STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee	UNPUBLISHED August 23, 2011
v	No. 296140 St. Joseph Circuit Court
JOHN WALTER BENNETT, Defendant-Appellant.	LC No. 09-15595-FH

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM

Defendant appeals as of right his jury trial convictions for resisting and obstructing a police officer, MCL 750.81d(1), and tampering with evidence, MCL 750.483a(5)(a). Defendant was sentenced as a habitual offender, third offense, MCL 769.11, to concurrent sentences of two months in jail for each conviction. For the reasons set forth in this opinion, we affirm.

I. FACTS AND PROCEDURAL HISTORY

During June and July 2008, the Sturgis Police Department conducted traffic stops on defendant five times while he was driving his motorcycle. These traffic stops were initiated because defendant was not wearing a crash helmet that was approved by the Department of Transportation (DOT). Failure to wear an approved crash helmet is a civil infraction under MCL 257.658(4). Defendant was issued several citations as a result of these traffic stops; he requested formal hearings as a result of his citations. Four of the five traffic stops were performed by Sgt. Brian Cooper.

On July 14, 2008, Officer Frank Noel initiated a sixth traffic stop of defendant because defendant's helmet did not have a DOT sticker on the back. Pursuant to 49 CFR 571.218, Standard S5.6.1, a label with the symbol "DOT" is required to be prominently displayed on the back of a DOT-approved helmet. Officer Jeremy Marsh was with Officer Noel at the time of the traffic stop. Following their stop of defendant, Officer Marsh told defendant: "we've been instructed by the Prosecutor to confiscate your helmet as evidence in the informal hearing coming up, so we're going to need the helmet." In addition, defendant was informed by Officer Marsh that "[i]f you don't give us the helmet right now, it's a lawful order of a police officer, that's obstructing justice." Reluctantly, defendant gave the officers his helmet so that the officers could use the helmet as evidence to be used in a future court hearing. Defendant was also issued a citation for wearing a helmet that was not approved by DOT.

Two days later, on July 16, 2008, Officer Matthew Boerman observed defendant riding his motorcycle. Officer Boerman testified that he received training regarding what to look for when determining whether someone is wearing an approved helmet, and defendant appeared to be wearing a helmet that was not approved by DOT because the helmet was "tight-fitting" and did not bear a DOT sticker on the back. Thus, Officer Boerman performed a traffic stop on defendant. Immediately upon dismounting his motorcycle, defendant removed the helmet he was wearing and placed it inside a sealed container near the rear of his motorcycle. Defendant subsequently closed the container and locked it. Defendant then removed a different helmet from his motorcycle and placed that helmet on the seat of his motorcycle. When Officer Boerman approached defendant, defendant started to read his rights from a card to Officer Boerman. Officer Boerman interrupted defendant and asked him for his driver's license, registration, and proof of insurance, which defendant provided.

Officer Boerman had been with Sgt. Cooper on two previous occasions when Cooper initiated traffic stops of defendant for wearing a helmet that was not approved by DOT, so Boerman telephoned Cooper for assistance. When Sgt. Cooper arrived, defendant lay down on the ground on his stomach and put his hands behind his back. Sgt. Cooper approached defendant and made three or four requests to inspect the helmet that was concealed in the container on defendant's motorcycle, but defendant refused each request. At some point, defendant stood up and told the officers that he did not consent to a search of the container and that he would "take the ticket." Sgt. Cooper informed defendant that if he did not comply, he would be arrested for resisting and obstructing. Defendant refused to produce the helmet and then turned around without being told and placed his hands behind his back. Thereafter, Sgt. Cooper arrested defendant for resisting and obstructing a police officer. Defendant subsequently informed the officers that he threw the keys to the locked container into the bushes. However, the keys to the locked container were located in defendant's pants pocket.

Defendant was convicted and sentenced as explained above, and this appeal ensued.

II. ANALYSIS

Defendant argues that Sgt. Cooper's request to inspect defendant's helmet was unlawful under statutory law, specifically MCL 257.730[1] and MCL 257.742(1) and (2),[2] because those

[1] MCL 257.730 provides: "This chapter shall govern all police officers in making arrests without a warrant and in issuing civil infraction citations for violations of this act, but this act shall not be construed as preventing the execution of a warrant for the arrest of a person for a misdemeanor as in other cases of misdemeanors when the same may be necessary."

[2] MCL 257.742(2) provides that a police officer, who has "reason to believe that the load, weight, height, length, or width of a vehicle or load are" violating the applicable specifications for a vehicle or load, "which violation is a civil infraction, may require the driver of the vehicle to stop, and the officer may investigate, weigh, or measure the vehicle or load." If the officer determines that there is a violation, the officer "may temporarily detain the driver of the vehicle for purposes of making a record or vehicle check and issue a citation to the driver or owner of the vehicle . . . ."

statutes do not give a police officer the right to demand to inspect a helmet to determine if the helmet is approved by DOT, nor do those statutes provide a police officer with the right to confiscate a helmet. In addition, defendant contends that Sgt. Cooper's demand that defendant produce the helmet was unconstitutional under the Fourth Amendment of the United States Constitution, US Const, Am IV, and under Article I of the Michigan Constitution, Const 1963, art 1, because an illegal helmet violation is not a crime. Therefore, defendant contends, under no circumstances could a search and seizure of the helmet be constitutional. Thus, defendant contends, the proofs presented at the preliminary examination did not establish probable cause to believe that defendant committed the crime of resisting and obstructing a police officer. Defendant also argues that the evidence presented at the preliminary examination did not establish that there was probable cause to believe that defendant tampered with evidence in violation of MCL 750.483a(6)(a).

We begin our analysis in this case by deciding whether Sgt. Cooper's request to inspect defendant's motorcycle helmet was lawful.

Michigan law requires all persons riding a motorcycle on public streets to wear a crash helmet that has been approved by the Michigan Department of State Police. MCL 257.658(4). This law is commonly referred to as the "Helmet Law." Pursuant to MCL 257.658(4), the State Police adopted a rule requiring motorcycle helmets to meet specifications set forth by the United States Department of Transportation's National Highway Safety Administration. 2000 AC, R 28.951.

MCL 257.742 governs law enforcement officers' authority to stop a motorist for a civil infraction. MCL 257.742(1) provides, in relevant part:

> A police officer who witnesses a person violating this act or a local ordinance substantially corresponding to this act, which violation is a civil infraction, may stop the person, detain the person temporarily for purposes of making a record of vehicle check, and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation, which shall be a notice to appear in court for 1 or more civil infractions. . . .

Whether the police officers had the legal authority to request to inspect defendant's motorcycle helmet to determine if it conformed to the specifications established by the National Highway Traffic Safety Administration as required by 2000 AC, R 28.951, was recently examined by the United States District Court for the Western District of Michigan in *Constantino v Michigan Dep't of State Police*, ___ F Supp 2d ___ (WD Mich, May 18, 2011), 2011 US Dist LEXIS 53098 (Bell, J.). In *Constantino*, the court ruled that it was not illegal under Michigan law for a police officer to inspect the helmet of a motorcyclist who has been detained under MCL 257.658(4). *Id.*, slip op p 21. We agree with Judge Bell's holding in *Constantino* that MCL 257.742(1) authorizes officers to require motorcyclists to remove their helmets for inspection purposes, and we adopt the following reasoning from *Constantino* in the present case:

> The foremost principle in statutory construction is to give effect to the Legislature's intent. *Tryc v Michigan Veterans' Facility, 451 Mich 129, 135, 545*

> *N.2d 642 (1996)* (citing *Reardon v. Dep't of Mental Health, 430 Mich 398, 407, 424 NW2d 248 (1988)). Section 257.742(1)* clearly authorizes officers to gather information on the vehicle, including checking the vehicle's registration certificate and "rental papers." *See People v Rondon, No. 222465, 2001 Mich App LEXIS 1104, 2001 WL 709314, at *2-3 (Mich Ct App March 16, 2001).* There is also no dispute that *§257.742(1)* authorizes officers to check for a valid driver's license with motorcycle endorsement. The authority to inspect the inside of the helmet, like the authority to check a driver's license, is implied by the explicit authority to stop and detain a motorcyclist for purposes of making a record check and preparing a citation. The Court is satisfied that when the legislature granted officers the authority to detain a motorcyclist, to conduct a vehicle record check, and to issue a citation for Helmet Law violations, it also intended to allow officers to gather the information necessary to enable them to enforce the Helmet Law. The ability to inspect the inside of the helmet is part and parcel of the ability to issue a citation for violation of the Helmet Law. A brief inspection of the inside of the helmet is all that is necessary to confirm or dispel the officer's belief that there is a Helmet Law violation. [*Id.*, slip op pp 18-20 (footnote omitted).]

For the reasons set forth in *Constantino*, we hold that MCL 257.742(1) authorizes law enforcement officials to inspect a motorcylist's helmet. Therefore, we reject defendant's argument that Sgt. Cooper's request to inspect defendant's helmet was unlawful.

Having determined that MCL 257.742(1) authorizes law enforcement officials to inspect a motorcylist's helmet, we next turn to the issue whether there was sufficient evidence of the charges presented to support defendant's conviction. "The primary function of a preliminary examination is to determine whether a felony has been committed and, if so, whether there exists probable cause to believe that the defendant committed the felony." *People v Hill*, 269 Mich App 505, 514; 715 NW2d 301 (2006), rev'd in part on other grounds 486 Mich 658 (2010). In deciding a motion to quash the information, the trial court reviews a district court's decision to bind over a defendant for an abuse of discretion. *Id*. at 513-514. This Court also reviews a trial court's decision regarding a motion to quash for an abuse of discretion. *Id*. However, this Court reviews de novo challenges to the sufficiency of the evidence. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). In reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). "Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime." *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *Hardiman*, 466 Mich at 428.

Defendant argues that the district court abused its discretion in binding defendant over for trial and also that the trial court erred in denying his motion for directed verdict. Because resolution of these two issues depends on our review of the evidence and its application to the statutes under which defendant was convicted, we consider these issues together.

Viewing the evidence presented in a light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to determine that the essential elements of resisting and obstructing a police officer were proved beyond a reasonable doubt. MCL 750.81d(1); *Hardiman*, 466 Mich at 420-421. In this case, after a traffic stop was performed on defendant, he immediately removed the helmet he was wearing and placed it inside a sealed container near the rear of his motorcycle and closed and locked the container. Sgt. Cooper requested three or four times for defendant to retrieve the helmet. Defendant repeatedly refused Sgt. Cooper's lawful request to produce the helmet. Police officers have a duty to investigate violations of the law and seize evidence. See generally *Robinson v Inches*, 220 Mich 490, 491; 190 NW 227 (1922); *People v Hess*, 85 Mich 128, 132; 48 NW 181 (1891); *People v Johnson*, 137 Mich App 295, 301; 357 NW2d 675 (1984); *People v Stiles*, 99 Mich App 116, 120; 297 NW2d 631 (1980). A reasonable jury could find that defendant was resisting or obstructing an officer when defendant refused to retrieve his helmet and show it to Sgt. Cooper. *Constantino*, slip op pp 19-20. Accordingly, viewed in a light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to determine that the crime of resisting and obstructing a police officer was proved beyond a reasonable doubt. *Hardiman*, 466 Mich at 420-421.

In addition, viewing the evidence presented by the prosecution in a light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to determine that the essential elements of tampering with evidence were proved beyond a reasonable doubt. MCL 750.483a(5)(a); *Hardiman*, 466 Mich at 420-421. In this case, defendant was previously pulled over on numerous occasions and issued citations for not wearing a DOT-approved motorcycle helmet. In addition, in response to the citations he was issued, defendant repeatedly requested formal hearings. In fact, when defendant was pulled over on the sixth occasion, which occurred only two days before defendant allegedly committed the instant offense, defendant was told by one of the officers that "we've been instructed by the Prosecutor to confiscate your helmet as evidence in the informal hearing coming up, so we're going to need the helmet." And, on that occasion, the officers took defendant's helmet so the helmet could be used at a future court hearing. Thus, a reasonable inference could be drawn from the evidence that defendant was aware that his helmet may be used as evidence at a future court proceeding. *Plummer*, 229 Mich App at 299. Hence, a rational trier of fact could conclude using reasonable inferences that defendant was knowingly and intentionally concealing evidence that he knew may be offered in a future official proceeding when he placed his helmet in a closed compartment on his motorcycle. MCL 750.483a(5)(a); *Plummer*, 229 Mich App at 299. Accordingly, viewing the evidence presented in a light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to determine that the essential elements of tampering with evidence were proved beyond a reasonable doubt. *Hardiman*, 466 Mich at 420-421.

In conclusion, because there was sufficient evidence to convict defendant for resisting and obstructing a police officer and tampering with evidence, as set forth above, "error, if any, in the bindover would be harmless" and would not support reversal of defendant's convictions. *Dunham*, 220 Mich App at 276-277.

Affirmed.

/s/ Douglas B. Shapiro
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello