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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v JOEL DELAVARA, Defendant-Appellant.	UNPUBLISHED November 19, 2026 10:19 AM No. 375971 Oakland Circuit Court LC No. 2024-290916-FC

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

Defendant appeals as of right his convictions following a jury trial of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(c) (involving commission of any other felony); second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(c) (involving commission of any other felony); and first-degree home invasion, MCL 750.110a(2). The trial court sentenced defendant to 15 to 40 years' imprisonment for his CSC-I conviction, 71 months to 15 years' imprisonment for his CSC-II conviction, and 85 months to 20 years' imprisonment for his first-degree home invasion conviction, with the sentences for CSC-I and home invasion to be served consecutively. For the reasons set forth in this opinion, we affirm defendant's convictions but in order to facilitate meaningful appellate review, remand this matter for the trial court to fully articulate its rationale for imposing consecutive sentences.

I. BACKGROUND

This case arises out of a sexual assault that occurred at a hotel. Defendant and the victim met at a work-related convention. Defendant and the victim spent the day together, along with two other individuals, attending the convention. In the evening, they spent time eating and drinking at a restaurant and bar before returning to the hotel. The victim went to her hotel room alone, and she believed that she was intoxicated. Defendant obtained a key to the victim's room from the hotel employee working at the front desk. This employee did not ask for defendant's identification before issuing the key. Defendant used the key to enter the victim's room, and he sexually assaulted her. The victim testified that she had never given anyone at the hotel front desk permission to enter

her room or permission to make a key for her room. She never gave defendant or anyone else permission to enter her room.

The jury convicted defendant, as previously stated, of CSC-I, CSC-II, and first-degree home invasion. He was sentenced as stated. The trial court denied defendant's post-judgment motion for judgment notwithstanding the verdict or, in the alternative, a new trial. Defendant's appeal is now before this Court.

II. SUFFICIENCY OF THE EVIDENCE

In his appeal, defendant contends that the evidence introduced at trial was insufficient to establish the element of first-degree home invasion requiring either a "breaking" or "entering without permission." He asserts that the hotel front desk employee, who was purportedly authorized to do so, provided defendant with permission to enter the victim's room by issuing him a key. Hence, defendant maintains, his use of the key to access the room did not constitute a "breaking." On this basis, defendant argues that his convictions for first-degree home invasion and for first-degree criminal sexual conduct—which was predicated on the home invasion as the underlying felony—cannot stand, and that the trial court erred in denying his post-judgment motion.

Challenges to the sufficiency of the evidence supporting a conviction are reviewed de novo on appeal. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). "In reviewing a claim of insufficient evidence, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have concluded that the elements of the offense were proven beyond a reasonable doubt." *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008). "[C]ircumstantial evidence and reasonable inferences arising from th[e] evidence can constitute satisfactory proof of the elements of a crime." *Harverson*, 291 Mich App at 175 (quotation marks and citation omitted; alterations in original). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime," and it "is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018) (quotation marks, citations, and emphasis omitted).

As relevant to defendant's appellate arguments, defendant was convicted of first-degree home invasion and CSC-I. Pursuant to MCL 750.110a(2), 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.

Furthermore, under MCL 750.520b(1)(c), a "person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and . . . [s]exual penetration occurs under circumstances involving the commission of any other felony." The parties agree that the first-degree home invasion was the predicate felony for purposes of the CSC-I conviction.

Our Supreme Court has recognized that the crime of first-degree home invasion may be committed "in several different ways, each of which involves alternative elements necessary to complete the crime." *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010). The Court listed these 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*.]

Defendant only challenges the first element on appeal. The jury was instructed on both alternatives for element one.

Defendant first contends that he possessed permission to enter the victim's hotel room because a front desk employee provided him with a key. Under the home invasion statute, the phrase "without permission" is defined as entry "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." MCL 750.110a(1)(c).

In his argument, defendant correctly observes that a hotel proprietor retains a measure of control over guest rooms and that a hotel guest's interest in those rooms is less substantial than that of a tenant in leased premises. In *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 432; 581 NW2d 794 (1998), this Court distinguished landlord-tenant relationships from those of hotel-guest, emphasizing that the "characteristic of exclusive possession and control of

the premises—one that lies in the character of the possession—is the fundamental criteria in distinguishing between a tenant and a guest." *Id*. at 443. While a tenant enjoys exclusive legal possession and control of leased premises, a hotel guest is deemed a licensee with a right to use the premises, subject to the proprietor's retained control and right of access, typically for housekeeping and maintenance purposes. *Id*. at 444; see also *Brams v Briggs*, 272 Mich 38, 43; 260 NW 785 (1935).

However, defendant's argument overlooks the nature of the special relationship between innkeeper and guest, as well as the corresponding legal duties imposed upon innkeepers. Our Supreme Court has recognized that innkeepers have a special relationship with their guests, which generally obligates innkeepers to protect their guests. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). This duty constitutes an exception to the general rule that there is no obligation to aid or protect another. *Id*.

The innkeeper's duty of protection arises from the guest's act of entrusting himself to the innkeeper's control, thereby relinquishing his own ability to ensure his safety. *Id.* At common law, the innkeeper-guest relationship required that the guest be a transient, present for a temporary stay. *Brams*, 272 Mich at 41. The duty to protect encompasses reasonable precautions, including the prevention of unauthorized access to a guest's room by third parties who may commit criminal acts. *Jenness v Sheraton-Cadillac Props, Inc*, 48 Mich App 723, 725-726; 211 NW2d 106 (1973). The rationale for imposing this duty is that the party in control is best positioned to provide safety. *Williams*, 429 Mich at 499.

It is unnecessary for this Court to articulate the precise contours of an innkeeper's duty to safeguard guests from the criminal acts of third parties. It is sufficient to recognize that, under the circumstances presented here, this duty within the innkeeper-guest relationship did not permit the innkeeper to provide defendant with access to the victim's room without her authorization. As the Louisiana Court of Appeals explained, "[t]he motel had an affirmative duty, stemming from a guest's rights of privacy and peaceful possession, not to allow unregistered and unauthorized third parties to gain access to the rooms of its guest." *Campbell v Womack*, 345 So 2d 96, 98 (La App, 1977). We find this reasoning both persuasive and consistent with fundamental principles of common sense.

Accordingly, because the front desk clerk lacked authority to confer permission for defendant to enter the victim's room, defendant's argument fails to show that he entered with permission. Entry into a dwelling[1] without permission satisfies the first element of first-degree home invasion. *Wilder*, 485 Mich at 43. Whether a breaking occurred is immaterial; nevertheless, Michigan law recognizes that any force, however minimal, used to open a door or window to gain entry constitutes a breaking. *People v Toole*, 227 Mich App 656, 659; 576 NW2d 441 (1998). The record does not support defendant's claim that the evidence was insufficient to sustain his convictions. See *People v Harverson,* 291 Mich App 171, 177 (2010).

[1] For purposes of the home invasion statute, "dwelling" means "a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter." MCL 750.110a(1)(a).

III. RESPONSE TO JURY QUESTION

Next, defendant argues that the trial court erred by failing to properly answer the jury's question about the effect of alcohol on the matter of consent.

After the jury began deliberations, the jury sent a note to the trial court asking, "What is the laws on alcohol voluntary verbal contracts?" and "Also, does being intoxicated mean you cannot consent?" After a discussion on the record with both the prosecutor and defendant's trial counsel, the trial court determined that it would instruct the jurors to rely on their collective memories and to refer to the jury instructions. The jury was brought in, and the trial court instructed the jury accordingly. After the jury left the courtroom, the trial court asked the parties, "Everybody satisfied with the answering of that question?" Both the prosecutor and defendant's trial counsel responded, "Yes, Your Honor."

Defendant waived this challenge to the trial court's instruction in response to the jury question when his trial counsel expressed unequivocal approval of the trial court's instruction after it was given to the jury. In *People v Miller*, 326 Mich App 719, 726; 929 NW2d 821 (2019), this Court explained:

> A defendant may waive his or her challenge to jury instructions. Waiver extinguishes any error, leaving nothing for this Court to review. A defendant waives an issue by expressly approving of the trial court's action. When the trial court asks whether a party has any objections to the jury instructions and the party responds negatively, it is an affirmative approval of the trial court's instructions. [Citations omitted.]

Here, defendant's trial counsel responded with affirmative approval to the trial court's question whether the parties were satisfied with the court's response to the jury's questions. This issue is therefore waived. *Id*.

To the extent defendant on appeal appears to suggest that this Court should review the matter for plain error, defendant does not address the above facts demonstrating waiver and does not explain why the issue should be treated as forfeited, and thus reviewed for plain error, rather than treating it as waived. Defendant does not argue that his trial counsel's attempt to belatedly raise the issue in the trial court—after the jury had already reached a verdict—somehow had the effect of resurrecting this claim and nullifying the earlier waiver. Accordingly, defendant has abandoned any such arguments. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002) (quotation marks and citation omitted). "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004).

Defendant further contends, in the alternative, that he received ineffective assistance of counsel. To prevail on a claim of ineffective assistance, a defendant must establish (1) that counsel's performance was objectively unreasonable under prevailing professional norms, and (2)

that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v Abcumby-Blair*, 335 Mich App 210, 228; 966 NW2d 437 (2020). A "reasonable probability" is one sufficient to undermine confidence in the outcome. *Id*.

Here, defendant asserts that "[t]here is a reasonable probability that, if the jury had correctly and fully understood the law of consent, the jury would have acquitted Mr. Delavara of the other sex charge." However, defendant fails to articulate what he means by "the law of consent," and cites no legal authority delineating the relevant legal standards. Defendant's argument, limited to a single paragraph, merely contends that trial counsel was ineffective for failing to object to the trial court's instruction in response to a jury question, speculating that the jury was too confused to render a valid verdict. This Court is not obligated to act as defendant's research assistant, and defendant has abandoned his claim of ineffective assistance by failing to provide any legal basis for appellate relief. See *Yee*, 251 Mich App at 406.

Additionally, defendant has not identified the specific jury instruction he contends *should* have been given, nor has he explained how such an instruction would have altered the outcome of the proceedings. Accordingly, defendant has failed to establish that, but for trial counsel's alleged deficiency, there is a reasonable probability that the result would have been different. *Abcumby-Blair*, 335 Mich App at 228. Defendant has therefore not demonstrated entitlement to appellate relief on his ineffective assistance claim.

IV. SENTENCING

Defendant raises several challenges to his sentence.

A trial court's sentencing decisions are generally reviewed for an abuse of discretion. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). Furthermore, "the decision to impose a consecutive sentence when not mandated by statute is reviewable for an abuse of discretion." *People v Norfleet*, 317 Mich App 649, 664; 897 NW2d 195 (2016).

Defendant first argues that the trial court improperly considered defendant's decision to remain silent at the sentencing hearing as a factor in fashioning its sentence,[2] which rendered defendant's sentence invalid as a matter of law. Defendant relies on certain comments by the trial judge that will be quoted below. At sentencing, defendant's trial counsel stated as part of his argument that

> [i]f [defendant] doesn't speak on his own behalf today it's because he does have a right to an appeal. It's not because he hasn't reflected on his actions or taken responsibility for the choices that he's made. I've had many conversations with him. I know where he stands on this.

Subsequently, the following colloquy occurred:

[2] Defendant testified in his own defense at trial.

> THE COURT: Okay. All right, [defendant], anything you'd like to tell the Court before you're sentenced?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: No, all right. And, so the position is that you're not going to make a statement because of your appellate rights. That's news to me because I don't think any statement that you would make here in Court would somehow affect your ability to appeal. You have an absolute right to appeal post a jury trial. So, with that being said, with you not providing a statement to the Court, all I can kind of rely on is what you told us here in court.

Defendant's sentencing guidelines range for his conviction of first-degree criminal sexual conduct (CSC-I) was 108 to 180 months, and the trial court imposed a sentence of 180 months to 40 years' imprisonment. On appeal, defendant contends that the trial court penalized him for exercising his right not to make a statement at sentencing. However, the trial court's remarks do not reflect any intent to impose a harsher sentence based on defendant's silence. Rather, the court clarified that it could only consider the information presented at trial and did not have the benefit of any additional statement from defendant. The record does not support defendant's assertion to the contrary, and he has failed to demonstrate that the trial court abused its discretion or that resentencing is warranted.

Defendant next argues that the trial court ignored his potential for rehabilitation and ignored the fact that he did not have any prior criminal record. Our Supreme Court has stated:

> Where the Legislature has assigned a range of sentencing outcomes for any given conviction, the trial court has authority to sentence a defendant within that range. Within that range, the sentence should be tailored to the particular circumstances of the case and offender. It is the trial court's duty to exercise discretion in a way that ensures the individualized sentence conforms with the principle of proportionality. An appropriate sentence should give consideration to the reformation of the offender, the protection of society, the discipline of the offender, and the deterrence of others from committing the same offense. However, *these are not the only relevant sentencing criteria and trial courts are not required to consider each of these factors when imposing a sentence*. [*People v Boykin*, 510 Mich 171, 183-184; 987 NW2d 58 (2022) (citations omitted; emphasis added).]

Defendant principally contends that the trial court erred by failing to expressly state on the record its consideration of his potential for rehabilitation. However, defendant cites no legal authority requiring a trial court to specifically address, or make an express record of, its consideration of rehabilitation as a prerequisite to a valid sentence. Indeed, Michigan law imposes no such obligation. *People v Boykin*, 510 Mich 171, 192; 987 NW2d 42 (2022). Sentencing courts must impose sentences that are proportionate to the seriousness of both the offense and the offender and must provide justification for the sentence to facilitate appellate review. *Id*. Nevertheless, in *Boykin*, our Supreme Court made clear that sentencing courts are not required to provide detailed, on-the-record explanations of any particular sentencing factor. *Id.* Accordingly, defendant has failed to demonstrate an abuse of discretion on this ground.

Defendant further asserts that the trial court erred by failing to articulate its reasoning for ordering that defendant's sentences for first-degree criminal sexual conduct (CSC-I) and first-degree home invasion be served consecutively. The relevant statutory provision authorizes consecutive sentencing in appropriate circumstances. See MCL 750.520b(3) ("The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction."). Nevertheless, the exercise of such discretion requires the trial court to state, on the record, its reasons for imposing consecutive sentences to enable meaningful appellate review. *People v Norfleet*, 317 Mich App 649, 664-665; 897 NW2d 195 (2016). In this case, although the trial court generally addressed the circumstances of the offense and the offender, it offered no specific rationale for its decision to impose consecutive sentences. The court simply stated, "Count 1 and Count 3 will run consecutive to one another," without further explanation. In the absence of a stated rationale, this Court is unable to perform meaningful appellate review. Accordingly, remand is required for the trial court to articulate its reasons for imposing consecutive sentences. *Id*. at 666.

Defendant also requests reassignment of the case to a different judge on remand, arguing that the trial judge would have "substantial difficulty in putting out of her mind her own previously-expressed views on this issue." Defendant, however, offers no argument beyond this conclusory assertion and appears to equate unfavorable rulings with judicial bias. Michigan law is clear that judicial rulings and opinions formed during proceedings do not, standing alone, establish bias absent evidence of deep-seated favoritism or antagonism that would render fair judgment impossible. *People v Jackson*, 292 Mich App 583, 598; 808 NW2d 541 (2011). Critical or hostile comments toward counsel or the parties generally do not suffice to pierce the presumption of impartiality. *Id*. Defendant's unsupported and conclusory argument does not overcome the strong presumption of judicial impartiality, and we find no basis to grant his request for reassignment on remand.

We affirm defendant's convictions and remand this matter for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin