STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 21, 2010
v	No. 294670 Ottawa Circuit Court
JORGE ARMONDO VILLARREAL, Defendant-Appellant.	LC No. 08-032955-FH

Before: MURRAY, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of third-degree fleeing and eluding, MCL 257.602a(3), assaulting, resisting, or obstructing a deputy sheriff, MCL 750.81d(1), and reckless driving, MCL 257.626. Defendant appeals as of right. We affirm.

I. GREAT WEIGHT AND SUFFICIENCY OF THE EVIDENCE

Defendant argues that his convictions are either against the great weight of the evidence or not supported by sufficient evidence. We disagree.

A verdict is against the great weight of the evidence when the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Conflicting testimony is an insufficient ground for granting a new trial. *Id.* at 647. "[U]nless it can be said that directly contradictory testimony was so far impeached that it was deprived of all probative value or that the [factfinder] could not believe it, or contradicted indisputable physical facts or defied physical realities," we must defer to the factfinder's credibility determinations. *Id.* at 645-646 (internal citations and quotations omitted).

In assessing whether a conviction is supported by sufficient evidence, we view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could conclude that the essential elements of the crime were proved beyond a reasonable doubt. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). We resolve all evidentiary conflicts in favor of the prosecution. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Circumstantial evidence and reasonable inferences arising from such evidence can be satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

A. FLEEING AND ELUDING

Defendant argues that his conviction for third-degree fleeing and eluding is not supported by sufficient evidence because there was no evidence that he was aware that he had been ordered to stop or that he refused to obey an order to stop by trying to flee. To sustain a conviction for third-degree fleeing and eluding, there must be evidence that (1) a law enforcement officer was in uniform with an adequately identified law enforcement vehicle and was performing his lawful duties, (2) the defendant was driving a motor vehicle, (3) the officer ordered the defendant to stop by hand, voice, siren, or emergency light, (4) the defendant was aware of the order, (5) the defendant refused to obey by trying to flee, and (6) some portion of the violation took place in an area where the speed limit was 35 miles per hour or less. MCL 257.602a(3); *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999).

Deputy James Douglas testified that as he approached defendant's vehicle while it was stopped at a red light at the intersection of Lakewood Boulevard and Beeline Road, he activated his vehicle's lights. According to Douglas, defendant then turned left onto Beeline Road while the traffic light was still red. Douglas then activated his vehicle's sirens and chased defendant on Beeline Road and Surry Oak Drive, where the speed limit was 25 or 35 miles per hour. The speed of the two vehicles exceeded 50 miles per hour. The chase occurred soon after midnight, and there were not many vehicles on the road. Viewing this evidence and the inferences arising therefrom in the light most favorable to the prosecution, a rational trier of fact could find that defendant knew he had been ordered to stop and that he refused to obey the order by fleeing. *Kanaan*, 278 Mich App at 618. As the trial court stated, "The fact that the defendant ran the red light suggests that he saw the lights and was attempting to elude the officer," as does the fact that defendant continued driving at high speeds after he ran the red light. Defendant's conviction for third-degree fleeing and eluding is supported by sufficient evidence.

B. RESISTING OR OBSTRUCTING

Defendant argues that the trial court's verdict finding him guilty of resisting or obstructing a police officer is against the great weight of the evidence. Specifically, defendant contends that the trial court erred in viewing the case as a credibility contest, because the physical evidence, e.g., his shirts and the trauma to his back, supported his testimony that he was compliant with Douglas's orders and that Douglas tased him while he was in a nonaggressive position. Defendant also claims that his mother's reaction and the fact that a person's elbow must necessarily move to the right when a person who has his hands above his head turns to the right support his version of the events.

For a defendant to be convicted of resisting or obstructing a police officer, the prosecution must prove that the defendant (1) assaulted, battered, resisted, or obstructed a police officer and (2) that the defendant knew or had reason to know that the person was a police officer performing his or her duties. MCL 750.81d; *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010). The definition of "person" under MCL 750.81d includes a deputy sheriff. MCL 750.81d(7)(b)(v).

Douglas testified that as he got out of his vehicle, he had his gun drawn on defendant. He ordered defendant to keep his hands up and to lie down on the ground. Although defendant went

to his knees, defendant refused to follow his commands "to go down." Douglas walked toward defendant to take him into custody, but when he was within a couple feet of defendant, defendant turned and attempted to elbow him. Douglas then "disengaged" defendant, redrew his gun, and ordered defendant to stay on the ground. Defendant refused. He stood up, unbuttoned his shirt and began to take it off, and walked toward Douglas. Douglas drew his taser and warned defendant that he would tase defendant. When defendant continued toward him, Douglas tased defendant, but as he did so, defendant turned. The taser prongs hit defendant in the back. Douglas remembered that defendant was at a side angle when he saw defendant clench from the taser prongs. Douglas testified that a taser is not an "instantaneous thing" and that the holes in the back of defendant's shirts were consistent with defendant turning. Throughout Douglas's encounter with defendant, defendant's mother was screaming at Douglas.

Defendant testified to a different set of events. According to defendant, Douglas only ordered him to his knees. He complied with the order. While on his knees, he was hit in the back, which forced his face to slam to the ground. It was then, while he was laying on the ground with his hands above his head, that Douglas tased him.

The trial court acknowledged that the marks on defendant's back were consistent with defendant being tased in the back. But it also stated that the marks were "equally consistent with [Douglas's] testimony that the defendant turned and flinched at the time of the firing." It ultimately concluded that the case was "essentially a credibility contest" and it accepted the facts as testified by Douglas. We find no merit to defendant's argument that the trial court erred in viewing the case as a credibility contest. In doing so, the trial court did not ignore the physical evidence regarding where the taser prongs hit defendant. Douglas, as the trial court noted, provided a reason for why the taser prongs hit defendant in the back, and the reason was that defendant turned when Douglas tased him. Because Douglas's testimony is not contrary to the physical evidence, we must defer to the trial court's credibility determination. *Lemmon*, 456 Mich at 646; see also MCR 2.613(C).

The reaction of defendant's mother and the fact that a person's elbow necessarily moves when a person who has his hands raised moves to the right do not prohibit us from deferring to the trial court's credibility determination. While it is true that defendant's elbow may have moved simply because he turned his body, it is equally true that defendant's elbow may have moved because he attempted to elbow Douglas. Similarly, while defendant's mother's screaming could be indicative of a mother's reaction to seeing her son being tased while complying with a deputy's commands, her screaming could just as easily be a reaction to seeing a gun pointed at her son. The trial court's verdict finding defendant guilty of resisting or obstructing is not against the great weight of the evidence.

In concluding that the verdict was not against the great weight of the evidence, we reject defendant's claim that the evidence established that he acted in self defense. Under the Self-Defense Act, MCL 780.971 *et seq*., a person who has not or is not engaged in the commission of a crime may use nondeadly force where he has the legal right to be with no duty to retreat if he honestly and reasonably believes that the use of force is necessary to defend himself from the imminent unlawful use of force by another person. MCL 780.972(2). If a defendant establishes a prima facie defense of self-defense, the prosecution bears the burden of disproving self-defense beyond a reasonable doubt. *People v Roper*, 286 Mich App 77, 86; 777 NW2d 483 (2009).

Defendant's argument regarding self-defense is based on the facts that he testified to at trial. He claims that he was compliant with Douglas's commands and that Douglas was the initial aggressor when Douglas kneed him in the back. However, as already stated, the trial court accepted the facts as testified to by Douglas. Because defendant's argument is contrary to the facts as found by the trial court, we find no merit to defendant's claim that he acted in self defense.

C. RECKLESS DRIVING

Defendant argues that the trial court's verdict finding him guilty of reckless driving was "erroneous" because he was driving in the early morning hours, at a speed not rising to the level of recklessness, and without traffic or pedestrians in the vicinity.

A person commits reckless driving when he drives a vehicle on a highway "in willful or wanton disregard for the safety of persons or property." MCL 257.626(1). In *Jennings v Southwood*, 446 Mich 125, 140; 521 NW2d 230 (1994), our Supreme Court stated that "willful" means intentional and that "wanton" means an "indifference to whether harm will result as to be the equivalent of a willingness that it does" (quotation and emphasis omitted).

The speed limit on Lakewood Boulevard was 35 miles per hour. According to Douglas, the speed of defendant's vehicle on Lakewood Boulevard exceeded 50 miles per hour. Defendant then disobeyed a red traffic signal, and turned left onto Beeline Road, where he continued to drive at a high speed. He drove at a speed exceeding 50 miles per hour on Surry Oak Drive, a residential street. According to Doug Doyle, a resident of Surry Oak Drive, defendant's vehicle "[w]ent flying by." Viewing this evidence in the light most favorable to the prosecution, a rational trier of fact could have found that defendant drove his vehicle with an indifference as to whether harm would result. *Kanaan*, 278 Mich App at 618. Defendant's conviction for reckless driving is supported by sufficient evidence.

II. REBUTTAL TESTIMONY

Defendant argues that the trial court improperly admitted the rebuttal testimony of Deputy Gary Fox because Fox's testimony should have been part of the prosecution's case-in-chief. We disagree.

We review a trial court's admission of rebuttal testimony for an abuse of discretion. *People v Steele*, 283 Mich App 472, 485-486; 769 NW2d 256 (2009). "A trial court abuses its discretion when its decision falls outside the range of principled outcomes." *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010) (quotation omitted).

In *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996), the Supreme Court stated that the test to determine the admissibility of rebuttal testimony "is not whether the evidence could have been offered in the prosecutor's case in chief, but, rather, whether the evidence is properly responsive to evidence introduced or a theory developed by the defendant." "As long as evidence is responsive to material presented by the defense, it is properly classified as rebuttal, even if it overlaps evidence admitted in the prosecutor's case in chief." *Id.*

Douglas testified in the prosecution's case-in-chief that he grabbed defendant in the "porch area" near defendant's garage. Defendant tried to pull away and attempted to punch the deputy. During defendant's cross-examination of Deputy Eric De Boer, De Boer testified that when he arrived at defendant's home, he did not see defendant fighting or struggling with Douglas on the porch. Defendant thereafter testified that the only physical contact he had with Douglas was when Douglas kicked him to the ground. After defendant rested his case, the prosecution called Fox as a rebuttal witness, and he testified that he saw Douglas struggling with defendant near defendant's garage.

Fox's testimony was responsive to defendant's testimony that the only physical contact he had with Douglas was when the deputy kicked him to the ground. Moreover, contrary to defendant's argument, De Boer did not introduce the theory that defendant and Douglas did not engage in a struggle; the deputy merely testified on cross-examination that he did not see a struggle. Indeed, after Douglas testified in the prosecution's case-in-chief that a struggle did occur, defendant testified that a struggle on the porch did not occur. Even though Fox's testimony could have been introduced in the prosecution's case-in-chief, it was admissible under *Figgures*. The trial court did not abuse its discretion when it admitted Fox's rebuttal testimony.

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto