

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MATTHEW BROWN,

Defendant-Appellant.

UNPUBLISHED
October 11, 1996

No. 183711
LC No. 93-130319

Before: McDonald, P. J., and White and P. J. Conlin*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of resisting and obstructing a police officer, MCL 750.479; MSA 28.747 and of habitual offender, second offense, MCL 769.10; MSA 28.1082. He was subsequently sentenced to 183 days' imprisonment on the habitual offender conviction. He appeals as of right and we affirm.

On the evening in question, Royal Oak Police Officers Barry Gale and David Adriaens entered the Red Coat Tavern where defendant was employed, to conduct a sting operation. The officers observed the tavern's bartender sell alcohol to a minor. After the illegal sale, the officers planned to issue a citation to the bartender. Moments later, Adriaens asked defendant if he could speak to the bartender, but defendant ignored the request. Adriaens then asked defendant for identification at which time defendant became belligerent and began to curse at Adriaens and the other officers. Defendant then proceeded to the tavern's office, and Adriaens followed. After entering the tavern's office, Adriaens again asked defendant to produce identification. When defendant refused, Adriaens asked several more times. Defendant then stood up from a desk and walked towards another area in the office near filing cabinets. At that point, defendant raised his arm in a manner which Adriaens believed defendant was going to strike him. Officer James Stehlin, also present that evening, testified that defendant raised his arm as if to strike Adriaens.

Defendant argues that there was insufficient evidence to sustain his conviction. We review such claims, after viewing the evidence in a light most favorable to the prosecution, to determine if a rational

* Circuit judge, sitting on the Court of Appeals by assignment.

trier of fact could have found that the elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Under the statute, the elements of the crime of resisting and obstructing are (1) the defendant must have resisted arrest; (2) the arrest must have been lawful; (3) the person making the arrest must have been at the time an officer of the law; (4) at the time of the arrest, the defendant must have intended to have resisted such officer; (5) at the time of the arrest, the defendant must have known that the person he was resisting was an officer; and (6) at the time of the arrest, the defendant must have known that the officer was making an arrest. *People v Julkowski*, 124 Mich App 379, 383; 335 NW2d 47 (1983). Furthermore, it is not necessary that the defendant physically obstruct a police officer; he need only hinder the officer's performance of a lawful duty. *People v Pohl*, 207 Mich App 332, 333; 523 NW2d 634 (1995).

Specifically, defendant argues that there was insufficient evidence to find that his arrest was legal. However, an arrest is legal if the defendant commits a crime in the arresting officer's presence. *People v Wood*, 450 Mich 399, 403; 538 NW2d 351(1995); MCL 764.15(1)(a); MSA 28.874(1)(a). The evidence demonstrated that defendant was arrested for assault. An assault is defined as either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). Therefore, so long as Adriaens reasonably feared an immediate battery, his subsequent arrest of defendant was legal because the crime of assault was committed in Adriaens' presence. *Wood, supra*. When viewed in a light most favorable to the prosecution, we find sufficient evidence to conclude that the arrest was legal.

Defendant also contends that the verdict is against the great weight of the evidence because the actions of the complaining officers were illegal and deliberately insulting. When reviewing a claim that the defendant's conviction was against the great weight of the evidence, we determine whether the trial court abused its discretion in denying the defendant's motion for new trial. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). We will vacate a verdict only when it does not find reasonable support in the evidence, but is more likely to be attributed to causes outside the record such as passion or prejudice. *Id.*

Although defendant's testimony contrasted sharply with that of the officers, there is reasonable support from the record that defendant was belligerent, used foul language, and was otherwise uncooperative with the officers. It is not our function to weigh the credibility of the witnesses. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991). That aside, there was evidence that defendant raised his hand in an assaultive manner, was subsequently placed under arrest, and then cursed at and kicked Adriaens. The acts subsequent to the arrest clearly show that defendant resisted and obstructed the lawful arrest. Thus, the court's verdict was is not against the great weight of the evidence and defendant's motion for new trial was properly denied.

Defendant next argues that the trial court, sitting as the trier of fact, rendered a compromise verdict. We note that when a trial judge sits as a trier of fact, his role is more circumscribed and the possibility of an inappropriate compromise judgment is significantly reduced or eliminated. *People v*

Cazal, 412 Mich 680, 689; 316 NW2d 705 (1982). The judge's duty is to find facts based on the evidence presented and to apply law to those facts. *Id.* However, if the trial court's findings of fact are inconsistent with its conclusions of law, this Court accepts the findings of fact and disregards the conclusion of law. *Nelson & Witt v Texas Co*, 256 Mich 65, 69; 239 NW 289 (1931). See also *Thompson v Merritt*, 192 Mich App 412, 417; 481 NW2d 735 (1991).

Defendant contends that the trial court compromised its verdict as evidenced by its erroneous factual finding that he did not "intend to strike Adriaens." In defendant's view, the court neither believed his testimony that he did not strike Adriaens, nor that of Adriaens that he did. We review the trial court's factual findings to determine whether they are clearly erroneous. MCR 2.613. A decision is clearly erroneous when we are of the belief that a mistake has been made. *People v Barclay*, 208 Mich App 670, 675; 528 NW2d 842 (1995). We find ample support in the record for the trial court's finding. Adriaens testified that defendant raised his arm in a backhanded motion such that he thought defendant was going to strike him. Officer Stehlin also testified to this effect. The fact that the court found that defendant did not "intend" to strike Adriaens does not render this finding clearly erroneous. Nevertheless, whether defendant intended to or actually did strike an officer is not required to sustain a conviction under the statute. The trial court found that defendant's arrest was legal since he raised his arm in an assaultive manner. The trial court's factual findings are not inconsistent with its conclusion of law and we do not believe that a mistake was made.

Affirmed.

/s/ Gary R. McDonald

/s/ Helene N. White

/s/ Patrick J. Conlin