STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 9, 2010
v	No. 288993 Montcalm Circuit Court
PAUL COLARELLI, Defendant-Appellant.	LC No. 08-010597-FH

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of resisting and obstructing a police officer, MCL 750.81d. He was sentenced as a fourth habitual offender, MCL 769.12, to 18 months to 15 years' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to prove that he intended to resist and obstruct the officer. This Court reviews a claim of insufficient evidence de novo. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). This Court must review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id*.

Defendant was convicted of MCL 750.81d(1), which provides, in pertinent part: "[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." Whether a defendant's conduct constitutes resisting and obstructing a police officer must be determined on a case-by-case basis. *People v Pohl*, 207 Mich App 332, 333; 523 NW2d 634 (1994). "Obstruct includes 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 defendant must have actually resisted by what he said or did, but physical violence is unnecessary. *Pohl*, 207 Mich App at 333. The statute clearly states that an individual who resists a person the individual knows or has reason to know is performing his duties is guilty of a felony. *People v Ventura*, 262 Mich App 370, 376; 686 NW2d 748 (2004).

Viewed in a light most favorable to the prosecution, the evidence presented at trial was sufficient to permit a rational jury to conclude that defendant committed the offense of resisting and obstructing a police officer. When Steven Dewitt, Chief of Police in Howard City, arrived at defendant's residence, he was dressed in full police uniform and driving his fully marked police cruiser. Dewitt called to defendant through defendant's bedroom door, identifying himself as a police officer, and told defendant that he had warrants for defendant's arrest. Defendant heard Dewitt say that he was a police officer and that defendant was under arrest. Defendant knew that Dewitt was there to arrest him on outstanding warrants.

Dewitt testified that, as soon as Dewitt entered the room, defendant started screaming profanities at the officers and was very hostile and aggressive. Dewitt told defendant to stay down on the bed and keep his hands where Dewitt could see them. Defendant's right hand was in a large cast and was in clear view. Defendant initially raised his left hand in the air, but then lowered it down the left side of the bed toward the floor. Dewitt could not see defendant's left hand because it was on the far side of the bed. Dewitt yelled for defendant to get his hand up, but defendant left it down on the far side of the bed. Defendant testified that he had used his left arm to support himself as he leaned over to roll out of bed because his right arm was in a cast.

Dewitt was eight feet from the bed issuing verbal commands for defendant to stay on the bed and informing him that he was under arrest. Defendant testified that heard Dewitt tell him to stay on the bed, but he was already reaching for his pants. When defendant started to rise up from the bed, Dewitt ordered him to stay on the bed. Defendant finally stood up and Dewitt told him to do as he commanded or he would be tasered. Dewitt repeated this warning three or four times. Whenever Dewitt issued an order, defendant yelled and screamed profanities. Defendant stood up and reached for his dresser drawer. Dewitt yelled for defendant not to open the drawer repeatedly because weapons are typical stored in dresser drawers. When defendant made contact with the dresser drawer, Dewitt tasered him. Defendant fell back on the bed and Dewitt called for the other officers to handcuff him.

On appeal, defendant argues that he knew the officers were there to arrest him on outstanding warrants and that he intended to comply with the officers and go with them, but he wanted to put his pants on before they took him to the police station. However, defendant's argument is without merit. The evidence established that defendant knew or had reason to know that Dewitt was performing his duties pursuant to MCL 750.81d(1) and that defendant knowingly failed to comply with Dewitt's lawful order. MCL 750.81d(7)(a). Dewitt testified that the whole incident happened very fast and was over in about one minute. In that quick minute, Dewitt was unaware of defendant's intentions and only knew that defendant was disobeying his commands and was reaching for something. This Court in *Ventura*, 262 Mich App at 377, found that MCL 750.81d(1) was an attempt by the Legislature to reduce the likelihood of potential dangers inherent in an arrest situation, protecting both the public and police officers. Defendant's unspoken intentions were irrelevant to the trier of fact in review of the evidence. Thus, the evidence was sufficient for the jury to have concluded that defendant resisted and obstructed Dewitt, who defendant knew or had reason to know was performing his duties.

In a supplemental brief, filed in propria persona, defendant also argues that the prosecution abused its discretion in charging defendant with MCL 750.81d(1), rather than MCL 750.479, because the prosecution knew that the arrest had been illegal and, as such, defendant

would have had a defense under MCL 750.479. This Court reviews a prosecution's charging decisions for an abuse of discretion. *People v Nichols*, 262 Mich App 408, 415; 686 Nw2d 502 (2004). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no excuse for the ruling made. *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

Defendant is correct in his assertion that, under MCL 750.479, the legality of the arrest was an element of the charged offense, and therefore the right to resist an unlawful arrest is a defense to a charge under this statute. *Ventura*, 262 Mich App at 374. Under MCL 750.81d(1), with which defendant was charged, a person may not use force to resist an arrest made by an officer he knows or has reason to know is performing his duties regardless of whether the arrest is illegal. *Id.* at 377. Because there was sufficient evidence to support a conviction pursuant to MCL 750.81d(1), the prosecution did not abuse its discretion in charging defendant under that statute. In addition, defendant fails to offer any information or evidence to support his contention that the charges were brought for an unconstitutional, illegal or illegitimate reason. Therefore, there is no basis for this Court to conclude that the prosecutor abused his discretion in charging defendant with MCL 750.81d(1).

Affirmed.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood