

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
January 24, 2017

v

MATTHEW JAMES CHABOT,  
  
Defendant-Appellant.

No. 329968  
Huron Circuit Court  
LC No. 15-305922-FH

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Before: RIORDAN, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1).<sup>1</sup> The trial court sentenced defendant as a second habitual offender, MCL 769.10, to serve 150 days in jail with credit for 13 days served. Defendant was to serve 30 days immediately with the remaining time held in abeyance upon completion of 40 hours of community service. We affirm.

On March 4, 2015, defendant was involved in an altercation with Grant Nichols, who had appeared at defendant's apartment with a female neighbor. Defendant's live in girlfriend, Brittany Brown, tried to break up the altercation and was grabbed by defendant during the scuffle. Nichols and Cassandra Herron told responding police officer David Wilson that an altercation had occurred and Brown told him defendant had "grabbed her by the throat" when she was trying to break up the struggle between defendant and Nichols. Brown testified that she remembered telling Wilson that defendant "pushed me right here, and when I said—no, I told him that he grabbed me, but what I meant by grabbing is was pushing more so." Brown explained that defendant was trying to get her out of the way, "And it just scared me and—I wasn't hurt." Officer Wilson testified that because of the information he received from Brown, he felt he had probable cause to arrest defendant for domestic violence.

Officer Wilson encountered defendant sitting on the porch outside of his apartment. According to Officer Wilson, he approached defendant and "grabbed onto I believe it was his right arm, the sleeve of his coat, told him that he was under arrest for domestic violence, [and]

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<sup>1</sup> Defendant was acquitted of domestic assault, 750.81(2).

asked him to stand up out of his chair.” Officer Wilson testified the defendant stood up, but pulled away from him, asked him what he was talking about, and refused to follow his commands. Officer Wilson succeeded in handcuffing defendant’s left wrist, but Brown came outside and asked what was going on, at which point defendant pulled his right arm free from Officer Wilson’s grasp. Officer Wilson used his body weight to push defendant up against a wall, telling him that he was under arrest and directing him to put his hands behind his back. It was not until Officer Wilson pulled his taser out and warned defendant that he would be tased unless he put his hands behind his back that defendant complied and was handcuffed.

Defendant moved for a directed verdict after plaintiff completed its case-in-chief, arguing in part that because he had not committed a domestic assault, his arrest was unlawful and he had a right to reasonably resist an unlawful arrest under *People v Moreno*, 491 Mich 38; 814 NW2d 624 (2012). The *Moreno* Court held that MCL 750.81d did not abrogate the common-law right to resist illegal police conduct, including unlawful arrests. *Id.* at 57-58. Thus, in order to convict a defendant of resisting and obstructing a police officer, the prosecution must also establish the officer’s actions were lawful. *Id.* at 51-52. The trial court denied the motion.

On appeal, defendant contends that the trial court erred in denying his motion for a directed verdict. He argues that because the arresting officer did not have probable cause to believe that a domestic assault had occurred, defendant had the right to resist the unlawful arrest.

When ruling on a motion for a directed verdict, the court must consider the evidence presented by the prosecutor up to the time of the motion in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Lemmon*, 456 Mich 625, 634; 576 NW2d 129 (1998). Reasonable inferences drawn from circumstantial evidence may be sufficient to prove the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Questions regarding the credibility of witnesses are left to the trier of fact, not the court. *People v Peña*, 224 Mich App 650, 659; 569 NW2d 871 (1997), mod in part on other grounds 457 Mich 885 (1998). Directed verdicts are only appropriate when no factual question exists upon which reasonable minds may differ and no rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997).

A warrantless arrest made by a police officer is lawful if the officer had “reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.” MCL 764.15(1)(d). In other words, “[i]n order to lawfully arrest a person without a warrant, a police officer must ‘possess information demonstrating probable cause to believe that an offense has occurred and that the defendant committed it.’ ” *People v Reese*, 281 Mich App 290, 294-295; 761 NW2d 405 (2008), quoting *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). “This probable cause standard is a practical, nontechnical conception judged from the totality of the circumstances before the arresting officers.” *People v Cohen*, 294 Mich App 70, 75; 816 NW2d 474 (2011) (internal quotation marks and citation omitted). Thus, “where the facts and circumstances within an officer’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that

an offense has been or is being committed,” probable cause has been established. *Id.* (internal quotation marks and citation omitted).

In order to find a defendant guilty of misdemeanor domestic assault, for which a defendant may be imprisoned “for not more than 93 days,” a defendant must “assault[ ] or assault[ ] and batter[ ] his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household.” MCL 750.81(2). “A simple assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996). A “battery” “is the willful touching of the person of another by the aggressor or by some substance put in motion by him.” *People v Bryant*, 80 Mich App 428, 433; 264 NW2d 13 (1978) (internal quotation marks and citation omitted). Consistent with this definition, the court instructed the jury that “[a] battery is the forceful, violent, or offensive touching of a person or something closely connected with him or her.” See M Crim JI 17.1(2) (“A battery is the forceful, violent, or offensive touching of the person or something closely connected with the person of another.”).

Considering the totality of facts and circumstances within Officer Wilson’s knowledge at the time of defendant’s arrest, a reasonable person standing in the officer’s place would believe defendant had committed a domestic assault. Defendant and Brown shared an apartment and had a dating relationship. The information provided to the officer immediately after the incident was that defendant had “grabbed” Brown by the throat. Whether defendant had pushed Brown or grabbed Brown’s throat is of no import because either action constitutes a “forceful, violent, or offensive touching of” Brown. Further, Brown’s indication to the officer that she did not want to pursue charges does not impact the probable cause determination made by Wilson, nor does defendant’s subjective belief that he had not assaulted Brown. Thus, defendant’s arrest for domestic violence was lawful because Wilson had probable cause to believe the crime had been committed. And, because no right to resist arrest existed under *Moreno*, the denial of his motion for directed verdict was proper.

Affirmed.

/s/ Michael J. Riordan  
/s/ Karen M. Fort Hood  
/s/ Deborah A. Servitto