

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN DUANE KNIGHT,

Defendant-Appellant.

UNPUBLISHED
February 14, 2008

No. 276088
Wayne Circuit court
LC No. 06-009723-01

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of resisting and obstructing a police officer, MCL 750.81d(1). Defendant was sentenced to 18 months' probation, and appeals as of right.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to convict him of this crime. We disagree.

The prosecution was required to establish that defendant assaulted, battered, wounded, resisted, obstructed, opposed or endangered "a person who the individual knows or has reason to know is performing his or her duties." MCL 750.81d(1). "Person" is defined to include a police officer. MCL 750.81d(7)(b)(vii). In evaluating defendant's claim regarding the sufficiency of the evidence, we must review the evidence in a light most favorable to the prosecution to determine whether any trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). Circumstantial evidence and reasonable inferences that arise from it may constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). We will not interfere with the trier of fact's role of determining the weight of

¹ Defendant also moved for a remand to establish that his counsel failed to call witnesses whom he had identified so as to support a claim for ineffective assistance of counsel. This Court denied this motion. It is noted that in support of this motion defendant failed to provide affidavits from any of the witnesses to establish what their testimony would be, and also failed to name these alleged witnesses.

the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 477, 452; 569 NW2d 641 (1997). The trial court's findings of fact may not be set aside unless they are clearly erroneous. *Robinson, supra* at 5; MCR 2.613(C).

Consistent with an officer's testimony, the trial court found that the officer overheard defendant's wife screaming "get off me" when he responded to a domestic violence call. Defendant and his wife claimed that they advised the officers that they were just arguing, and that when defendant was asked to step outside, one officer yelled and used profanities while his police dog was barking, and threatened to use the dog if defendant did not exit the apartment. Defendant testified that he was afraid for himself and his family. The trial court found that the testimony of the police officers was credible, and that defendant's testimony was "absolutely incredible." Further, the trial court found, consistent with the testimony of the responding police officers, that the officers were validly conducting an investigation, that they requested that defendant step out of his apartment, and that defendant initially did not comply. The trial court concluded that after defendant did eventually step out, he failed to comply when told he was being handcuffed, and shoved an officer before he was tasered. Given that the credibility determination will not be disturbed, *Wolfe, supra*, and that these findings were supported by the evidence and therefore were not clearly erroneous, an inference arises that defendant must have known or at least should have known that the officers' investigation was legitimate when he refused to comply and when he shoved the officer. *Carines, supra*. We therefore conclude that the evidence was sufficient to convict him of this crime.

Defendant next argues that his attorney rendered ineffective assistance by failing to call witnesses defendant had allegedly identified. There is no evidence in the lower court record to establish the identities of other witnesses, except defendant's two toddlers, or the facts that might have been established by their testimony. Presuming counsel was aware of such information, there is nothing in the record to establish her reasons for not calling these witnesses. Our review is limited to the facts contained in the appellate record. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Moreover, if counsel decided not to call these witnesses, absent evidence to the contrary, we would presume that the decision was a matter of trial strategy and would not substitute our judgment for that of counsel. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004); *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). While these witnesses ostensibly might have buttressed defendant's credibility, their testimony presumably would have been consistent with defendant's testimony and that of his wife. Accordingly, defendant was not denied a substantial defense. *Dixon, supra*. Defendant has not established a claim of ineffective assistance of counsel.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra