STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 13, 2007
v	No. 270051 Oakland Circuit Court
JEREMY ANDREW SCHILLING, Defendant-Appellant.	LC No. 2005-203824-FH

Before: Borrello, P.J., and Jansen and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree home invasion, MCL 750.110a(2), and one count of assault and battery, MCL 750.81. The trial court sentenced defendant to 12 months' probation for each conviction, which reflected a downward departure from the legislative sentencing guidelines. Defendant successfully completed his term of probation. He now appeals his conviction of first-degree home invasion as of right. We affirm.

I. Facts

On July 30, 2005, defendant Jeremy Schilling's neighbor, Holly Hoensheid, hosted a party at her home. She invited defendant and his wife, Jessica Schilling, to the party. The party started at 3:00 p.m. Hoensheid's doors remained unlocked during the party. Defendant arrived at Hoensheid's home at approximately 5:30 p.m. At 11:30 p.m., he left and went home. Shortly thereafter, Jessica, Hoensheid, and Hoensheid's friends, Brooke Adams and David Pellitti, went to defendant's home to have more drinks. They were intoxicated. Once inside, Pellitti vomited on defendant's furniture. Defendant became upset with Jessica for bringing drunken individuals into their home. He grabbed her by her upper arms, pushed her against the entertainment center, and screamed profanities at her. Defendant told everyone to leave, except for Jessica, as he did not want her to return to the party. Hoensheid testified that she was concerned that the situation, and defendant's violence toward Jessica, could escalate. Thus, she escorted Jessica back to her house, and told defendant that he and Jessica could work things out in the morning. Hoensheid also testified that, after observing defendant's behavior, she did not want him to come back to her house, though she never told defendant that fact. When Hoensheid and Jessica arrived at Hoensheid's home, the party was winding down. Everyone was inside and most of the guests who remained at Hoensheid's home were spending the night. Hoensheid did not lock the door and she did not think that defendant would follow them back to her house.

Adams testified that, after Hoensheid and Jessica returned to Hoensheid's home, defendant called Jessica on her cellular telephone, but she did not answer his calls. Shortly thereafter, defendant was outside of Hoensheid's home yelling "I want my wife. Let me get my wife. Let my wife out. Let me in." Adams heard defendant exchange threats with Pellitti, who was inside of the home. Defendant indicated that he "wanted to come in and beat [Pellitti's] ass." Brooke made sure that the doors were locked because defendant was "acting very aggressive," she "didn't want him getting in." Defendant yelled, pounded on the door, and rang the doorbell for "[a] couple minutes" and then, he kicked the door down. He entered Hoensheid's home and began punching Pellitti. The police officer that responded to the scene described the situation in the home as "a drunken mess".

II. Analysis

Defendant contends that the trial court erred in denying his motion to quash the first-degree home invasion charge and in denying his motion for a directed verdict at trial. He argues that the evidence established that he had permission to enter Hoensheid's home and, therefore, he could not be guilty of first-degree home invasion. We disagree.

"We review a circuit court's decision to grant or deny a motion to quash a felony information de novo to determine if the district court abused its discretion in ordering bindover." *People v Northey*, 231 Mich App 568, 574; 591 NW2d 227 (1998). A district court's determination that sufficient probable cause exists to bind a defendant over for trial "will not be disturbed unless the determination is wholly unjustified by the record." *Id*.

"When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Werner*, 254 Mich App 528, 530; 659 NW2d 688 (2002) (citation omitted). "'Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.'" *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), quoting *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Finally, "[s]tatutory interpretation is a question of law that we review de novo." *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003).

The first-degree home invasion statute, MCL 750.110a(2), provides:

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

(b) Another person is lawfully present in the dwelling.

The evidence presented by the prosecutor at trial, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that all of the elements of first-degree home invasion were proved beyond a reasonable doubt. Defendant does not dispute that he assaulted Pellitti inside of Hoensheid's home and that other individuals were lawfully present in the home when the assault occurred. Defendant's resulting conviction of misdemeanor assault and battery, MCL 750.81, which he does not challenge on appeal, is sufficient to support his first-degree home invasion conviction. "'[A]ssault' under MCL 750.110a(2) refers to both misdemeanors and felonies." *People v Sands,* 261 Mich App 158, 163; 680 NW2d 500 (2004).

Defendant argues, however, that the evidence presented by the prosecutor at trial established that he had permission to enter Hoensheid's home and, therefore, he could not be guilty of first-degree home invasion. Whether defendant had permission to enter Hoensheid's home was a question of fact for the jury to decide. The evidence was sufficient to persuade the jury, beyond a reasonable doubt, that defendant entered Hoensheid's home 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). Hoensheid testified at trial that defendant had permission to enter her home during the party and that she never told him that she was revoking that permission. However, she testified that once her doors were closed and locked, defendant no longer had permission to enter her home. She never gave defendant permission to kick in, or otherwise damage, her door. When defendant discovered that the door was locked, he pounded on the door and rang the doorbell for a couple of minutes; however, none of the individuals who were lawfully present in the house allowed him entry into the home. Thus, although the evidence established that defendant was generally allowed to enter Hoensheid's home during the party, when the door was unlocked, the evidence permitted the jury to find that, when he later returned to the house and found that the door was locked, he no longer had permission to enter the home. Thus, the trial court did not err in denying defendant's motion for a directed verdict.

Defendant's reliance on *People v Brownfield,* 216 Mich App 429; 548 NW2d 248 (1996), is misplaced. In that case, the defendant and his friends entered the home of one of the friends, Nutt, intending to steal certain property. *Id.* at 430-431. This Court concluded that, "because Nutt had the right to enter the home, he did not commit a breaking and entering." Further, because Nutt had the right to enter, the defendant did not commit a breaking and entering under an aiding and abetting theory. *Id.* at 432. In the present case, however, defendant did not reside with Hoensheid, nor did he have a key to her home. Cf. *People v Rider,* 411 Mich 496; 307 NW2d 690 (1981). Thus, he did not have a right to enter the home.

Furthermore, contrary to defendant's argument, the prosecutor was not required to prove that defendant entered the dwelling without permission. The Legislature's use of the word "or" in MCL 750.110a(2) reveals that first-degree home invasion is committed when a person, under certain circumstances, "enters a dwelling without permission" *or* "breaks and enters a dwelling." "The word 'or' generally refers to a choice or alternative between two or more things." *People v Neal,* 266 Mich App 654, 656; 702 NW2d 696 (2005) (citation omitted). The evidence presented by the prosecutor was sufficient to prove that defendant broke and entered Hoensheid's home and, once inside, committed an assault. Any amount of force used to open a door to enter a building is sufficient to constitute a breaking. *People v Toole,* 227 Mich App 656, 659; 576

NW2d 441 (1998). Thus, the trial court properly denied defendant's motion for a directed verdict. Further, because the testimony at trial was sufficient evidence to convict defendant of first-degree home invasion, any error in the magistrate's decision to bind defendant over for trial on that charge was harmless. *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002).

We additionally reject defendant's argument that the trial court erred in denying defendant's request for a jury instruction stating that defendant could not be convicted of first-degree home invasion unless the prosecutor proved beyond a reasonable doubt that defendant entered Hoensheid's home without permission.[1] Because first-degree home invasion is committed when a person, under certain circumstances, "breaks and enters a dwelling" *or* "enters a dwelling without permission," defendant's requested instruction was an incorrect statement of the law. A trial court only has a duty to "instruct the jury as to the law applicable to the case." MCL 768.29; *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000). Thus, we find no instructional error warranting reversal.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Christopher M. Murray

[1] We review claims of instructional error de novo on appeal. *People v Martin*, 271 Mich App 280, 337; 721 NW2d 815 (2006).