

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 11, 2010

v

CHARLES EDWARD LATTIMORE,

Defendant-Appellant.

No. 290042
Wayne Circuit Court
LC No. 08-011546-FH

Before: SERVITTO, P.J., and BANDSTRA and FORT HOOD, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), and felonious assault, MCL 750.82. He was sentenced as an habitual offender, second offense, MCL 769.10, to concurrent prison terms of 90 to 240 months for the home invasion conviction, and 19 to 48 months for the assault conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of breaking into the house of the mother of his children on August 18, 2008, and assaulting his 17-year-old son, cutting him along his back with a pocketknife. Defendant lived next-door to the 17-year-old victim, the victim's mother, and the victim's two sisters. The victim explained that their relationship with defendant was "real bad," and that defendant would often "get[] drunk[,] come and mess with [them]." The victim testified that on the day of the incident, defendant, who was intoxicated, got out of a car, approached him on the porch, and asked, "where my wife at." The victim indicated that he would not allow defendant inside because he "already knew what he was going to do." The victim placed himself "between the doors" and defendant attempted to force his way into the house to see the victim's mother. As defendant and the victim wrestled on the porch, the victim pushed defendant down the steps, grabbed him, and threw him against the steps. At that point, the victim's 16-year-old sister, who is also one of defendant's children, broke the victim and defendant apart, and she and the victim went inside the house and closed the door. Defendant went to his house. According to the victim, his sister, and his mother, defendant returned to the side of the home few minutes later, broke a ground level window with his foot and entered the basement of the home through the broken window. The victim's sister testified that she heard the basement window break and immediately thereafter saw defendant run up the stairs. Defendant entered the dining room where the victim, along with his mother, his two sisters, and some cousins were gathered, and moved toward the victim's mother. Upon seeing defendant, the victim's mother and sisters ran out the front door. Defendant followed them, and the victim stood in front of defendant to

prevent him from approaching the victim's mother. The victim explained that he and defendant wrestled, and defendant eventually pulled out a pocketknife and cut the victim along his back. The victim's sister observed defendant making a stabbing motion aimed at the victim's back three or four times. The victim's mother called 911, a cousin was able to take the knife from defendant and break up the fight, and a relative took the victim out of the house while defendant returned to his house.

A responding police officer testified that he was given a Smith and Wesson pocketknife, and was told that it was taken from defendant; the knife was admitted into evidence. The officer explained that a basement window of the house, approximately 18'' by 24'' in size, had been broken. In a statement made to the police, defendant denied kicking open the basement window and entering the house; he admitted possessing a knife, but denied cutting the victim.

At trial, defendant claimed that he did not remember most of what happened during the second episode; he denied any intent to harm anyone. Defendant testified that he went to the house to obtain some barbeque sauce, but the victim said he could not enter because he was intoxicated. Defendant and the victim argued, and the victim pushed him down the porch steps and punched him several times, causing his head to hit the concrete. As a result, he "was kind of in [a] daze." He explained that because he was in a daze and had been "drinking," he did not remember whether he broke the window and entered the house, or how the second fight ended. Defendant admitted possessing a knife when he went to the victim's house the second time, but denied that the knife shown in court belonged to him.

Defendant's sole argument on appeal is that the evidence was insufficient to sustain his convictions. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must 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 proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. It is for the trier of fact to decide what inferences can be fairly drawn from the evidence and to judge the weight it accords to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the [trier of fact's] verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of first-degree home invasion are: (1) the defendant broke and entered a dwelling or entered the dwelling without permission; (2) when the defendant did so, he intended to commit a felony, larceny, or assault, or he actually committed a felony, larceny, or assault while entering, being present in, or exiting the dwelling; and (3) another person was lawfully present in the dwelling or the defendant was armed with a dangerous weapon. *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004); MCL 750.110a(2).

There was ample evidence that defendant broke a basement window and entered the home without permission. Shortly before the breaking and entering, defendant, who was intoxicated, tried to enter the home, but the victim would not allow him to go inside. Soon

thereafter, the victim's sister heard a basement window break and then saw defendant run up the stairs. The victim's mother, who is the owner of the house, testified that defendant did not have permission to enter her home, and the victim explained that the window was closed and locked before the incident. Defendant did not directly deny breaking and entering the dwelling, but testified that he might have kicked in the window and did not remember what occurred because he "was drinking" and in a daze.

In addition, contrary to what defendant argues, the evidence supported an inference that defendant intended to commit and actually did commit an assault while in or exiting the house. There was evidence that after entering the home through the basement, defendant ran up the stairs, went directly toward the victim's mother, and, upon the family seeing defendant, they instantly ran out of the house. There was also testimony that defendant would often come over and "mess" with the family when he was intoxicated. Defendant did not stop when the family ran, but followed them, and the victim stood in front of him to stop him. As the victim and defendant fought, defendant pulled out a pocketknife and attempted to stab the victim three or four times, ultimately cutting his back. Defendant continued fighting with the victim until a relative was able to take the knife and stop the fight. Defendant admitted bringing a pocketknife with him to the house. Therefore, viewed most favorably to the prosecution, the evidence presented at trial was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant broke into the house without permission with the intent to commit an assault, and actually committed an assault, while others were in the house and while defendant was armed with a dangerous weapon.

"The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007), quoting *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). An assault is "either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery." *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995), quoting *People v Johnson*, 407 Mich 196, 210; 284 NW2d 178 (1979). "An actor's intent may be inferred from all of the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

Viewed in a light most favorable to the prosecution, the testimony that defendant possessed a pocketknife, which he used to attempt to stab the victim, ultimately cutting the victim along his back, was sufficient to sustain defendant's conviction of felonious assault.

We affirm.

/s/ Deborah A. Servitto

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood