

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LEQUIN PATTERSON,

Defendant-Appellant.

UNPUBLISHED

March 13, 2008

No. 272969

Berrien Circuit Court

LC No. 2005-412705-FH

Before: Fitzgerald, P.J., and Smolenski and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of resisting and obstructing police officers, MCL 750.81d(1). Defendant was sentenced as an habitual offender, second offense, MCL 769.10, to two years' probation. We affirm.

Defendant first argues that the trial court erred when it denied defendant's motion for a new trial on the ground that the jury's verdict was against the great weight of the evidence. This Court reviews for an abuse of discretion a trial court's decision to deny a motion for a new trial on the basis that the verdict was against the great weight of the evidence. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). A trial court abuses its discretion when it selects an outcome that is not within the range of reasonable and principled outcomes. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

On appeal, defendant argues that there was no evidence that defendant resisted the police officers or that defendant knew the police officers were performing their duties. We disagree. "The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003).

In the present case, witness testimony established that uniformed police officers arrived at defendant's apartment in marked patrol cars in response to a domestic assault call. The officers testified that they announced their presence and knocked on defendant's front door several times. There was testimony that the victim's key worked in the lock, but that she was unable to unlock the door. A police lieutenant observed an individual, who was holding the apartment's front door shut, through a rear glass sliding door. After one police officer kicked in the front door, he saw defendant directly behind the door. In a subsequent search of the

apartment, the police found that defendant was the only person present. This evidence was sufficient to support the charge.

Further, although defendant's trial testimony contradicted the testimony given by prosecution witnesses, absent exceptional circumstances, issues of witness credibility are for the jury. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). Because the police officers' testimony was not so thoroughly impeached that it was deprived of all probative value, the trial court properly determined that the issue was one of weight and credibility that was properly left to the jury. *Id.* at 645-647. Therefore it did not abuse its discretion when it determined that the verdict was not against the great weight of the evidence.

Defendant also argues that the issue whether the exigent circumstances exception to the warrant requirement applied in this case was improperly put to the jury. However, defendant fails to cite the lower court record to support the factual basis for his allegation of error. Moreover, this Court was unable to locate any instances in the record, where the prosecution, defense counsel, or the trial court placed this issue before the jury. Therefore, we conclude that defendant abandoned this issue on appeal. *People v Martin*, 271 Mich App 280, 315; 721 NW2d 815 (2006).

Nevertheless, we reject the argument that defendant raises throughout his appellate brief that the police unlawfully entered his apartment without a warrant. The police responded to a domestic violence dispatch and, after arriving and ascertaining the situation, the police had probable cause to arrest defendant on two felonies: resisting and obstructing, and assault with a dangerous weapon. Moreover, the exigent circumstances exception to the warrant requirement clearly applied to this case. Under the exigent circumstances exception, where the police have probable cause to believe a crime has been committed, they may enter a defendant's home to secure and protect the police and others, to prevent the destruction of evidence or to prevent the defendant's escape. *People v Snider*, 239 Mich App 393, 409-411; 608 NW2d 502 (2000). In this case, the police had justification to enter the apartment to protect themselves, to prevent the destruction of evidence, and to prevent defendant's escape. *Id.*

Defendant also contends that the prosecution improperly failed to produce an endorsed witness—the victim. Because defendant never objected to the prosecution's failure to call the victim or requested aid in obtaining her presence, this claim of error is unpreserved. Therefore we shall review this it for plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). The prosecution's failure to call the victim at trial clearly did not prejudice defendant's trial. Indeed, the trial court earlier dismissed the more serious charge of assault with a dangerous weapon because the victim did not appear at the preliminary examination. Had the victim appeared at trial, the prosecution might have obtained the reinstatement of this charge and the witness would have been able to testify about the circumstances of the domestic assault. Even assuming that the victim would have been limited to testifying about the events leading to the obstruction charge, she could have corroborated the police testimony that she had a key to defendant's apartment and that, when she tried the key on the door, it would not open. Therefore, even if the error were plain, it was not outcome determinative and does not warrant relief. *Id.*

For the same reason, we cannot agree with defendant's contention that his trial counsel was ineffective for failing to secure the victim's testimony. Defendant's trial counsel could have

reasonably concluded that defendant's case was better served if the victim did not testify. Hence, defendant cannot overcome the presumption that his trial counsel's decision was merely trial strategy. This Court will not substitute its judgment for that of defense counsel on matters of trial strategy. *People v Rocky*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

Likewise, defendant's trial counsel was not ineffective for failing to move to dismiss the charges on the ground that the police unlawfully entered his apartment. We have already noted that the police properly entered defendant's apartment to secure it and defendant without a warrant. Therefore, this motion would have been futile. A defendant's trial counsel is not ineffective for failing to raise futile motions. *People v Riley*, 468 Mich 135, 142; 659 NW2d 611 (2003).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski
/s/ Jane M. Beckering