

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

DALLAS HORACEDURAN BROOKS,

Defendant-Appellant.

UNPUBLISHED

August 26, 2008

No. 278792

Oakland Circuit Court

LC No. 2007-213875-FH

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree home invasion, MCL 750.110a(2), and domestic violence, MCL 750.81(4). Defendant was sentenced, as a second habitual offender, MCL 769.10, to 10 to 30 years in prison for the first-degree home invasion conviction, and one and one-half to three years in prison for the domestic violence conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that there was insufficient evidence to convict him of the crimes charged. We disagree. A claim based on insufficiency of evidence is reviewed *de novo*. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In determining whether sufficient evidence has been presented in support of a conviction, this Court reviews the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

To convict a defendant of first-degree home invasion, the prosecution must prove that a defendant (1) broke and entered a dwelling or entered without permission, (2) with intent to commit a felony, larceny, or assault in the dwelling or, while he or she is entering, present in, or exiting the dwelling, committed a felony, larceny, or assault, and (3) was armed with a dangerous weapon or another person was lawfully present in the dwelling. *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004).

Defendant contends that the prosecution failed to produce sufficient evidence that he had the intent to commit an assault when he *entered* the home of the victim, a woman with whom he once had a dating relationship. Defendant bases this argument on the victim's testimony that his stated purpose when entering the dwelling was to use her bathroom and telephone. Defendant's

argument is misplaced. The prosecution was required to prove that defendant had the intent to commit an assault when entering the dwelling, *or* that he committed an actual assault while entering, *present in*, or exiting the dwelling. MCL 750.11a(2). As discussed *infra*, there was sufficient evidence presented by the prosecution that defendant committed an assault while present in the dwelling, thus defendant's intent when entering the dwelling is irrelevant.

Defendant also contends that the prosecution failed to produce sufficient evidence of an assault to support his domestic violence conviction. We disagree. To convict a defendant of domestic violence, the prosecution must prove that defendant (1) assaulted or assaulted and battered an individual, (2) with whom he or she has or has had a dating relationship. *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996); MCL 750.81(4). An assault is an attempt to commit a battery or an unlawful act, which places another in reasonable apprehension of receiving an immediate battery. *People v Reeves*, 458 Mich 236, 240; 580 NW2d 433 (1998). A battery is an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person. *Id.* at 240 n 4.

Prior to the incident, defendant and the victim had a dating relationship on an off for about two years. Defendant argues on appeal that there was insufficient evidence that he committed an assault. There was sufficient evidence that defendant assaulted and battered the victim. The victim testified that after defendant kicked in her door and entered her home, she was placed in fear of defendant shooting her with a gun because of defendant's actions of stating into his cell phone that he was going to "pop" her while reaching for his waistband. The victim also testified that defendant grabbed her throat and used his hands to sling her around the kitchen, from the counter, to the sink, and finally to on top of the stove. Defendant also punched her once in the face. Viewed in a light most favorable to the prosecution, this testimony supports the jury's verdict that defendant committed assault and battery on the victim while present in her home, and therefore, there was sufficient evidence presented at trial to convict defendant of first-degree home invasion and domestic violence.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly