

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON CRUSE VALENTINE,

Defendant-Appellant.

UNPUBLISHED

September 30, 2008

No. 280794

Oakland Circuit Court

LC No. 2007-213651-FH

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

PER CURIAM.

After a jury trial, defendant was convicted of one count of assaulting, resisting, or obstructing a police officer performing his duties, MCL 750.81d(1), and was sentenced as an habitual offender, fourth offense, MCL 769.12, to 2 to 15 years’ imprisonment, to be served consecutively to another sentence. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the prosecution presented insufficient evidence to establish the elements of the charged offense beyond a reasonable doubt. Specifically, defendant argues that Officer Pearce was not performing his duties as a police officer at the time of the attack. We disagree. We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We must view the evidence in a light most favorable to the prosecution to determine whether sufficient evidence has been presented that would permit a reasonable trier of fact to find 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). “[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).

To establish the offense of assaulting, resisting, or obstructing a police officer, the prosecution must establish (1) that defendant assaulted, battered, resisted, obstructed, opposed, or endangered a person, and (2) that defendant had reason to know the person was performing his duties as a police officer. MCL 750.81d; *People v Ventura*, 262 Mich App 370, 375; 686 NW2d 748 (2004). MCL 750.81d(7)(a) defines “obstruct” as “the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” This Court defined “know” as “to perceive or understand as fact or truth; apprehend clearly and with certainty,” and indicated that the prosecution must show that defendant had “actual knowledge”

in order to establish the charged offense. *People v Nichols*, 262 Mich App 408, 413; 686 NW2d 502 (2004), quoting *Random House Webster's College Dictionary* (1997).

In this case, the evidence established that defendant knowingly assaulted, resisted, or obstructed a police officer. Evidence presented at trial established that defendant failed to comply with Officer Pearce's lawful commands. In particular, Officer Pearce instructed defendant to keep his feet away from the door of the holding cell. When defendant ignored Officer Pearce's command, Officer Pearce pushed defendant's feet away from the door in order to open the door unobstructed and gather information for booking. When Officer Pearce did so, defendant jumped up and took an aggressive, hostile stance toward him. To maintain control, Officer Pearce ordered defendant to sit back down, but defendant refused. Concerned about becoming trapped in the cell, Officer Pearce pushed defendant back into his seat and exited the holding cell. Upon instruction of his superior officer, Officer Pearce returned to gain control of the situation and again pushed defendant back into his seat. When he did this, defendant grabbed the officer's legs and both men fell to the ground. Additional officers rushed into the cell and forcibly handcuffed defendant after he refused commands to put his hands behind his back. Taken together, this evidence establishes that defendant knowingly failed to comply with lawful commands by uniformed officers and physically assaulted a police officer, satisfying the first element of the offense. MCL 750.81d(7)(a).

Second, defendant knew or had reason to know that Officer Pearce was a police officer performing his duties. When defendant ignored and resisted Officer Pearce's persistent commands, defendant was in a holding cell in a police station and Officer Pearce was in full uniform. Therefore, defendant had actual knowledge that Officer Pearce was a police officer. See *Nichols, supra* at 413. Further, Officer Pearce was assisting with the booking of the two other prisoners held in the same cell as defendant, indicating that Officer Pearce was acting within the scope of his duties at the time.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher