STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 15, 2008
v	No. 274615 Wayne Circuit Court
CLEVELAND ROGERS, Defendant-Appellant.	LC No. 06-005429-01

Before: Jansen, P.J., and Donofrio and Davis, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial convictions of attempted first-degree home invasion, MCL 750.92; MCL 750.110a(2), attempted unlawful taking of a firearm from a peace officer, MCL 750.92; MCL 750.479b(2), and resisting or obstructing an officer causing injury, MCL 750.81d(2). Pursuant to MCL 769.11, defendant was sentenced as a third habitual offender to concurrent prison terms of 57 months to 10 years for the attempted home invasion and attempted taking-of-a-firearm convictions, and two to four years for the resisting-or-obstructing conviction. We affirm.

Defendant first argues is that the prosecution failed to present legally sufficient evidence to support his conviction of resisting or obstructing an officer causing injury. We disagree. We review de novo sufficiency of the evidence claims. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We view the evidence in a light most favorable to the prosecution to 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 Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of resisting or obstructing an officer causing injury are: (1) the defendant assaults, batters, wounds, resists, obstructs, opposes, or endangers a person, (2) the defendant knows or has reason to know that person is performing his or her duties, and (3) the defendant causes a bodily injury requiring medical attention or medical care. MCL 750.81d(2).

Defendant ran from officer Harrell after she told him to stop and identified herself as a police officer. Defendant then battered officer Harrell by hitting or striking the right side of her face twice. Afterward, the officer's eye was red and swollen. In addition, defendant struggled with Harrell for her gun. Officer Shea, who arrived shortly thereafter, found evidence to confirm that such a struggle had occurred. We conclude that there was sufficient evidence from which a

rational trier of fact could have concluded beyond a reasonable doubt that defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered officer Harrell.

Next, although defendant saw Harrell step out of an unmarked car, she was wearing a police uniform at the time. Harrell testified that she yelled, "Police; stop." Consequently, there was sufficient evidence from which a rational trier of fact could have concluded beyond a reasonable doubt that defendant knew or had reason to know that Harrell was performing her duties.

Finally, the evidence established that defendant injured Harrell and that Harrell received medical treatment after being struck in the face. There was sufficient evidence from which a rational trier of fact could have concluded beyond a reasonable doubt that defendant caused a bodily injury requiring medical attention or care.

Defendant contends that Harrell had an incentive to fabricate her testimony because her contact with defendant resulted in the discharge of her firearm. However, resolution of the conflicting evidence and matters of witness credibility are properly left to the trier of fact. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). We defer to the trier of fact's superior ability to assess witness credibility. See *People v Brown*, 43 Mich App 170, 176; 204 NW2d 72 (1972). Moreover, all conflicts in the evidence must be resolved in favor of the prosecution. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004). In this case, the trial court weighed Harrell's testimony concerning her struggle with defendant against defendant's argument that Harrell had shot him in the leg out of fear. The trial court concluded that Harrell's testimony was more credible, commenting that "[i]f she was scared and thought he was getting ready to hurt her with a gun, you don't shoot [him] in the leg. That happened because there was a struggle." We defer to the trial court's determination that a struggle occurred and that the firearm discharge was accidental.

Defendant also argues that his trial attorney was ineffective for failing to request a fingerprint analysis of officer Harrell's firearm. We disagree. Effective assistance is strongly presumed and a reviewing court should not evaluate an attorney's decision with the benefit of hindsight. *People v Grant*, 470 Mich 477, 485; 684 NW2d 686 (2004); see also *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). To demonstrate ineffective assistance, a defendant must show (1) that his attorney's performance fell below an objective standard of reasonableness, and (2) that this performance so prejudiced him that he was deprived of a fair trial. *Grant*, *supra* at 485-486. Prejudice exists if a defendant shows a reasonable probability that the outcome would have been different but for the attorney's errors. *Id*. at 486.

Defense counsel's performance did not fall below an objective standard of reasonableness in this case. *Id.* at 485-486. Decisions concerning which evidence to present are matters of trial strategy, and can constitute ineffective assistance of counsel only when they deprive the defendant of a substantial defense. *People v Hoyt*, 185 Mich App 531, 537-538, 462 NW2d 793 (1990). A substantial defense is one that might have made a difference in the outcome of the trial. *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). Defendant's attorney argued throughout the proceedings below that defendant did not attempt to take Harrell's gun and that defendant did not resist or obstruct Harrell in the discharge of her duties. Indeed, defense counsel suggested that Harrell had shot defendant because she was afraid. Moreover, counsel also pointed out that Harrell was the only witness to the purported

struggle with defendant. In short, defense counsel vigorously pursued the theories that defendant had never struggled with Harrell and that defendant had never reached for her gun. The mere fact that counsel did not request a fingerprint analysis of the gun does not require a finding that defendant was deprived of a substantial defense. We will not substitute our judgment for that of counsel regarding trial strategy. *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001).

Additionally, we cannot conclude that defendant was prejudiced by his attorney's failure to request a fingerprint analysis of the gun. *Grant*, *supra* at 485-486. As the trial court observed, even a complete absence of defendant's fingerprints would not have proven that defendant had not struggled for Harrell's gun. After all, there was other independent evidence to establish the existence of a struggle between defendant and Harrell. For instance, another officer testified that Harrell's eye was red and swollen after the purported struggle, and a third officer found physical evidence of the struggle upon arriving at the scene. Defendant has not established that a fingerprint analysis would have made a difference in the outcome of trial, and counsel was therefore not ineffective for failing to request one.

Affirmed.

/s/ Kathleen Jansen
/s/ Pat M. Donofrio
/s/ Alton T. Davis