

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNARD FISHER,

Defendant-Appellant.

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UNPUBLISHED

January 29, 2004

No. 242213

Wayne Circuit Court

LC No. 01-005108-01

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of second-degree home invasion, MCL 750.110a(3), and felonious assault, MCL 750.82, entered after a bench trial. We affirm.

Defendant was charged with first-degree home invasion, MCL 750.110a(2), and felonious assault in connection with an incident involving his former girlfriend. On appeal, defendant argues that the evidence was insufficient to support his conviction of second-degree home invasion, and contends that the trial court erred by denying his motion for directed verdict of the charge of first-degree home invasion. Defendant does not challenge his conviction of felonious assault on appeal.

When reviewing a trial court's decision on a motion for directed verdict, we review the record de novo to determine whether the evidence presented by the prosecution, viewed in a light most favorable to the prosecution, could have persuaded a rational trier of fact that the essential elements of the charged offense were proven beyond a reasonable doubt. *People v Sexton*, 250 Mich App 211, 222; 646 NW2d 875 (2002).

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985).

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 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 the person is armed with a dangerous weapon or another person is lawfully present in the dwelling. MCL 750.110a(2). A person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who 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 second degree. MCL 750.110a(3).

Complainant and her mother testified that defendant did not have permission to be in their home. Complainant testified that defendant entered the home as she was walking down the stairs, and that she told him to leave immediately. The trial court was entitled to find complainant's testimony that she told defendant to leave immediately credible, and to accept it. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). This testimony supported a finding that defendant entered the dwelling without permission. An inference that defendant had the requisite intent to commit an assault when he entered the dwelling was supported by complainant's testimony that he attacked her immediately upon entering the dwelling.

The evidence presented by the prosecution, viewed in a light most favorable to the prosecution, could have persuaded a rational trier of fact that the elements of the charged offense, first-degree home invasion, were proven beyond a reasonable doubt. The trial court did not err by denying defendant's motion for directed verdict of the charged offense of first-degree home invasion. *Sexton, supra*. The evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction of second-degree home invasion. *Petrella, supra*.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff