

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 19, 2013

v

JOSEPH NATHAN RIDDLE,

Defendant-Appellant.

No. 307859
Oakland Circuit Court
LC No. 2011-236060-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH NATHAN RIDDLE, II,

Defendant-Appellant.

No. 307860
Oakland Circuit Court
LC No. 2011-236061-FH

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

PER CURIAM.

On March 15, 2010 there was a scuffle between two police officers and the two defendants on the premises of the Ferndale District Court following an informal hearing on a traffic ticket. Based on that incident, the defendants, who are father and son, were each charged with resisting and obstructing a police officer, MCL 750.81d. The defendants were both convicted following a bench trial. Defendant father, Joseph Riddle, was sentenced to two days in jail. Defendant son, Joseph Riddle II, was sentenced to two days in jail and one year probation.

Defendants' only issue on appeal is their claim that the verdict was against the great weight of the evidence. In reviewing such a claim we consider "whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). A trial court's findings of fact, if any, "may not be set aside unless they are clearly erroneous." *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

The prosecution must establish three elements to satisfy MCL 750.81d. First, that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer. Second, 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. Third, that the conduct of the officers from which the resistance arose was lawful. *People v Moreno*, 491 Mich 38; 814 NW2d 624 (2012); *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010).

At trial, testimony was provided by four police officers, including the two involved in the scuffle, as well as the two defendants, the magistrate that presided at the hearing and the court reporter at that hearing. In its opinion, the trial court made the following findings of fact:

Defendants caused a disturbance at the 43rd District Court in Ferndale after Riddle II was found responsible for a speeding ticket. After making the finding, Magistrate Meade instructed Defendants to go downstairs and pay the ticket. Riddle II kept trying to argue his case, and Defendant Riddle made a comment that, “[T]hey’re all a bunch of crooks up here.” Magistrate Mead told the Defendants to leave or be arrested. When defendants did not move, Officer Wurm grabbed Riddle II’s arm to escort him out of the building. Riddle II pulled away from Officer Wurm and told him to “get your hands off me.” Defendant Riddle said “don’t push my son.” Railroad Officer Salamas, who was there to testify in another case came to assist Wurm and told Defendants to leave. Defendant Riddle took a swing and hit Officer Salamas on the right side of his nose. Defendants refused to comply with orders to put their hands behind their backs.

We have reviewed the entire lower court record and have, per defendants’ argument, considered the inconsistencies between some of the prosecution witnesses. The witnesses did differ on several issues, including how contentious the defendants acted after the magistrate ruled on the traffic infraction, precisely how Officer Wurm acted following that ruling, and whether the scuffle began in the hearing room or in hallway. However, these variations do not go to the heart of the matter being tried, i.e., whether defendants complied with the officer’s lawful command and who initiated the physical scuffle.

It is clear that the outcome of the resisting and obstructing trial turned on the credibility determinations of the trial court. Credibility determinations are the sole province of the trial judge in a bench trial. See *People v Lacalamita*, 286 Mich App 467, 470; 780 NW2d 311 (2009). Moreover, this Court does not favor “[n]ew trial motions based solely on the weight of the evidence regarding witness credibility” *People v Lemmon*, 456 Mich 625, 639; 576 NW2d 129 (1998). “In general, conflicting testimony or questions concerning the credibility of the witnesses are not sufficient grounds for granting a new trial.” *People v Brantley*, 296 Mich App 546, 553; 823 NW2d 290 (2012). Even if conflicting testimony is impeached to some degree, such grounds are not sufficient to grant a new trial. *Lacalamita*, 286 Mich App at 469-470.

We cannot say that the trial court’s assessment of the witnesses’ credibility or the findings of fact arising from that assessment were clearly erroneous. The trial court heard and

observed all the testimony and concluded that the testimony of the officers was more credible than that of the defendants. Nor do we find that the variations in testimony between the prosecution witnesses render the officers' testimony devoid of credibility. In sum, after a full review of the record and transcripts, we cannot conclude that the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Douglas B. Shapiro

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SAAD, J. (*concurring*).

I concur in the result only of the majority's opinion.

/s/ Henry William Saad