

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARRET GERARD DOBEK,

Defendant-Appellant.

UNPUBLISHED
September 6, 2007

No. 271165
Oakland Circuit Court
LC No. 2005-205604-FH

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for resisting and obstructing a police officer, MCL 750.81d(1), and possession of marijuana, MCL 333.7403(2)(d). The trial court sentenced defendant as a second habitual offender, MCL 769.10, to 213 days in jail and 18 months' probation for the resisting arrest and possession of marijuana convictions. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends there was insufficient evidence to sustain his conviction for resisting and obstructing a police officer. This Court reviews de novo a claim of insufficient evidence. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). "When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant's arrest arose from a confrontation at the Bald Mountain State Park with Oakland County Sheriff's Deputy Michael Richardson. Richardson observed defendant pull into a parking area in the park. Richardson soon became suspicious, after hearing the opening of the tailgate of defendant's pickup truck, due to prior complaints regarding improper activities such as drug use, dumping and poaching in the park. Richardson was in full uniform and in a marked police vehicle with its overhead lights activated when he approached defendant and questioned his activity in the park. Defendant did not initially respond and continued to rummage in the backseat area of his truck. On further questioning by Richardson, defendant became agitated and argumentative. Feeling threatened, Richardson requested back-up assistance and instructed defendant to kneel in front of the police vehicle. Although defendant did comply by kneeling, he refused to cross his feet. Defendant turned upon, and resisted Richardson's attempt to handcuff him. After subduing defendant with his taser, a small baggy of marijuana, along with rolling papers and other paraphernalia, were found on defendant's person.

In accordance with MCL 750.81d(1), “[a]n individual who . . . resists, obstructs, opposes, . . . a person who the individual knows or has reason to know is performing his or her duties” is guilty of resisting and obstructing a police officer. *People v Ventura*, 262 Mich App 370, 375; 686 NW2d 748 (2004). The prosecution was required to show that defendant resisted, obstructed or opposed the officer. MCL 750.81d(7)(a) defines the term “obstruct” to “include[s] the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” A finding of physical force is not necessary. In addition, the offense of resisting and obstructing a police officer does not mandate that the officer be effectuating a lawful arrest, only that the defendant knew or should have known that the officer was acting in the performance of his duties. *Ventura, supra* at 377.

Testimony demonstrated that defendant did not immediately comply with the officer’s repeated instructions to step away from his vehicle, to provide identification and to assume the position to be handcuffed. Defendant refused to answer direct questions posed by the officer and physically interfered with the officer’s effort to place him in handcuffs, thereby failing to comply with the officer’s lawful commands.

It was also incumbent on the prosecution to demonstrate defendant knew or had reason to know the officer was engaged in the performance of his duties during their confrontation. MCL 750.81d “requires the fact-finder to engage in an analysis to determine whether the facts and circumstances of the case indicate that when resisting, defendant had ‘reasonable cause to believe’ the person he was [resisting or obstructing] was performing his or her duties.” *People v Nichols*, 262 Mich App 408, 414; 686 NW2d 502 (2004). This Court has previously determined that a defendant knows or has reason to know a police officer is acting in the performance of his duties when he ignores or resists the persistent commands of a police officer in full uniform with a marked patrol vehicle. *Id.* at 413.

The record shows that Richardson was in uniform and approached defendant in a marked police vehicle with red lights flashing and a spotlight directed at defendant’s truck. Defendant has not suggested that he was unaware of Richardson’s status as a police officer during their interaction. Thus, defendant knew or should have known Richardson was a police officer acting in conformance with his duty given his prior receipt of a ticket for improper access to the park area.

Viewed in a light most favorable to the prosecution, the evidence provided at trial was sufficient for a jury to conclude that defendant resisted, obstructed, or opposed a police officer and that defendant reasonably should have known that the officer was engaged in the performance of his duties.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto