

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD LEE KILGORE,

Defendant-Appellant.

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UNPUBLISHED

March 23, 2004

No. 244916

Wayne Circuit Court

LC No. 02-001763

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of first-degree home invasion, MCL 750.110a(2), and his prison sentence of eighty-five months to twenty years. We affirm.

**I. FACTS**

Complainant, a special education student, testified that defendant entered her home without permission and sexually assaulted her. The trial court convicted defendant of first-degree home invasion, but acquitted him of two counts of criminal sexual conduct in the first degree (CSC I), MCL 750.520b. The trial court found that the evidence established that defendant entered the home without permission with the intent to commit a felony, but concluded that complainant's inconsistent statements regarding the alleged sexual assault precluded a finding of guilt on the charges of CSC I.

**II. STANDARD OF REVIEW**

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. The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C).

### III. ANALYSIS

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 the person is armed with a dangerous weapon or another person is lawfully present in the dwelling. MCL 750.110a(2).

Complainant gave inconsistent testimony regarding the alleged sexual assault, but consistently maintained that defendant entered the home without permission. The trial court was entitled to accept complainant's assertion that defendant entered the home without permission, notwithstanding the fact that it found other portions of complainant's testimony to be insufficient to prove beyond a reasonable doubt that defendant committed two counts of CSC I. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Complainant's testimony that a sexual assault occurred, while not sufficient to support convictions of CSC I, was sufficient to support an inference that defendant entered the home with the intent to commit a felony. *Vaughn, supra*. The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction of first-degree home invasion. *Petrella, supra*.

The limitations on appellate review of sentences in MCL 769.34(10) are constitutional. *People v Garza*, 469 Mich 431, 435; 670 NW2d 662 (2003). Defendant received a minimum term within the guidelines range. He has not demonstrated that the trial court erred in scoring the guidelines<sup>1</sup> or relied on inaccurate information in imposing sentence. Defendant's sentence must be affirmed. MCL 769.34(10).

Affirmed.

/s/ Brian K. Zahra  
/s/ Henry William Saad  
/s/ Bill Schuette

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<sup>1</sup> Contrary to defendant's assertion, the trial court did not change the scoring of Offense Variable 11, MCL 777.41, criminal sexual penetration, to reflect a finding that complainant had been penetrated.