# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>August 18, 2011 |
| v | No. 298241<br>Wayne Circuit Court |
| MILTON DEVON PERRY,<br><br>Defendant-Appellant. | LC No. 09-028286-FH |

Before: MARKEY, P.J., and SAAD and GLEICHER, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of possession of marijuana, MCL 333.7403(2)(d), and resisting and obstructing a police officer, MCL 750.81d(1). Defendant was sentenced to 193 days, time served, for the possession of marijuana conviction. He was sentenced as a fourth habitual offender, MCL 769.12, to 34 months to 15 years' imprisonment for the resisting and obstructing a police officer conviction. We affirm.

Defendant argues that the prosecution failed to present sufficient evidence to support the jury's verdict of guilty of resisting and obstructing a police officer. In particular, defendant argues that he did not have reason to know that Sergeant Scot Murray and other officers from the Westland Police Department were police officers performing their duties. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). This Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id*.

The elements of resisting and obstructing a police officer are: (1) that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) that the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties. MCL 750.81d(1); *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010). For this charge, '"[o]bstruct' 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). Furthermore, actual knowledge is not required to meet the second element. The "has reason to know" language of MCL 750.81d(1) allows the second requirement to be met with something

less than actual knowledge. *People v Nichols*, 262 Mich App 408, 414; 686 NW2d 502 (2004). In particular, the "has reason to know" language can be interpreted as "has reasonable cause to believe" and requires the fact-finder to analyze whether the facts indicate that when resisting, the defendant had "reasonable cause to believe" the officer that was performing his or her duties. *Id.*

There is sufficient evidence in the record for a reasonable jury to conclude that defendant obstructed Murray during the performance of his duties. Here, defendant attempted to close the door and prevent the officers from entering the apartment. Thus, by doing so, defendant physically prevented the officers from performing their duty of properly executing a narcotics search warrant. Moreover, Murray and Officer James Francisco both testified that defendant was resisting and was not willingly complying; in fact, he was pushing against the door to prevent the officers' entry. In fact, Murray was forced to step into the door's threshold to prevent the door from closing and continued to struggle with defendant to keep the door open. Murray testified that it was not until he felt an extra push from his back that he was able to get the door open far enough to allow entry. Therefore, this evidence, when viewed in a light most favorable to the prosecution, would justify a rational jury's finding that defendant resisted and obstructed the officers, especially under the "obstruction" language of MCL 750.81(d)(7)(a), which includes the "use of physical interference" and "knowing failure to comply with a lawful command."

There is also sufficient evidence in the record for a reasonable jury to conclude that defendant knew or had reason to know that Murray was a police officer attempting to perform his duty of executing a search warrant. This element can be met even if a defendant does not have actual knowledge that the person he or she is resisting is an officer performing his or her duties. *Nichols*, 262 Mich App at 414. If the evidence would permit a rational fact finder to conclude that defendant had "reasonable cause to believe" that the person being resisted is an officer performing his or her duties, than this element is satisfied. *Id.*

In this case, there is abundant evidence on the record that supports finding defendant had reasonable cause to believe that Murray was a police officer attempting to perform his duty of executing a search warrant. First, Murray testified that he told defendant that he was a police officer with a search warrant when defendant initially opened the door and when they were struggling with the door. A reasonable jury could conclude that defendant should have known that Murray was a police officer attempting to execute a search warrant after this information was repeated directly to him. Additionally, although not in a usual police uniform, Murray and the other officers had on clothing that showed they were police. Murray's vest had the word "POLICE" printed across the chest and the back. Furthermore, Murray had his badge displayed on his lower right leg, located on his pistol.

Moreover, the other officers in the raid unit had reflective "POLICE" patches that were approximately 12 inches long by three inches wide going down both sleeves and the word "POLICE" going across the chest and back. A reasonable jury could infer that defendant, after opening the door and looking out, should have known that it was the police that were at his door based upon the appearance of the officers. Finally, there were normal uniformed officers present with the raid unit at the door. Thus, given that Murray repeatedly told defendant that he was a police officer with a warrant, the appearance of Murray and the other officers having the word "POLICE" displayed in numerous places, and the presence of uniformed officers, it is reasonable

for a jury to conclude that defendant knew or had reason to know that Murray was a police officer attempting to perform his duty of executing a search warrant.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Elizabeth L. Gleicher