STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 22, 2011
v	No. 295550 Kent Circuit Court
CARL DIXON, Defendant-Appellant.	LC Nos. 09-003242-FH 09-003241-FH

Before: BORRELLO, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of and sentences for two counts of first-degree home invasion, MCL 750.110a(2).[1] Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent terms of 25 to 75 years in prison, to run consecutively to the sentences defendant was serving on parole at the time he committed the instant offenses. For the reasons set forth in this opinion, we affirm the convictions and sentence of defendant. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Defendant's convictions stem from his actions in an apartment complex in the late evening and early morning of March 11 and 12, 2009. The first charge (Docket No. 09-003241-FH) arose from defendant's entry into the apartment of Alexis Bonya and Nicholas Jones. The second charge (Docket No. 09-003242-FH) arose from defendant's entry into the apartment of Sahcha Johnson. Johnson testified that she went to a party store at approximately midnight on March 11, 2009, where she met defendant. The two exchanged phone numbers, and Johnson later drove defendant to her home. According to Johnson's trial testimony, when she later asked defendant to leave and offered to drive him home, he became upset when Johnson's friend did not want to accompany him. Johnson rescinded the offer to drive defendant and went back into her apartment. Defendant remained outside. Johnson heard defendant in the hallway, yelling

[1] Defendant was charged in two separate files, Docket No. 09-03241-FH and Docket No. 09-03242-FH. The cases were tried together.

and screaming, and calling to let him in. Johnson threatened to call the police if he did not go home, the noise stopped, but when Johnson looked out into the parking lot she saw defendant sitting in her van. Defendant reentered the building, threatened to break down the door, and stated that he had a gun. Defendant eventually kicked the door in and entered the apartment. Johnson testified that she was "scared for [her] life" because defendant had a screwdriver in his hand, and she did not know what he intended to do. Johnson ran past defendant and out of the apartment. Later, as the police arrived, defendant was coming down the steps, but ran back into her apartment and jumped out the window.

Jones testified that Johnson was his neighbor downstairs. He awoke between 6:00 a.m. and 6:50 a.m., heard the door bell "dingle", and then heard a loud thumping. He jumped up, grabbed a bat, told Bonya to call the police, and went outside the bedroom. He saw defendant in the hallway of the apartment, approaching him. Defendant was holding something that looked like a knife or a screwdriver. He told Bonya to call the police, and defendant stated, "The police won't do shit." Jones retreated to the bedroom because he was afraid for Bonya and was unsure what he was allowed to do to legally to defend himself. He shut the door, and held it closed. When he no longer heard anything, he left the bedroom. He stepped outside the apartment, to see defendant "donkey-kicking" the door to Johnson's apartment, and entering it. The police arrived, and Jones told them that he thought defendant was jumping out the window. Bonya's testimony corroborated Jones' testimony.

II. INSUFFICIENT EVIDENCE

Defendant first argues that the prosecution presented insufficient evidence to support either home invasion conviction. Specifically, he asserts that the prosecution failed to present evidence that defendant intended to commit an assault, or an attempted assault, while in either apartment and maintains that the witnesses did not describe behavior by defendant that would rise to the level of an assault or an attempted assault. We review a defendant's allegations regarding insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id*. Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences can fairly be drawn from the evidence and the weight to be accorded to those inferences. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992); *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

A conviction for first-degree home invasion requires proof that (1) defendant broke and entered a dwelling or entered a dwelling without permission; (2) the defendant (a) intended to commit a felony, larceny, or assault at the time of entry or (b) committed a felony, larceny, or assault while entering, present inside, or leaving the dwelling; and (3) did so either (a) armed

with a dangerous weapon or (b) while another person is lawfully present in the dwelling. MCL 750.110a (2); *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010).

In this case, the charged home invasions were each predicated on an assertion that defendant intended to commit an assault. An assault is "an attempt to commit a battery or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery." *People v Sanford*, 402 Mich 460, 479; 265 NW2d 1 (1978) (citation omitted).

As to defendant's entry into the home of Jones and Bonya, the evidence, when reviewed in the light most favorable to the prosecution, was sufficient to allow a reasonable juror to find beyond a reasonable doubt that defendant intended to commit an assault when he broke into the apartment. Jones testified that he saw defendant in the hallway approaching him and that defendant was holding what appeared to be a screwdriver or a knife. Jones also testified that he retreated into the bedroom, even though he was holding a baseball bat, both because he feared for Bonya's safety and because he was unsure about his right to self-defense. The evidence of defendant's violent entry into the apartment, his possession of a weapon, his refusal to retreat when he saw Jones and realized that the police had been called, the time of the entry, and Jones' reaction to defendant's presence, constituted circumstantial evidence of defendant's intent to at least place Jones in reasonable apprehension of receiving an immediate battery. Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). We find that the prosecution presented more than sufficient evidence to show that defendant intended to commit an assault when he broke into Jones and Bonya's apartment.

The evidence concerning defendant's intent while forcibly entering Johnson's apartment also supports his conviction on the second charge. Johnson testified that defendant became highly upset when thwarted in his attempt to have Johnson's friend join him for the evening, threatened to break down her door while stating that he had a gun, and forcibly entered her home while armed with a screwdriver, all of which made Johnson "scared for [her] life." This testimony supports a finding that defendant intended to place Johnson in fear of an immediate battery when he entered the apartment. The evidence was sufficient to support this conviction for first-degree home invasion.

III. SCORING OF OFFENSE VARIABLE 4

Defendant next argues that the trial court erred when scoring offense variable (OV) 4. Barring constitutional error, if a sentence is within the appropriate guidelines range, we must affirm the sentence unless the trial court erred in scoring the guidelines or relied on inaccurate information in determining the defendant's sentence. MCL 769.34(10); *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003); People *v Conley*, 270 Mich App 301, 316; 715 NW2d 377 (2006). A sentencing court has discretion in determining the number of points to be scored for each offense if record evidence adequately supports a particular score. *People v Leversee*, 243 Mich App 337, 349; 622 NW2d 325 (2000). "Scoring decisions for which there is any evidence in support will be upheld." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002), quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

MCL 777.34(1)(a) requires a score of ten points for OV 4 when the victim has suffered "[s]erious psychological injury requiring professional treatment." MCL 777.34(2) provides:

> (2) Score 10 points if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.

Defendant contends there was no evidence that Alexis Bonya suffered any psychological injury requiring professional treatment. This argument is meritless. Nicholas Jones submitted a victim impact statement prior to defendant's sentencing that stated:

> My fiancé Alexis was shaken up for a few days, getting nervous everytime (sic) she heard someone near our door. She also had a hard time sleeping, in fear that someone else would kick our door in.

In *People v Apgar*, 264 Mich App 321; 690 NW2d 312 (2004), this Court determined that a scoring of ten points for OV 4 was supported solely "[b]ecause victim testified that she was fearful during the encounter with defendant." *Id*. at 329. Here, fact that Bonya experienced fear, nervousness, and sleep disruption as a result of her encounter with defendant is sufficient to support the trial court's decision to score ten points for OV 4. *Id*.

Similarly, the trial court was presented with evidence to support this scoring of OV 4 with respect to the home invasion of Sahcha Johnson's apartment. As noted above, Johnson testified that she was "scared for [her] life" when defendant broke into the apartment. Under *Apgar*, the evidence was sufficient to support the scoring of OV 4.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood