

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TABITHA NICOLE BROWN,

Defendant-Appellant.

UNPUBLISHED

May 27, 2010

No. 291302

Ingham Circuit Court

LC No. 08-000485-FH

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals of right her jury trial conviction of resisting and obstructing a police officer, MCL 750.81d(1). This case arises from an incident that occurred on April 26, 2008, when police visited Risdale Street in Lansing, MI. Because when considered in a light most favorable to the prosecution, the evidence clearly established that defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and, because the great weight of the evidence did not preponderate so heavily against the jury's verdict that defendant is entitled to a new trial, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant claims there was insufficient evidence to support the jury's verdict and that the verdict was against the great weight of the evidence. We review de novo a claim of insufficient evidence. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). "[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). A claim that a conviction is against the great weight of the evidence requires that the defendant make a timely motion for a new trial raising the issue. MCR 2.611(A)(1)(e) and (B); MCR 6.431(A) and (D); *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Defendant did not move for a new trial so this claim is not preserved. In the absence of a motion for a new trial, defendant's unpreserved great weight of the evidence claim is reviewed for plain error. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). To establish plain error, defendant must show that

(1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights. Once the defendant establishes these three

elements, the appellate court must still exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, unpreserved error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity, or public reputation of the judicial proceedings independent of the defendant's innocence. [*People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003) (internal citations omitted).]

Defendant essentially bases her sufficiency of the evidence argument on a review of the evidence supporting her version of the events. However, this Court must apply the correct standard of review that requires viewing the evidence in a light most favorable to the prosecution. *Wolfe*, 440 Mich at 515. Viewed in such a light, this Court must focus on the evidence that supports the verdict and determine whether it was sufficient, if believed, to prove defendant's guilt beyond a reasonable doubt. In this case, the evidence supporting the prosecutor's case was provided by the testimony of three of the police officers who interacted with defendant. Although all the witnesses agreed on the general nature of the incident, the prosecution and defense witnesses were diametrically opposed with regard to the specific facts.

Defendant does not dispute that the officer who she was convicted of resisting or obstructing was acting in his capacity as a City of Lansing police officer at the time of the incident. Indeed, the evidence showed that he was wearing his full uniform and displaying his badge. The evidence clearly established that the officer was a "person" within the meaning of MCL 750.81d(1) as defined by MCL 750.81d(7)(b). That the officer was dressed in full uniform and displaying his badge also suggests that defendant had "reason to know [he was] performing his . . . duties." MCL 750.81d(1). The issue, then, is whether the prosecutor proved that defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered the officer.

According to the three police officers' testimony, defendant was swearing, yelling, and attempting to interfere with their investigation of her son. The officers gave her specific directives, but she refused to comply. She was asked to stop swearing and yelling, but she continued doing so. She was also told she was under arrest and was asked to put her hands behind her back so she could be placed in handcuffs. She refused and began flailing her arms around, preventing the police from handcuffing her. They were forced to wrestle her to the ground and, during the struggle, she struck the complaining officer in the face.¹ Photographs of his injuries were shown to the jury. Police were forced to spray defendant twice with pepper spray to subdue her enough to allow them to handcuff her. This testimony, which was evidently accepted by the jury and which must be accepted by this Court on appeal because it views the evidence in a light most favorable to the prosecutor, established that defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered the officer. There was sufficient evidence to support defendant's conviction.

Further, defendant's great weight challenge was not preserved for appellate review and she has not shown plain error in regard to the claim. When a defendant challenges the great

¹ One of the other officers testified that defendant also struck him in the face, but defendant was acquitted of the charges relating to that officer.

weight of the evidence, a new trial may be granted “only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand.” *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). The police witnesses all agreed that defendant resisted and assaulted the police officer. In contrast, defendant and the several defense witnesses denied she had assaulted or resisted the officer and claimed the police were the aggressors. Thus, the determination of defendant’s guilt was dependent on the jury’s determination of witness credibility. Because this Court does not resolve credibility issues anew on appeal, *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998), “the evidence [did not] preponderate[] heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand.” *Lemmon*, 456 Mich at 627. Accordingly, defendant has failed to show plain error.

Affirmed.

/s/ Douglas B. Shapiro

/s/ Kathleen Jansen

/s/ Pat M. Donofrio