

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IAN ANTHONY PASQUALONE,

Defendant-Appellant.

UNPUBLISHED

May 4, 2023

Nos. 359301; 359303

Alcona Circuit Court

LC Nos. 21-003508-FC;

20-003418-FC

Before: SHAPIRO, P.J., and REDFORD and YATES, JJ.

PER CURIAM.

In these consolidated cases,¹ defendant appeals as of right, in Docket No. 359301, his jury trial conviction of witness bribery, MCL 750.122(7)(b). In Docket No. 359303, defendant appeals as of right his jury trial convictions of resisting and obstructing a police officer (resisting arrest), MCL 750.81d(1), and domestic violence, MCL 750.81(2). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to serve concurrent terms of 70 months to 20 years for the witness bribery conviction, 3 to 15 years for the resisting arrest conviction, and 93 days for the domestic violence conviction. We affirm.

I. BACKGROUND

For purposes of this appeal, the material facts are not in dispute. Defendant and the victim were engaged in a dating relationship. In September 2020, they went to stay at a cabin. One night, they stayed in and drank heavily. The victim went to sleep, but she later awoke and went to the kitchen and saw defendant on the phone in the living room. After defendant hung up the phone, he became angry. The victim did not wish to get into a fight, so she walked back to the bedroom. Defendant followed her and began physically assaulting her. The victim testified that defendant shoved her into walls and a closet door, hit her in the face, and strangled her. Defendant took away

¹ *People v Pasqualone*, unpublished order of the Court of Appeals, entered December 14, 2021 (Docket No. 359301); *People v Pasqualone*, unpublished order of the Court of Appeals, entered December 14, 2021 (Docket No. 359303).

the victim's phone but she eventually convinced defendant to return it and allow her to leave. The victim went to her vehicle, locked the door, and called the police. Defendant fled the property. The police arrived, searched the cabin with the victim's permission, and took the victim's statement. Before leaving and taking the victim to the police station, the police secured the cabin.

The next day, four officers searched the surrounding area, returned to the cabin, and found that the door had been forced open. Although they did not possess a warrant, the officers entered the cabin, searched the premises, located defendant hiding underneath a bed, and arrested him. The officers testified that defendant resisted their attempts to arrest him, which led to the resisting arrest charge. After his arrest, defendant exchanged numerous text messages and phone calls with the victim. He also sent her letters. The victim believed that defendant was attempting to influence and bribe her not to testify. After an investigation, the prosecution added a charge of witness bribery.

After the close of the prosecution's proofs, defendant moved for a directed verdict regarding the resisting arrest charge. Defendant argued that the warrantless entry into the cabin was illegal because there were no exigent circumstances to justify it. Defendant contended that, because the entry was illegal, he could lawfully resist the unlawful arrest. The trial court allowed the prosecution to recall one of the officers for further testimony. Initially, the trial court granted the motion, focusing on testimony that the sole reason for entering the cabin was to arrest defendant based on probable cause. The trial court further reasoned that there were enough officers to secure the cabin while obtaining a warrant. However, after a brief recess, the trial court sua sponte reversed itself and denied the motion. The trial court reasoned that the officers believed that defendant was inside the cabin and they knew about defendant's criminal history which included home invasion, weapons theft, retail crime, and organized crime. The trial court determined that it was objectively reasonable for the officers to enter the cabin for their own safety. On appeal, defendant challenges the trial court's decision to reverse itself. Defendant further argues that, because the jury acquitted him of the assault by strangulation charge, he could not be convicted of witness bribery.

II. ANALYSIS

A. RESISTING ARREST

In their brief on appeal, appellee confessed error on the issue of the lawfulness of the police officers' actions before taking appellant into custody. However, during oral arguments appellee's counsel retracted its confession of error or at least conceded that it remained within the authority of the Court to affirm the conviction. We therefore turn to our analysis of the warrantless entry into the structure before defendant's arrest.

Defendant argues that the trial court erred by denying his motion for a directed verdict of the resisting arrest charge because no exigent circumstances existed to justify the warrantless entry. We disagree.²

To prove that a defendant is guilty of assaulting, resisting, or obstructing a police officer under a MCL 750.81d(1), the prosecution must show: “(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) 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.” *People v Quinn*, 305 Mich App 484, 491; 853 NW2d 383 (2014) (quotation marks and citation omitted). Because there is a common-law right to resist illegal police conduct, the prosecution must also show the police officer’s actions were lawful. *People v Moreno*, 491 Mich 38, 51-52; 814 NW2d 624 (2012). See also *Quinn*, 305 Mich App at 492.

The United States and Michigan Constitutions guarantee the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. “[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *Payton v New York*, 445 US 573, 590; 100 S Ct 1371; 63 L Ed 2d 639 (1980). See also *People v Trapp*, 335 Mich App 141, 154-155; 966 NW2d 420 (2020). “Even when based on probable cause, . . . a warrantless search or seizure inside a suspect’s home is presumptively unreasonable.” *People v Hammerlund*, 504 Mich 442, 452; 939 NW2d 129 (2019). “The exigent-circumstances exception to the warrant requirement contemplates the existence of an actual emergency.” *Trapp*, 335 Mich App at 167. Exigent circumstances allow the police to

enter a dwelling without a warrant if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect. [*Id.* at 167-168.]

“[T]he term exigent does not mean expedient,” *People v Anthony*, 120 Mich App 207, 212; 327 NW2d 441 (1982), and the burden is on the prosecution to show exigent circumstances justified the warrantless entry. *People v White*, 392 Mich 404, 410; 221 NW2d 357 (1974).

Defendant contends that no exigent circumstances existed justifying the police’s warrantless entry. Although this case originated because of the victim’s statements to police and

² The trial court’s decision on a directed verdict is reviewed de novo. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). “In reviewing a trial court’s decision regarding a motion for directed verdict, we review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Schrauben*, 314 Mich App 181, 198; 886 NW2d 173 (2016) (quotation marks and citation omitted).

the injuries she sustained which led to the charge of domestic violence, that alone did not serve as the ground for entering the premises. The record reflects that, when the officers went to the cabin, they discovered that its previously secured doors had been broken indicating forced entry. The record indicates that the officers knew about defendant's extensive criminal history which included periods of imprisonment for breaking and entering and unlawful weapons possession; that the officers observed evidence of breaking and entering and had the belief that the premises contained the perpetrator. The record also shows that defendant did not own the cabin. Although in hindsight one can surmise that the police could have stood by and waited for a warrant, under the circumstances presented at the time, the suspicion that a known violent felon broke and entered the premises and might remain within the premises with further destructive and perhaps violent intentions toward the officers justified the police's entry, investigation, and ultimate apprehension of defendant to protect the premises and the safety of the officers or others. Further, although the police did not find defendant armed or a firearm on the premises, they certainly had no way of knowing that under the circumstances. When police are faced with exigent circumstances such as those presented in this case, the law does not required them to idly stand by and do nothing.

For these reasons, we conclude that the trial court correctly determined that the police officers' warrantless entry into the cabin was based on exigent circumstances. Consequently, defendant had no common-law right to resist the arrest. The trial court, therefore, did not err by denying the directed verdict.

B. WITNESS BRIBERY

Defendant also argues that the trial court erred by allowing his conviction of witness bribery to stand because defendant was acquitted of the underlying offense, i.e., assault with intent to do great bodily harm less than murder by strangulation (assault by strangulation), MCL 750.84(1)(b). We disagree.³

MCL 750.122(1)(a) provides in relevant part:

(1) A person shall not give, offer to give, or promise anything of value to an individual for any of the following purposes:

(a) To discourage any individual from attending a present or future official proceeding as a witness, testifying at a present or future official proceeding, or giving information at a present or future official proceeding.

MCL 750.122(7) provides various penalties for different violations. Defendant was charged under MCL 750.122(7)(b), which provides:

³ In order to preserve an issue regarding the great weight of the evidence, the defendant must move the trial court for a new trial. See *People v Lopez*, 305 Mich App 686, 695; 854 NW2d 205 (2014). Defendant failed to do so, which means that we review this issue for plain error affecting substantial rights. *Id.*

(7) A person who violates this section is guilty of a crime as follows:

* * *

(b) If the violation is committed *in a criminal case for which the maximum term of imprisonment for the violation is more than 10 years*, or the violation is punishable by imprisonment for life or any term of years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both. [Emphasis added.]

The underlying “violation” in this case was assault by strangulation, which carries a term of imprisonment of not more than 10 years. MCL 750.84(1). However, given that defendant was convicted as a fourth-offense habitual offender, he faced a sentence of “imprisonment for life or for a lesser term,” MCL 769.12(1)(b), and habitual-offender enhancements count toward this element of witness tampering. *People v Stricklin*, 322 Mich App 533, 543-544; 912 NW2d 601 (2018).

Defendant nonetheless argues that because he was acquitted of the assault by strangulation charge, there was no underlying “violation” necessary to support a charge of witness bribery. However, the statute’s only requirement is that the witness interference occur “*in a criminal case for which the maximum term of imprisonment for the violation is more than 10 years*,” MCL 750.122(7)(b); notably absent from this language is any requirement that the defendant be *convicted* of the underlying offense. Therefore, defendant’s interpretation reads language into the statute that is not present. Further, the jury in this case was instructed consistent with M Crim JI 37.5a including that “[i]t does not matter whether the official proceeding took place as long as the defendant knew or had reason to know that [the victim] could be a witness at that proceeding.” Defendant does not dispute that this model jury instruction accurately states the law. For these reasons, his argument that there must be a conviction in the underlying criminal case is without merit.

Affirmed.

/s/ Douglas B. Shapiro
/s/ James Robert Redford
/s/ Christopher P. Yates