STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 29, 2016
v	No. 328732 Mason Circuit Court
JON LLOYD MACCUNE, Defendant-Appellant.	LC No. 14-002907-FC

Before: RONAYNE KRAUSE, P.J., and O'CONNELL and GLEICHER, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree home invasion, MCL 750.110a(2), and domestic violence, MCL 750.81(2). The trial court sentenced defendant as a second-offense habitual offender, MCL 769.10, to 170 months to 30 years' imprisonment for his first-degree home invasion conviction with credit for 330 days served, and 93 days in jail with credit for time served on his domestic-violence conviction. Defendant now appeals as of right. We affirm defendant's convictions, but remand to the trial court for resentencing in light of *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015).

Defendant first argues that the evidence was insufficient to support his first-degree home invasion conviction. Specifically, defendant argues that there was insufficient evidence that he either broke and entered into the victim's apartment or entered her apartment without permission. We review a challenge to the sufficiency of the evidence de novo to determine whether the evidence, when viewed in the light most favorable to the prosecution, could permit a rational trier of fact to find the essential elements of the charged crime proven beyond a reasonable doubt. *People v Henry (After Remand)*, 305 Mich App 127, 142; 854 NW2d 114 (2014); *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). On review of the record, the evidence against defendant was overwhelming.

Pursuant to MCL 750.110a(2), the crime of first-degree home invasion requires, *inter alia*, breaking and entering into a dwelling or entry into a dwelling without permission. "Without permission" means "without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling." MCL 750.110a(1)(c). A "breaking" is accomplished if any amount of force, no matter how slight, is used to open a door or window or other means of ingress, even if that means

of ingress was already open. *People v Toole*, 227 Mich App 656, 659; 576 NW2d 441 (1998); *People v Davenport*, 122 Mich App 159, 161; 332 NW2d 443 (1982).

The evidence was amply sufficient to establish that defendant broke and entered the victim's apartment. The victim testified that the apartment door was closed and locked, that defendant was banging and kicking the door loudly, and that defendant was eventually able to force the door open and come inside. There was evidence that the door was extensively damaged shortly after the incident, to the point that the entire frame and other parts needed replacement. The damage was described as appearing "fresh," and there was testimony that the door had been functional prior to the incident. In any event, there was also evidence that defendant forced the door open and did not have permission to enter the apartment. Although there was some testimony that the victim may have partially opened the door at some point, there was considerable evidence from which the jury could reasonably have found that defendant used at least some force to push it open further in the process of entering.

In sum, a rational trier of fact, viewing the evidence in a light most favorable to the prosecution, could have found that the prosecution proved the essential elements of first-degree home invasion beyond a reasonable doubt. Therefore, the evidence is sufficient to support defendant's conviction. See *Wolfe*, 440 Mich at 513-516.

Defendant additionally argues that he is entitled to resentencing. Defendant lodges specific challenges to several offense variables, alleging that they were scored on the basis of inaccurate information. However, defendant also argues, and the prosecutor expressly agrees, that the trial court did not have the benefit of *Lockridge*, 498 Mich 358, or *People v Steanhouse*, 313 Mich App 1; 880 NW2d 297 (2015), lv granted 499 Mich 934 (2016), when it imposed defendant's sentence, and defendant is therefore entitled to be resentenced in light of those cases. Parties cannot stipulate to the law, but we agree with the parties. We decline to otherwise interfere with the trial court's sentencing determinations at this time, particularly in light of the parties' agreement and the trial court's greater familiarity with the case, and instead we vacate defendant's sentences and remand to the trial court for resentencing. We therefore express no opinion at this time regarding defendant's specific challenges to the specific offense variables.

We affirm defendant's convictions, we vacate defendant's sentences, and we remand to the trial court for resentencing consistent with *Lockridge* and its progeny. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher