing regarding defendant's claim of ineffective assistance of counsel revealed that Widemon's coma resulted from head injuries he sustained in an assault. He did not recover from his injuries.

[4] On cross-examination, the prosecution produced a copy of the deed purporting to convey 190 Colorado to defendant. Defendant acknowledged that Widemon's signature on the deed, which defendant said Widemon wrote, was incorrectly spelled with an "a" in place of the "o". Widemon's name was also typed incorrectly below his signature. The deed was dated June 6, 2000 and was recorded June 9, 2000. During closing arguments, the prosecution argued that the deed was forged.

Mr. and Mrs. Taylor opened the door, but defendant and the two men who accompanied him, a laborer named Chuck Willard and another individual whose name defendant did not know, stayed on the front porch. Defendant said that he argued with Mr. and Mrs. Taylor on the front porch, but that no weapons were used during the argument. He testified that he had no knowledge of Mrs. Taylor breaking her hand on June 17.

The trial court found defendant guilty as charged and subsequently sentenced defendant to twenty months to four years' imprisonment for each assault conviction, twenty months to twenty years' imprisonment for the first-degree home invasion conviction, and two years' imprisonment for the felony-firearm conviction.

Thereafter, defendant moved for a new trial and a *Ginther*[5] hearing, asserting that his trial counsel failed to call witnesses who would have corroborated his trial testimony. Defendant attached affidavits from Clarence Price and LaTara in which they briefly stated what they observed on June 16, 2000. The trial court granted defendant's motion for a *Ginther* hearing, which it subsequently conducted. At the *Ginther* hearing, defendant's trial counsel, Wright Blake, testified that defendant did not tell him that Price and LaTara witnessed the events of June 16, 2000. Blake stated that during trial defendant told him that LaTara, who had accompanied defendant to trial, was his acquaintance and was related to one of the complainants. Blake testified that upon learning this, he questioned LaTara in a courthouse hallway. During their conversation, LaTara told Blake that she thought Mr. Taylor was lying, that she was next door during the altercation, and that she did not see defendant produce a gun. Blake also testified that LaTara did not tell him that she witnessed Widemon's signature on the deed.

Defendant, however, testified that he told Blake that LaTara and Price were potential trial witnesses in his case and that they had witnessed the entire incident on June 16. Price, defendant's friend, testified that he witnessed a "minor confrontation" involving defendant, Denard, Mr. Taylor, and a woman on June 16, 2000, outside the home at 190 Colorado Street, during which he saw Mr. Taylor point a metal pole at defendant and Denard. When the argument ended, Mr. Taylor went back inside the house and defendant and Denard drove away. Price said he observed the confrontation from approximately fifty feet away.

LaTara testified that on the afternoon of June 16, 2000, she and defendant were outside on the porch of the home at 182 Colorado when her grandfather, Mr. Taylor, arrived and asked defendant why he turned off the electricity and gas at 190 Colorado. LaTara testified that defendant told Mr. Taylor that he had the gas and electricity turned off because "y'all have to leave." She did not see defendant use a weapon during the altercation. LaTara further testified that although Blake asked her to step outside the courtroom during defendant's trial, he did not interview her regarding what she knew about defendant's case. She also stated that only she and defendant saw Widemon sign the deed conveying 190 Colorado. Although she did not recall when she saw Widemon sign the deed, she knew she saw him sign it before he entered the hospital and before the altercation between defendant and her grandfather.

[5] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

The trial court concluded that defendant's trial counsel had not been ineffective and denied defendant's motion for a new trial. Defendant now appeals.

II. Standards of Review

We review a defendant's challenge to the sufficiency of the evidence to determine whether, viewing the evidence in a light most favorable to the prosecution, "'any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.'" *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

We review the sufficiency of a trial court's findings of fact in a bench trial to determine whether

> the trial court was aware of the issues in the case and correctly applied the law. . . . The court need not make specific findings of fact regarding each element of the crime. . . . A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review. [*People v Legg*, 197 Mich App 131, 134-135; 494 NW2d 797 (1993)].

Although we review for abuse of discretion the trial court's denial of a defendant's motion for a new trial, we review de novo an underlying claim of ineffective assistance of counsel. *People v Kevorkian*, 248 Mich App 373, 410-411; 639 NW2d 291 (2001). To merit a new trial because of ineffective assistance of counsel, the defendant must sustain the heavy burden of demonstrating that his trial counsel's performance was so deficient that he was not functioning as constitutionally guaranteed 'counsel' and that trial counsel's performance prejudiced the defendant to the extent that it is reasonably probable that the outcome of the proceedings would have been different had counsel not erred. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001), quoting *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

III. Analysis

Defendant first argues that he was improperly convicted of first-degree home invasion because he owned the residence at 190 Colorado.[6] We disagree. Specifically, defendant

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[6] MCL 750.110a(2) states:

> A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time

(continued…)

challenges the sufficiency of the evidence to prove that he entered 190 Colorado without the permission of another person who was lawfully in the dwelling. However, Mr. and Mrs. Taylor both testified that Widemon owned the home where they lived, that they paid rent to live in the home, and that defendant and his companions kicked in the door and entered the home. Although defendant testified that he owned the home, that he recorded a valid deed to the home, and that Mr. and Mrs. Taylor did not have his permission to live there, defendant's testimony conflicts with Mr. and Mrs. Taylor's testimony and the evidence questioning the validity of Widemon's signature on the deed. We resolve all conflicts in the evidence in favor of the prosecution when reviewing a challenge to the sufficiency of the evidence. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Accordingly, the evidence was sufficient to sustain defendant's conviction.

Defendant next asserts that the trial court's findings of fact regarding the home invasion charge were insufficient. We disagree. When the trial court announced its findings of fact and conclusions of law, it initially omitted conclusions regarding the home invasion charge. After being reminded of the home invasion charge, the trial court stated: "That's right. Home invasion in the first degree is count one, of which the [d]efendant is adjudicated guilty based upon the findings of fact and conclusions of law heretofore iterated." Defendant argues that the trial court's factual findings are insufficient because they do not indicate how the trial court resolved the issues related to the home invasion charge, namely, whether Mr. and Mrs. Taylor were unlawfully present in defendant's home. On the contrary, the trial court's findings of fact, on which it relied to support its verdict on the home invasion charge, indicate that a confrontation occurred on June 16, 2000, between defendant and Mr. Taylor "upon Mr. Taylor's questioning of gas being turned off at *his* residence." (Emphasis added.) The trial court further stated:

> The following day, at approximately 11:00 a.m., the [d]efendant and two others reappeared at the residence on Colorado, the screen door of which had been locked was forced, and the main door, front door kicked in. Defendant was seen to be armed with a baseball bat, and his associate with a handgun.
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> The bat was brandished and the [c]omplainant and his wife, Mrs. Fannie Marie Taylor, were threatened by the [d]efendant with the baseball bat and with the handgun by the [d]efendant, threatening to shoot them. . . .

Contrary to defendant's assertions, the trial court did not merely state its ultimate finding on the home invasion charge in conclusory language. Rather, the trial court's findings of fact reveal that it gave credence to Mr. and Mrs. Taylor's version of events and rejected defendant's account. Moreover, the trial court was not required to specifically state that Mr. and Mrs. Taylor

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(…continued)

> while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:
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> (a) The person is armed with a dangerous weapon.
>
> (b) Another person is lawfully present in the dwelling.

were lawfully present in the home when defendant forcibly entered it. *Legg*, *supra*. We conclude that the trial court's factual findings were sufficient.

Finally, defendant claims he was denied the effective assistance of counsel because his trial attorney failed to call witnesses that would have corroborated his testimony concerning the events on June 16 and verified that he owned the residence at 190 Colorado. We disagree. Assuming that defendant's trial counsel knew that LaTara and Price were potential trial witnesses,[7] defendant has failed to demonstrate that his counsel should have called these witnesses or that their testimony would have affected the outcome of the proceedings because their testimony conflicted with, rather than corroborated, defendant's testimony at trial.

As stated above, defendant testified at trial that on June 16, 2000, after he tried to open the door at 190 Colorado, Mr. and Mrs. Taylor opened the door and defendant stayed on the porch and asked them why they were in the house. He did not testify to any altercation on the porch with Mr. Taylor and did not indicate that anyone accompanied him to 190 Colorado on that date. Defendant also testified that Mr. Taylor confronted him about the gas service at 190 Colorado in the living room of 182 Colorado and that he denied Mr. Taylor's accusation.

LaTara, however, testified that she and defendant were outside on the porch at 182 Colorado when Mr. Taylor confronted defendant about turning off the gas and electricity at 190 Colorado and that defendant admitted that he had it turned off because Mr. and Mrs. Taylor needed to leave. She also testified that only she and defendant saw Widemon sign the deed, despite the fact that the deed reflects the signatures of two other witnesses to Widemon's signature. Additionally, contrary to defendant's testimony, Price stated in his affidavit that the altercation he witnessed occurred on the lawn of 190 Colorado. He also testified during the *Ginther* hearing that Denard and defendant were both present during the altercation and that Mr. Taylor pointed a metal pole at them, which directly opposes defendant's trial testimony. Defendant, therefore, has not demonstrated that he was denied the effective assistance of counsel at trial.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Jessica R. Cooper

[7] When ruling on defendant's motion for a new trial, the trial court did not state its findings on this issue.