STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 29, 2013
v	No. 310469 Van Buren Circuit Court
JULIE MARIE KUHL, Defendant-Appellant.	LC No. 11-017938-FH

Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of resisting or obstructing a police officer, MCL 750.81d(1), and operating a motor vehicle with a suspended or revoked license, MCL 257.904(3)(a). The trial court sentenced defendant to 30 days in jail for each conviction. We affirm because there was sufficient evidence that defendant resisted a police officer, and her counsel's performance did not fall below the constitutionally mandated standard.

On October 19, 2011, a patrolling police officer stopped defendant for driving with a hanging placard that obstructed the driver's vision. According to the officer's testimony, after he stopped defendant, he determined that her license had been suspended. He therefore printed an appearance ticket for her, but she refused to take it. He testified that defendant yelled at him, got out of the car, held her arms out as if beckoning for handcuffs, "chest-bumped" him several times and that when he put up his arm to keep defendant away from him, she pushed it down. He then tried to put defendant in handcuffs which was difficult because as he described, defendant was "belligerent and flailing around."

Plaintiff was convicted of violating MCL 750.81d(1) which provides that, "an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony . . . ." "Obstruct" is "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).

Defendant argues that there was not sufficient evidence to support her conviction for resisting or obstructing a police officer. Specifically, she argues that the prosecution failed to prove that defendant "knowingly" assaulted, resisted, or obstructed the officer because defendant's actions could be interpreted as hysteria or panic, and the "chest-bump" could have been inadvertent due to defendant's "medical issues." However, evidence of defendant's

medical conditions was not put before the jury at trial, and, in any event, "the prosecution need not negate every reasonable theory consistent with the defendant's innocence . . . ." *People v Hardiman*, 466 Mich 417, 424; 646 NW2d 158 (2002). Moreover, in reviewing the sufficiency of the evidence, we review the evidence in a light most favorable to the prosecution, not defendant. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Since "minimal circumstantial evidence" may prove knowledge or intent, *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008), testimony that defendant repeatedly "bumped" the officer, pushed his arm away, was "flailing around" and pulled her arm away when he was handcuffing her, is sufficient to permit a reasonable juror to infer that her actions were not accidental and that she used "physical interference or force" to interfere with an officer. MCL 750.81d(7)(a); *Nowack*, 462 Mich 392, 399-400; *People v Passage*, 277 Mich App 175, 178; 743 NW2d 746 (2007) ("'Force' is nothing more than the exertion of strength and physical power."). Finally, since the officer was in a marked patrol vehicle and fully uniformed, defendant had reason to know he was a police officer acting in the performance of his duties. *People v Nichols*, 262 Mich App 408, 413; 686 NW2d 502 (2004). The evidence presented at trial was therefore sufficient to support her conviction.

Defendant next claims that defense counsel was constitutionally ineffective because he did not request an adjournment to seek out newly disclosed witnesses. Defendant did not move for a new trial or an evidentiary hearing, so our review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). "[T]o invoke the trial court's discretion to grant a continuance or adjournment, a defendant must show both good cause and diligence." *People v Coy*, 258 Mich App 1, 18; 669 NW2d 831 (2003). In the present case, defense counsel told the trial court that though he attempted to contact defendant earlier, but defendant only revealed the existence of additional witnesses to him on the morning of trial. When the trial court asked defendant why she had waited, she said, "[b]ecause I wanted to." This lack of good cause would have made a motion for adjournment futile, and counsel's decision to forego moving for an adjournment was not objectively unreasonable. See *Coy*, 258 Mich App 1, 18-19; *Snider*, 239 Mich App at 425. Additionally, defendant failed to meet "the burden of establishing the factual predicate for [her] claim of ineffective assistance of counsel," *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Nothing in the record suggests who these witnesses are or what testimony they would have provided. Thus, defendant has not shown that she was deprived of a substantial defense. See *Payne*, 285 Mich App at 190.

Defendant also claims that her counsel was ineffective for failing to challenge the presence of a juror who knew the complaining officer. "[A]n attorney's decisions relating to the selection of jurors generally involve matters of trial strategy," *People v Johnson*, 245 Mich App 243, 259; 631 NW2d 1 (2001), that seldom rises to the level of ineffective assistance of counsel, *People v Robinson*, 154 Mich App 92, 95; 397 NW2d 229 (1986); *People v Unger*, 278 Mich App 210, 258; 749 NW2d 272, 304 (2008). Generally, a juror's representation that he is able to set aside any personal bias is sufficient to protect a defendant's right to a fair trial, and he may remain on the jury. *People v Jendrzejewski*, 455 Mich 495, 515-516; 566 NW2d 530 (1997); *Johnson*, 245 Mich App at 256; *People v Roupe*, 150 Mich App 469, 474; 389 NW2d 449 (1986). In this case, the trial court questioned the juror who knew the officer regarding any potential bias, and the juror stated, without any vacillation, that the professional relationship with the officer would not affect determinations of witness credibility. Therefore, there was no basis for excluding the juror for cause. See *Jendrzejewski*, 455 Mich at 515-516; *Johnson*, 245 Mich

App at 256. Although presumably counsel could have used a peremptory challenge to exclude the juror, the decision not to do so constituted trial strategy, which does not warrant reversal. See *Unger*, 278 Mich App at 258.

Finally, defendant argues the trial court should have removed the juror on its own motion. The trial court did not commit error in failing to dismiss the juror on its own initiative because, as discussed above, there were insufficient grounds to justify excluding the juror for cause. See MCR 6.412D.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry W. Saad
/s/ Douglas B. Shapiro