

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 11, 2012

v

WIDLER NAVAL,
Defendant-Appellant.

No. 308031
Eaton Circuit Court
LC No. 11-020088-FH

Before: O'CONNELL, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Following a jury trial, defendant appeals by right his convictions of two counts of assaulting, resisting, and obstructing an officer, MCL 750.81d(1). The trial court sentenced defendant to 20 days in jail on each count and to one year of probation. We affirm.

Defendant's convictions arose from a confrontation that took place between police and defendant outside of a Delta Township nightclub. The police had responded to a report of a disturbance at the nightclub. When they arrived, the club was being evacuated because a fire alarm had sounded. Defendant's brother was acting aggressively, and a police officer asked him to leave the area. Defendant's brother did not leave, and the police attempted to take him into custody. Defendant held onto his brother and would not let go, despite the police trying to separate them. Eventually defendant was separated from his brother, but he returned and confronted another officer. At this point, defendant became involved in an altercation with a deputy, who attempted to use his taser on defendant. The taser malfunctioned and defendant disappeared back into the crowd, only to once again emerge and confront an officer. This time, an officer told defendant he was under arrest, and the two struggled on the ground until another officer tased him. The officers handcuffed defendant and took him into custody.

Defendant first argues that the prosecution's evidence was insufficient to support his convictions. We disagree. This Court reviews de novo a claim of insufficient evidence. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). Viewing the evidence in a light most favorable to the prosecution, the Court determines "whether a rational trier of fact could have found that the essential elements of the crime were proved beyond reasonable doubt." *Id.* at 196. On review, we will not interfere with the factfinder's role as determiners of weight and credibility. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

The prosecution has the burden of presenting sufficient evidence to allow a rational trier of fact to conclude that defendant committed all of the essential elements of the alleged crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). For the crime of assaulting, resisting, or obstructing a police officer, the prosecution must establish beyond a reasonable doubt that (1) defendant assaulted, resisted, or obstructed a police officer, and (2) that defendant knew or had reason to know that the person was performing his duties. MCL 750.81d(1). The statute defines “obstruct” as “the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” MCL 750.781d(7)(a).

In this case, the prosecution presented testimony from officers who responded to the club on the night of the incident. The testimony established that at least two officers were in uniform that night, which is sufficient evidence to conclude that defendant knew the police officers were performing their duties. Three officers testified that defendant confronted them on multiple occasions. Due to the hostile and aggressive crowd, the officers were concerned for their safety and repeatedly asked defendant to retreat. One officer testified that he attempted to deploy his taser at defendant, but it malfunctioned, and defendant moved back into the crowd. Another testified that he had repeatedly asked defendant to leave, to the point where he told another officer that he should arrest defendant for interfering with an arrest. Finally, a third officer testified that defendant swung at him, and he was forced to use his taser to control defendant while he was in a struggle with another officer.

Defendant’s argument is entirely predicated on weighing the testimony and credibility of his witnesses more favorably than those of the prosecution. This Court will not second guess a jury on such matters. Therefore, viewing the testimony presented by both the prosecution and defendant in a light most favorable to the prosecution, sufficient evidence was adduced to allow a rational factfinder to determine that the defendant committed two counts of assaulting, obstructing, and resisting a police officer.

Next, defendant argues that the verdicts were against the great weight of the evidence. Again, we disagree. To preserve the issue of great weight of the evidence for appeal, defendant must have timely moved for a new trial. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Because defendant did not move for a new trial below, the issue was not preserved. Accordingly, we review for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

A verdict is against the great weight of the evidence “only if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). Conflicting testimony does not warrant a new trial. *People v Lacalamita*, 286 Mich App 467, 472; 780 NW2d 311 (2009). Rather, conflicting testimony requires a trial court to defer to a jury’s determination unless the testimony was impeached to the point where it was not believable or had no probative value. *People v Lemmon*, 456 Mich 625, 647; 576 NW2d 129 (1998).

Defendant’s argument relies solely on the weight of the conflicting testimony at trial. Defendant does not show that the jury relied on evidence that was not believable or had no probative value. In this case, a rational jury could have determined that defendant assaulted,

resisted, or obstructed police officers. If a rational jury could have convicted defendant, then the evidence does not “preponderate[] so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *Unger*, 278 Mich App at 232. Therefore, defendant has not established a plain error that affects his substantial rights.

Affirmed.

/s/ Peter D. O’Connell

/s/ Mark J. Cavanagh

/s/ Pat M. Donofrio