

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TREVOR KELLY HOLT,

Defendant-Appellant.

UNPUBLISHED

March 27, 2008

No. 275088

Jackson Circuit Court

LC No. 06-004025-FH

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of resisting and obstructing a police officer, MCL 750.81d(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On May 29, 2006, two Jackson County Sheriff Deputies named Hiller and Smith went to the Colonial Inn Motel to find defendant, who had absconded from parole. Hiller had a warrant for defendant’s arrest. They were accompanied by a Blackman Township Public Safety Officer named Brower. The officers knocked on the doors of the motel looking for defendant. Hiller spotted defendant jumping down some steps and running away. Hiller yelled to defendant to stop and began chasing him. Brower joined the pursuit. Hiller lost sight of defendant, but he rounded a corner in time to see Smith catch defendant. As Smith approached defendant, defendant had his arms raised. After Smith grabbed defendant, however, defendant brought his arms down, and the two fell to the ground. Hiller moved toward the pair and attempted to handcuff defendant. Defendant refused to uncurl from a fetal position and ignored Hiller’s statements to “relax” and let the officers handcuff him. In an effort to force compliance with his commands, Hiller struck defendant’s body three times, but defendant continued to resist. Brower joined the others trying to subdue defendant, and the officers continued to direct defendant to release his hands and submit to being handcuffed. At one point, Hiller managed to get defendant’s arm loose, but he lost his grip. After the officers told defendant that he would be sprayed with pepper spray if he did not stop resisting, Brower sprayed defendant twice in the face. Defendant continued to resist. Shortly thereafter, the officers managed to handcuff defendant and then placed him in Hiller’s patrol car. The testimony from Smith and Brower generally corroborated Hiller’s testimony.

Defendant maintained that he was on his way out of the motel for a jog when the officers approached him. He stated that he did not hear Hiller shout any warning to stop, but that he

stopped when he heard Smith shout the order. Defendant stated that Smith instantly forced him to the ground. He testified that he did not have time to comply with any other orders because the officers attacked him as he lay on the ground. He maintained that he curled up to protect his side from being struck by the officers.

Defendant first argues that the prosecution committed misconduct when it repeatedly introduced evidence that defendant had absconded from parole. We disagree. Before trial, the parties discussed the introduction of this evidence in conjunction with the possible evidence that defendant was also suspected of committing a larceny. Defense counsel specifically stated that he had “no problem” with the introduction of the information that defendant was a parole absconder. It is well-settled that the intentional relinquishment of a right constitutes a waiver of any error. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). By specifically agreeing to the introduction of this evidence, defendant knowingly abandoned this issue. *Id.*

Defendant next argues that the prosecution failed to present sufficient evidence to support his conviction. We disagree. We review a defendant’s allegations regarding insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found 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). Under this deferential standard of review, “a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The prosecutor is not required to disprove every reasonable theory of innocence proffered by a defendant. *Id.* Instead the prosecutor’s burden is to convince the jury of the defendant’s guilt beyond a reasonable doubt in light of all the evidence presented. *Id.*

MCL 750.81d provides in relevant part:

(1) . . . [A]n individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$ 2,000.00, or both.

* * *

(7) As used in this section:

(a) “Obstruct” includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

Hiller’s testimony supports defendant’s conviction, as does the testimony of the other officers. The officers testified that defendant ignored Hiller’s command to stop, and then physically struggled with Hiller and the other officers to resist being handcuffed, notwithstanding their lawful orders directing him to relax and release his hands. Defendant maintained that he did not hear Hiller’s shouts warning him to stop and that he did not have time to comply with the other orders because he was immediately tackled and attacked as he lay on

the ground. However, the jury was free to disbelieve this testimony, and we will not interfere with the jury's role of determining the witnesses' credibility. *Wolfe, supra* at 514-515. When viewed in a light most favorable to the prosecution, the officers' testimony supported the finding that defendant knowingly disobeyed the officers' lawful orders generally, and Hiller's orders specifically, and that defendant physically interfered with Hiller's attempts to arrest him. MCL 750.81d(7)(a).

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher