

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTINEZ BRADLEY,

Respondent-Appellant.

UNPUBLISHED
December 22, 2009

No. 287550
Wayne Circuit Court
Family Division
LC No. 07-472082-DL

Before: Donofrio, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Respondent, age 17, appeals as of right his bench trial adjudication for assaulting, battering, resisting, obstructing, or opposing a police officer performing a duty, MCL 750.81d(1). Because the trial court's findings of fact were not clearly erroneous and sufficient evidence supported respondent's conviction, we affirm.

This case arises out of a police investigation that occurred on September 7, 2007, around 7:30 p.m. on Highland Street in Detroit, Michigan. Respondent testified he was walking his dog when he stopped in front of Samyia White's home on Highland street to speak to her and two mutual friends Uddie and Ryan. Around the same time, there was a shooting in the area and the Detroit Police had several scout cars in the neighborhood looking for the suspected shooter. Officers John Baritche and Juan Reynoso were one of the scout cars investigating the shooting. The officers were both in full uniform and driving a marked scout car. Baritche was driving the scout car down Highland Street when the officers noticed respondent because he matched the description of the shooter provided via radio. The officers stopped in front of White's house. Reynoso testified that, upon stopping, he ordered the three young men to put their hands on the hood of the vehicle. Uddie and Ryan went to the car and police patted them down.

At this point, there is conflicting testimony in the record. Respondent testified that he hesitated to immediately follow the police order because of his dog. Respondent asked the officers what to do with his dog, and received conflicting responses. Baritche told respondent to tie the dog to the fence, but Reynoso told respondent to let the dog go. Respondent let his dog go, and proceeded to put his hands on the scout car. Reynoso testified that upon ordering the young men to put their hands on the car, respondent began to walk away and respondent told Reynoso to leave him alone because he did nothing wrong. Respondent also told Reynoso not to touch him. Reynoso then had to escort respondent to the scout car. Upon trying to pat

respondent down, respondent tried to push off the car. Reynoso tried to pin respondent against the scout car by grabbing respondent around the waist. Respondent then tried to kick Reynoso several times, but only made contact once.

To the contrary, respondent and two other witnesses testified that when respondent reached the car, respondent was cooperating, but Reynoso slammed his head into the car, handcuffed respondent, and threw respondent to the ground. Once respondent was on the ground, Reynoso kept his knee in respondent's back. Respondent was then put into the scout car and taken away. Respondent denied talking back, resisting, or kicking at Reynoso.

Respondent's first issue on appeal is that the trial court's findings of fact were clearly erroneous. When reviewing findings of fact, this Court may reverse the trial court only when a finding is clearly erroneous. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). A finding is clearly erroneous when, "although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

Respondent argues that the findings of the trial court were clearly erroneous because the trial court failed to properly take into account all the evidence presented. Respondent asserts that while Reynoso stated that respondent fit the description of the suspected shooter, Reynoso's description of the suspect was very vague. Respondent points to Reynoso's statement that he would not be surprised if the suspect was actually fifty-six years old. Respondent argues that the trial court inaccurately found that Reynoso was only interested in respondent because he was walking away from the officers in light of the testimony of respondent, White, and another witness who all stated respondent did not walk away, rather, respondent did not put his hands on the scout car as quickly as the others because respondent first asked what to do with his dog. Respondent contends that these conflicting orders about the dog placed pressure on respondent that confused him and led to his slight hesitation to act. As such, respondent argues that his question about his dog does not amount to resisting or obstructing a police officer performing a duty.

At the close of proofs, the trial court concluded respondent was guilty of resisting and obstructing a police officer performing his duty. The trial court found as follows:

[Respondent] didn't stop when [the police] asked him to.... [H]e wanted to get into a discussion about the dog and so forth and so on. That created the problem right there [The police] were investigating a shooting and when they're investigating a shooting, individuals have to comply. The other two individuals did. And the fact of the matter remain, [sic] like I said, I'll just even go from Samyia and from Mr. Rose's testimony, he created a problem. He was obstructing the police officers' ability to further their investigation. He resisted by pulling away and having to be shoved down on the car Mr. Martinez was the one that made the biggest fuss and Martinez was the one who was more centrally involved [sic] because he apparently [sic] appeared to look like the perpetrator who they subsequently caught. But the police have the right and the obligation to conduct an investigation and that's what they were attempting to do. Mr. Bradley interfered with that investigation.

The record reveals that Reynoso testified that he was responding to a call to investigate a shooting in the neighborhood on September 7, 2007. Reynoso received a radio-transmitted description of the suspect as a black male wearing black pants and a black shirt. Upon seeing respondent, Reynoso stopped to investigate because respondent matched the suspect's description. Reynoso ordered respondent, Uddie, and Ryan to place their hands on the car, but respondent did not immediately comply. According to Reynoso, instead of complying, respondent first turned away and said he did nothing wrong. Reynoso testified that he had to escort respondent back to the scout car and respondent told Reynoso not to touch him. Reynoso further testified that respondent resisted being patted down and Reynoso had to hold respondent down while respondent tried to kick Reynoso several times, making contact once.

Respondent, White, and another witness testified to a different series of events. They said the police pulled up on the group quickly, and yelled orders at them without ever stating an investigation was underway. Respondent then received conflicting orders from the two officers about what he should do with his dog. One officer told respondent to tie the dog on the fence and the other told respondent to let the dog go. Respondent testified he then let the dog go and walked to the scout car. Reynoso then slammed respondent's head into the car and threw respondent to the ground while handcuffed. Reynoso kept his knee in respondent's back until placing respondent in the police car. Respondent denied ever walking away from the officers, and denied that he stated to Reynoso not to touch him or that he did not do anything wrong.

The findings of fact by the trial court are supported by the record evidence and are not clearly erroneous. *Williams, supra* at 313. We are not left with a definite and firm conviction that a mistake was made. *Lanzo Const Co, supra* at 473.

Respondent also argues that there was insufficient evidence to support the adjudication that he assaulted, battered, resisted, obstructed, or opposed a police officer performing a duty, MCL 750.81d(1). When reviewing a claim of insufficient evidence, this Court reviews the record de novo in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *In re Contempt of Henry*, 282 Mich App 656, 677; 765 NW2d 44 (2009). In reviewing the sufficiency of the evidence, this Court should not interfere with the fact finder's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Respondent argues that the prosecutor failed to present legally sufficient evidence to support his adjudication of assaulting, battering, resisting, obstructing, or opposing a police officer performing a duty beyond a reasonable doubt. Respondent claims the prosecution failed to prove knowledge on the part of respondent. At trial, the defense argued the fact that the police officers pulled up in front of White's house quickly and did not at any point inform respondent that they were conducting an investigation. Respondent claimed that he received conflicting orders from each police officer about what action to take with his dog. Respondent argues his slight hesitation about which police officer's order to follow is not sufficient evidence to prove he knew or should have known that the officer was performing his duty.

The elements of resisting and obstructing an officer are (1) that respondent assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer and (2) respondent knew or had reason to know the officer was performing his duties. *People v Ventura*,

262 Mich App 370, 377-378; 686 NW2d 748 (2004). “Obstruct” is defined by the statute as “the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” MCL 750.81d(7)(a). The statute requires that the prosecution prove that respondent had actual or constructive knowledge. *People v Nichols*, 262 Mich App 408, 413-414; 686 NW2d 502 (2004). This means that respondent knows or has reason to know he is resisting and obstructing when he ignores the persistent commands of a full uniform police officer. *Id.* Finally, a police officer need not be trying to accomplish a lawful arrest for the defendant to be resisting and obstructing, rather, the defendant resists and obstructs when he knows or should have known that the police officer was performing his duties. *Ventura, supra* at 377-378.

In this case, when looking at the evidence in the light most favorable to the prosecution and determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt, the evidence is sufficient to convict respondent of resisting and obstructing a police officer performing his duty. When the police officers pulled up to White’s house, they were both in full uniform and driving a fully marked police car. Reynoso told respondent and the other two young men to put their hands on the scout car. However, respondent did not immediately go to the car like the other two. Respondent testified that he recognized the car and the officers as the police. Respondent did not comply with the officer’s order and in doing so interfered with the on-going investigation.

Further, there is testimony that respondent was in fact belligerent with the police during their investigation. Respondent told the police to leave him alone and not to touch him. Respondent heard the police order just as well as the two other young men, however, he chose to create a complicated scene by his failure to comply with the officer’s order and in his resistance. The prosecution offered sufficient evidence for a rational trier of fact to conclude that the essential elements of the crime were proven beyond a reasonable doubt.

Even though respondent submitted contradictory evidence, it was for the trier of fact to determine the credibility of the proofs presented. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998); *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). The trial court heard the evidence and determined each witness’s credibility. A rational trier of fact would be able to conclude beyond a reasonable doubt that respondent resisted and obstructed a police officer performing his duty.

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Donald S. Owens