

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHEDEUS VANTELLO HIGGINS,

Defendant-Appellant.

UNPUBLISHED

February 17, 2011

No. 295675

Kalamazoo Circuit Court

LC No. 2009-000958-FH

Before: HOEKSTRA, P.J., and FITZGERALD and BECKERING293789, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.11a(2)(b). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to 78 to 360 months' imprisonment. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that his conviction for first-degree home invasion is not supported by sufficient evidence. We disagree.

We review de novo a challenge to the sufficiency of the evidence. *People v Chapo*, 283 Mich App 360, 363; 770 NW2d 68 (2009). We view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the prosecution proved the elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "The scope of review is the same whether the evidence is direct or circumstantial." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (quotation omitted).

To convict defendant of first-degree home invasion, the prosecution was required to prove beyond a reasonable doubt that (1) defendant broke and entered a dwelling, (2) when entering, he intended to commit a felony, larceny, or assault, and (3) another person was lawfully present in the apartment. MCL 750.110a(2)(b); *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010). Defendant contends that the prosecution failed to present sufficient evidence that he intended to commit a felony, larceny, or assault while in the apartment.

Because of the difficulty in proving a defendant's state of mind, minimal circumstantial evidence is sufficient to establish the defendant's intent. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). A defendant's intent may be proved by the nature, time, and place of the defendant's acts before and during the breaking and entering. *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988). Here, defendant kicked in the door to the apartment at 5:45 a.m. The victim testified that she heard defendant walking throughout the apartment, including her roommate's bedroom, and opening the doors to a large closet in the hallway. After the police arrived and defendant was taken into custody, the victim walked through the apartment with one of the officers and discovered that defendant had also opened one cabinet in the kitchen, as well as the pantry door. Viewing this evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant intended to commit a larceny. Defendant's conviction is supported by sufficient evidence.

Defendant also argues that defense counsel was ineffective because counsel failed to present evidence that the victim's roommate admitted that she emptied the contents of her purse onto her bed. We disagree. Because an evidentiary hearing has not been held on defendant's claim, our review is limited to the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000).

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 and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Judicial scrutiny of counsel's performance must be highly deferential. *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed2d 674 (1984). Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be taken in difficult cases. *People v Pickens*, 446 Mich 298, 325, 521 NW2d 797 (1994).

In the instant case, defense counsel allowed the jury to hear evidence of the purse based on a strategic decision. The purse was not mentioned by the victim, nor inquired of by the prosecutor, during direct examination. It was during cross-examination that defense counsel asked the victim if a laptop computer and items from the purse were laying in plain view. When the victim confirmed that they were, defense counsel then inquired whether any of the items were taken by defendant or otherwise "disturbed" in any way. After the victim answered "no," defense counsel went on to inquire whether there were other personal items that defendant had an opportunity to steal but did not. Defense counsel strategically focused on the fact that, although defendant had the opportunity to steal items, he took nothing from the apartment. This was a matter of trial strategy, and will not be second-guessed by this Court. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Defendant was not denied the effective assistance of counsel.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering