

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE JAMES WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

January 24, 2006

No. 257404

Oakland Circuit Court

LC No. 2004-196507-FH

Before: Cavanagh, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), malicious destruction of a building, MCL 750.380(3)(a), and malicious destruction of personal property, MCL 750.377(a)(1)(d). He appeals by right. We affirm.

I

First, defendant argues that the trial court's failure to instruct the jury that first-degree home invasion and malicious destruction of property are specific intent crimes constitutes error requiring reversal. Because defendant failed to preserve this issue by requesting the jury be instructed on specific intent at trial, we review the issue for plain error affecting defendant's substantial rights. *People v Aldrich*, 246 Mich App 101, 124-125; 631 NW2d 67 (2001). We review jury instructions in their entirety to determine whether there is error requiring reversal. *Id.* at 124. We will not reverse when the trial court's instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Id.*

We find no plain error with respect to the trial court's instructions related to the charges of first-degree home invasion or malicious destruction of a building. MCL 750.110(a)(2) provides that first-degree home invasion may be proven under three separate sets of circumstances:

A person who breaks or 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 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.* [Emphasis added.]

The prosecutor charged defendant with the third alternative emphasized, *supra*. According to the plain language of the statute, proof of intent to commit a felony, larceny, or assault is unnecessary to sustain a conviction under this third theory. Where a statute is unambiguous, we must enforce it as plainly written. *People v VanHeck*, 252 Mich App 207, 211; 651 NW2d 174 (2002). Defendant could properly be convicted upon evidence that (1) he broke and entered the house without permission; (2) he committed a felony while entering, being present in, or exiting the dwelling; and (3) another person was lawfully present in the dwelling. MCL 750.110a(2). This was the theory on which defendant was charged. The trial court instructed the jury that the prosecutor had to prove beyond a reasonable doubt that defendant broke into the dwelling, that defendant entered the dwelling, that, when defendant entered, was present in, or was leaving the dwelling, he committed the offense of malicious destruction of a building, greater than \$1,000 but less than \$20,000, and that another person was lawfully in the dwelling. The trial court's instructions fairly presented all of the elements of the alternative version of first-degree home invasion that the prosecutor theorized defendant committed. Therefore, we do not find plain error in the trial court's instruction. *Aldrich*, *supra* at 124.

Similarly, we find no plain error in the trial court's instructions related to the charge of malicious destruction of a building. MCL 750.380(1) provides that "[a] person shall not willfully and maliciously destroy or injure another person's house, barn, or other building or its appurtenances." In *People v Richardson*, 118 Mich App 492, 496-497; 325 NW2d 419 (1982), this Court addressed the phrase "willfully and maliciously" as used in MCL 750.377b, the statute prohibiting malicious destruction of police property. This Court upheld the trial court's instruction that the defendant must have acted "willfully and maliciously," defined by the trial court to mean that "the defendant committed the act while knowing it to be wrong and without any just cause or excuse and did it intentionally or with a conscious disregard of known risk to the property of another." *Id.* In *Richardson*, the defendant did not request an instruction on specific intent at trial, yet he argued on appeal that there was error requiring reversal where the trial court failed to give the instruction. *Id.* This Court disagreed, finding that the trial court's instruction was sufficient to inform the jury as to the necessary intent. *Id.*

In *People v Maynor*, 470 Mich 289; 683 NW2d 565 (2004), our Supreme Court was confronted with an issue related to the first-degree child abuse statute. Specifically, the Court was called upon to determine whether it was "sufficient to instruct the jury using the statutory language regarding intent (. . . knowingly or intentionally causing physical or serious mental harm to a child'), MCL 750.136b(2), or whether it is also necessary to instruct the jury regarding 'specific intent.'" *Maynor*, *supra* at 294. The Court found that the standard jury instruction correctly focused on whether the defendant knowingly or intentionally caused the harm. *Id.* at 295-296. The Court concluded that, because the jury instruction directed the jury to the proper method of analysis under the statutory language, it was unnecessary for the jury to be given further instruction on "specific intent." *Id.* at 296. The Court reasoned:

The need to draw the common-law distinction between “specific” and “general” intent is not required under the plain language of the statute, as long as the jury is instructed that it must find that defendant either knowingly or intentionally caused the harm. Moreover, the enactment of MCL 768.37, which abolished the defense of voluntary intoxication except in one narrow circumstance, has significantly diminished the need to categorize crimes as being either “specific” or “general” intent crimes. [*Id.* at 296-297.]

Here, the plain language of MCL 750.380(1) did not require the trial court to draw a distinction between specific and general intent. *Maynor, supra*. The statute requires a finding that defendant acted “willfully and maliciously,” which means that he committed the act while knowing it was wrong and without just cause or excuse and that he did it intentionally. *Richardson, supra*. The trial court’s instruction properly conveyed the elements of the offense to the jury as set forth in the statute. The instruction was sufficient to inform the jury of the necessary intent required for a conviction under the statute. Thus, we find no plain error in the trial court’s instruction to the jury. *Aldrich, supra* at 124.

Further, we note that defendant never requested specific intent instructions, and moreover, intent was not at issue at trial. Defendant claimed the evidence failed to establish that he was the perpetrator. Under the circumstances, the given instructions sufficiently protected defendant’s rights and fairly presented the issues to the jury. *Id.*

II

Defendant next argues that his convictions for both first-degree home invasion and felony malicious destruction of property violate the prohibition against double jeopardy. We review issues involving double jeopardy de novo. *People v Shipley*, 256 Mich App 367, 377-378; 662 NW2d 856 (2003).

Defendant asserts a violation of the double jeopardy protection against multiple punishments for the same offense. See *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004), for an explanation of the various protections offered by the double jeopardy clauses of the Michigan and United States Constitutions. US Const, Am V; Const 1963, art 1, § 15. Specifically, defendant argues that, in order to be convicted of first-degree home invasion, the jury had to find him guilty of the underlying felony of malicious destruction of a building in excess of \$1,000. By finding him guilty of both felonies for which he was charged, he was punished twice for malicious destruction of a building in excess of \$1,000.

The constitutional double jeopardy protection against multiple punishments for the same offense restrains the prosecutor and the courts, not the Legislature. *Shipley, supra* at 378, quoting *People v Mitchell*, 456 Mich 693, 695; 575 NW2d 283 (1998). If there exists a clear indication the Legislature intended to impose multiple punishment for the same offense, there is no double jeopardy violation. *Id.* MCL 750.110a(9) specifically provides that “[i]mposition of a penalty under this section does not bar imposition of a penalty under any other applicable law.” In *Shipley, supra* at 378, this Court held that the plain language of the statute authorizes multiple punishment. Because the Legislature clearly intended multiple punishment for first-degree home invasion and the underlying felony that satisfies an element of the first-degree home invasion, there is no double jeopardy violation. *Id.*

III

Finally, defendant argues that there was insufficient evidence to sustain his conviction for first-degree home invasion. Specifically, he claims that the only damage to the victim's house other than that which occurred during the breaking and entering phase of the crime cost less than \$250 to repair. Because the felony damage amount of \$1,000 was not proven, there was no felony committed in the dwelling, and the first-degree home invasion conviction must be set aside.

When reviewing the sufficiency of the evidence in a criminal case, we "view the evidence 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 proved beyond a reasonable doubt." *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). All conflicts with regard to the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

It is unclear why defendant believes the damage done to the area of the front door of the victim's home should be discounted when making his argument that no felony sufficient to sustain a first-degree home invasion conviction was committed. MCL 750.380(1) prohibits malicious destruction of another person's house. The crime is a felony if the amount of damage is greater than \$1,000. MCL 750.380(3)(a). MCL 750.110a(2) prohibits the commission of a felony "while entering, being present in, or exiting the dwelling." It does not permit a conviction only where a felony is committed after a defendant enters the dwelling.

In this case, when viewed in a light most favorable to the prosecution, the evidence supported the home invasion conviction. MCL 750.110a(2). First, there was evidence that defendant broke and entered without permission. The victim testified that he heard shattering glass, footsteps, and then defendant's voice. He also testified that defendant did not have permission to be in his house. Second, there was evidence that defendant committed the felony of malicious destruction of a building greater than \$1,000 but less than \$20,000 when entering the victim's house. With respect to this felony, defendant only challenges the existence of proof that the \$1,000 damage amount was met. At trial, the victim and his friend testified that before hearing defendant's voice they heard shattering glass. After defendant left the premises, glass and damage were found in the area of the previously undamaged front door. The victim's mother testified, and produced a receipt to support, that it cost \$2,450 to repair the front door area of the house. This evidence supported finding that defendant damaged the building upon entering the building causing more than \$1,000 to repair. Third, another person was lawfully present in the dwelling: the victim, who lived in the house, and his invited guest were in the basement. A rational trier of fact could have determined beyond a reasonable doubt that defendant committed the crime of first-degree home invasion. *Hoffman, supra*.

We affirm.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Jane E. Markey