

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LAWRENCE JAMES WHEELER,

Defendant-Appellee.

UNPUBLISHED

April 4, 2013

No. 307070

Oakland Circuit Court

LC No. 2011-236578-FH

Before: MURRAY, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree home invasion, MCL 750.110a(2), and unlawfully driving away of a motor vehicle (UDAA), MCL 750.413. On the date of sentencing, the trial court granted defendant's motion for directed verdict, dismissed the first-degree home invasion charge, and sentenced defendant to 273 days in jail on the UDAA conviction, to be served consecutive to any parole sentence. We reverse and remand for reinstatement of the jury's verdict and for resentencing.

I. FACTS

Defendant and the victim, who were in a dating relationship, lived together in the victim's home¹ for approximately five months before the victim decided to end their relationship. The victim told defendant that the relationship was over and that he needed to leave her home. The victim had called her cousins, and when they arrived, they told defendant to leave the home. Defendant did not argue. Instead, he packed up his belongings, gave the victim his house key, and Freeman took defendant to his sister's house.

Approximately 45 minutes later, after the victim's family had left her home, the victim heard defendant's voice outside. Next, her bedroom window, a large picture window, shattered, and defendant started coming through the window. The victim ran to her neighbor's house while she called the police. After entering the neighbor's house, the victim observed defendant walk

¹ The victim leased the home from her sister-in-law, Shawanna Freeman.

out of the front door of her home with her coat and her purse, jump into her van, which was parked in the driveway, and drive away. The police searched for defendant, but, did not immediately locate him. At the same time, defendant began calling the victim's phone, though she refused to answer his calls. At approximately 6:00 a.m., defendant called the victim and told her where the van was located. Later, he sent her text messages indicating the location of the van's keys. When the victim recovered the van, she found her coat and purse (minus \$35 cash) inside the van.

At the close of the prosecution's case, defendant moved for a directed verdict, alleging that defendant was not guilty of home invasion because he had permission to enter the house. The trial court denied the motion. However, apparently the court had an off-the-record discussion with the parties about reconsidering this motion. The jury returned a verdict of guilty on both counts, and the trial court instructed the parties to submit briefs before sentencing. On the date of sentencing, the trial court issued a written opinion granting defendant's motion for a directed verdict and dismissing the first-degree home invasion charge. The prosecution now appeals as of right the trial court's order dismissing the first-degree home invasion charge.

II. ANALYSIS

A. DOUBLE JEOPARDY

The parties agree that double jeopardy does not bar reinstatement of the jury's verdict because there is no danger of subjecting defendant to a second trial for the same offense. *United States v Wilson*, 420 US 332, 336; 95 S Ct 1013; 43 L Ed 2d 232 (1975); *People v Torres*, 452 Mich 43, 72; 549 NW2d 540 (1996). Here, the trial court granted a directed verdict on the first-degree home invasion charge after the jury rendered its guilty verdict. Because reversal of the directed verdict would merely reinstate the jury's verdict, and not subject defendant to a second trial, double jeopardy does not attach to preclude reinstatement of the jury's verdict. *Torres*, 452 Mich at 72.

B. MCR 6.419(A)

The prosecution argues that the trial court improperly reconsidered its denial of defendant's motion for a directed verdict because it had no authority to reconsider the motion. While the prosecution failed to object to the trial court's decision to reconsider its denial of the directed verdict, we can review "an unpreserved question of law where the facts necessary for its resolution have been presented." *People v Houston*, 237 Mich App 707, 712; 604 NW2d 706 (1999). The interpretation of a court rule is a question of law that is reviewed de novo, *People v Hawkins*, 468 Mich 488, 497; 668 NW2d 602 (2003), and the court rules are construed under the same rules applied to the construction of statutes, *In re Leete Estate*, 290 Mich App 647, 655; 803 NW2d 889 (2010). MCR 6.419(A) controls motions for directed verdicts before submission to the jury and provides:

(A) Before Submission to Jury. After the prosecutor has rested the prosecution's case-in-chief and before the defendant presents proofs, the court on its own initiative may, or on the defendant's motion must, direct a verdict of acquittal on any charged offense as to which the evidence is insufficient to support conviction. The court may not reserve decision on the defendant's motion. If the defendant's motion is made after the defendant presents proofs, the

court may reserve decision on the motion, submit the case to the jury, and decide the motion before or after the jury has completed its deliberations.

The prosecution's argument that there is a conflict between MCR 6.419(A), which does not allow a trial court to reserve judgment of a motion for a directed verdict, and MCR 6.435(B),² which allows a trial court to correct substantive mistakes before entering judgment, is without merit. MCR 6.419(A) does not prevent a trial court from later correcting its ruling on a motion for a directed verdict. Instead, it simply prohibits a court from reserving its decision when the motion is made at the close of the prosecution's case. The trial court followed the procedures of MCR 6.435(B), by allowing the parties to brief the issue and it corrected its order before judgment was entered. Additionally, defendant did not present evidence, so there can be no claim of prejudice to the prosecution by any correction. Therefore, the trial court did not violate any court rule by reconsidering its denial of defendant's motion for a directed verdict.

C. DIRECTED VERDICT

Turning to the merits, the prosecution argues that the trial court erred in granting defendant's motion for directed verdict where there was sufficient evidence that defendant did not have permission to enter the victim's home. This Court reviews de novo the trial court's decision regarding a motion for a directed verdict to determine whether the evidence, viewed in a light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime were proven beyond a reasonable doubt. *People v Parker*, 288 Mich App 500, 504; 795 NW2d 596 (2010).

Viewed in a light most favorable to the prosecution, there was sufficient evidence that defendant broke and entered a dwelling that he did not have permission to enter. 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.

² MCR 6.435(B) provides: "After giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous."

In *People v Wilder*, 485 Mich 35, 42-43; 780 NW2d 265 (2010), the elements of first-degree home invasion were discussed, specifically that the crime could be committed in several different ways. The *Wilder* Court set forth the alternative elements as follows:

Element One: The defendant *either*:

1. breaks and enters a dwelling or
2. enters a dwelling without permission.

Element Two: The defendant *either*:

1. intends when entering to commit a felony, larceny, or assault in the dwelling or
2. at any time while entering, present in, or exiting the dwelling commits a felony, larceny, or assault.

Element Three: While the defendant is entering, present in, or exiting the dwelling, *either*:

1. the defendant is armed with a dangerous weapon or
2. another person is lawfully present in the dwelling. [*Id.* at 43.]
[Emphasis in the original.]

Here, defendant argues that as a tenant of the house he had the legal right to enter a dwelling, and therefore the element of breaking and entering or entering without permission cannot be met. *People v Brownfield (After Remand)*, 216 Mich App 429, 432; 548 NW2d 248 (1996), citing *People v Rider*, 411 Mich 496, 498; 307 NW2d 690 (1981) and *People v D'Argis*, 44 Mich App 186, 192-193; 205 NW2d 19 (1972). We first note that MCL 750.110a(1)(c) defines "without permission" as "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." Under this statutory definition, the jury could have convicted defendant of first-degree home invasion because the facts tended to show that defendant entered the victim's home without permission, as he voluntarily left the premises with all his belongings and handed his key over after having been asked to do so.

However, defendant argues, and the trial court ruled, that defendant had permission to enter because he was a tenant of the house. In order for someone to be tenant, there must be

permission or consent on the part of the landlord to occupancy by the tenant, subordination of the landlord's title and rights on the part of the tenant, a reversion in the landlord, the creation of an estate in the tenant, the transfer of possession and control of the premises to him, and, generally speaking, a contract, either express or implied, between the parties. [*Grant v Detroit Ass'n of Women's Clubs*, 443 Mich 596, 605 n 6; 505 NW2d 254 (1993).]

In this case, the trial court ruled as a matter of law that defendant was a tenant of the house for landlord-tenant purposes. The evidence to support this conclusion was that Freeman testified that she was aware and consented to defendant moving into the property. The victim testified that she invited defendant to move into the home, that she gave him a key, and that for several months he came and went as he pleased. However, the trial court never ruled on *what type* of tenancy defendant had on the premises, and that failure led to an incorrect ruling on the motion for a directed verdict.

Because defendant's name was not on the lease and the length of defendant's tenancy was never determined, he had a tenancy at will. "At the common law a tenancy at will is created when a man lets land to another without limiting any certain or determinate estate." *Hilsendegen v Scheich*, 55 Mich 468, 477; 21 NW 894 (1885); see *Donald v Faulds*, 302 Mich 331, 335; 4 NW2d 676 (1942) (A tenancy at will is created when a tenant moves onto the premises with the landowner's consent "but without any understanding as to the length of [the] tenancy[.]"). "If a tenant at will vacates the premises, which he may do at any time, it will be treated as a surrender to the landlord; or if he abandons them, it will be presumed that he abandoned the possession to his landlord." *Donald*, 302 Mich at 335. There are two elements that establish abandonment. *Sparling Plastic Indus, Inc v Sparling*, 229 Mich App 704, 717; 583 NW2d 232 (1998). It must be shown that 1) there is an intent to relinquish the property and 2) there are external acts that put the intention to abandon into effect. *Id.* at 718.

In light of the undisputed evidence at trial, the jury could have reasonably concluded that defendant abandoned his tenancy at will before he broke and entered the victim's home. When the victim asked defendant to move out of her home, defendant did not argue. Instead, he packed up all of his belongings, gave the victim his house key, and promptly left the premises. Freeman then drove defendant to his sister's house. Defendant's actions in vacating the premises highlight both a clear intent to abandon the premises and provide evidence that defendant put his intent to abandon into effect. Moreover, defendant's decision to enter the victim's home by breaking through her bedroom window establishes that defendant was aware that his tenancy had extinguished and he no longer had the legal right to enter the victim's home. Consequently, the essential elements of the crime were proven beyond a reasonable doubt because, although defendant returned to the premises a mere 45 minutes later, the jury could have concluded that defendant did not have permission to enter the premises when he broke through the bedroom window and entered the house.

Thus, in granting defendant's motion for a directed verdict and ruling that defendant could not as a matter of law commit first-degree home invasion if he was a tenant, the trial court improperly took this issue away from the jury.³ Moreover, whether Freeman could employ a self-help eviction was irrelevant given that the victim — and not the landlord — requested that

³ Indeed, defense counsel argued to the jury that defendant had permission to be in the house because he resided there and had only temporarily left, as he had in the past when he and the victim argued.

defendant leave the premises and because defendant voluntarily abandoned his tenancy.⁴ The trial court abused its discretion when it granted defendant's motion for a directed verdict because it made an error of law in concluding that defendant had permission to enter the premises when he broke and entered the victim's home.

Reversed and remanded with instructions to reinstate the jury's guilty verdict on the first-degree home invasion conviction and to resentence defendant accordingly. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Kurtis T. Wilder

/s/ Donald S. Owens

⁴ Likewise, the trial court's reliance upon *People v Jex*, unpublished opinion per curiam of the Court of Appeals, issued April 28, 2011 (Docket No. 295825), slip op, p 1, for the proposition that defendant remained a tenant even after he voluntarily left the premises and returned his key is misplaced. *Jex* is an unpublished case that does not have precedential value. MCR 7.215(C)(1). Additionally, the Michigan Supreme Court reversed that *Jex* decision, *People v Jex*, 489 Mich 983; 799 NW2d 557 (2011), and on subsequent remand our Court did not address the merits but instead remanded to the trial court for further proceedings. *People v Jex (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued January 17, 2012 (Docket No. 295825), slip op, p 5. Thus, *Jex* is not helpful to this case.