

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARYL ANTHONY PARKER,

Defendant-Appellant.

UNPUBLISHED

June 29, 2004

No. 243485

Washtenaw Circuit Court

LC No. 01-000366-FH

Before: Hoekstra, P.J., and O’Connell and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his convictions by jury of two counts of carrying a weapon with unlawful intent, MCL 750.226, and one count of resisting and obstructing an officer, MCL 750.479. The trial court sentenced defendant as a fourth habitual offender to four to twenty years’ imprisonment for each weapon conviction and four to fifteen years’ imprisonment for the resisting conviction, to be served concurrently. We affirm.

Defendant argues on appeal that the trial court abused its discretion in admitting statements that defendant made in the presence of police officers while at the hospital receiving treatment following his arrest. We disagree.

To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that the party asserts on appeal. MRE 103(a)(1); *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). Although defendant argued against the admission of his statements in the court below, his objection was based on an alleged violation of the doctor/patient privilege; however, he now argues that his statements were involuntary because he suffered a concussion during his arrest and because the statements were hearsay and not within the hearsay exception provided in MRE 804(B)(3). An unpreserved claim regarding the admission of evidence is reviewed for plain error affecting the defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763, 774; 597 NW2d 130 (1999); *People v Coy*, 243 Mich App 283, 287; 620 NW2d 888 (2000). Reversal is warranted only when plain error results in the conviction of an actually innocent defendant or seriously affected the fairness, integrity or public reputation of judicial proceedings, independent of the defendant’s guilt or innocence. *Carines, supra*. Having reviewed the record, we are left with little doubt that defendant knowingly, intelligently, and voluntarily waived his rights, and thus we find no error requiring reversal on this issue. *People v McCrady*, 244 Mich App 27, 29; 624 NW2d 761 (2000). Nor has defendant demonstrated that any of his rights were violated when he

made the “non-Mirandized out of court statements” to a police officer. In addition, defendant’s hearsay argument is unavailing where defendant’s statements were party admissions, admissible as non-hearsay under MRE 801(d)(2).

Defendant also argues that the trial court erred in denying his motion for directed verdict and that his convictions are based on insufficient evidence. We disagree. This Court reviews a trial court’s decision on a motion for a directed verdict de novo. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). “In assessing a motion for a directed verdict of acquittal, a trial court must consider the evidence presented by the prosecution to the time the motion is made and in a light most favorable to the prosecution, and 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 Riley (After Remand)*, 468 Mich 135, 139-140; 659 NW2d 611 (2003). Further, “[w]hen a defendant challenges the sufficiency of the evidence in a criminal case, this Court considers whether the evidence, viewed in a light most favorable to the prosecution, would warrant a reasonable juror to find guilt beyond a reasonable doubt.” *People v Werner*, 254 Mich App 528, 530; 659 NW2d 688 (2002).

MCL 750.226 proscribes the carrying of a dangerous weapon with the intent to use it against another person. While defendant did not openly threaten or assault anyone, the testimony of the store clerk and the arresting officers was such that the jury could have reasonably found that defendant possessed both a knife and a piece of metal pipe approximately two feet in length; the jury could also reasonably infer from his actions, and later statements to a police officer that he had followed a man into the store who had been giving a relative problems, that he intended to use those weapons against another person. Thus, when the prosecution initially rested its case, sufficient evidence was presented to the jury for a reasonable jury to find defendant guilty of two counts of carrying a weapon with unlawful intent, and thus the trial court did not err in denying defendant’s motion for directed verdict.¹ Likewise, considering the record as a whole with regard to the weapon convictions and viewing the evidence in a light most favorable to the prosecution, a rational jury could have determined that the elements of the offense were proven beyond a reasonable doubt. With respect to the sufficiency of the evidence, circumstantial evidence and the reasonable inferences drawn from that evidence can constitute satisfactory proof of the elements of the charged crime. *Carines, supra* at 757.

With regard to the resisting and obstructing conviction, defendant also testified that he did not knowingly resist police officers because he did not see their uniforms but, rather, only remembers seeing a crowd of people. MCL 750.479 proscribes “knowingly and willfully” resisting or obstructing an officer in the discharge of his duties. This Court has ruled that in the

¹ To the extent that defendant argues on appeal that his motion for directed verdict should have been granted on the resisting and obstructing an officer count, the record does not support his argument. The record reveals that defendant’s motion for directed verdict concerned the two weapon counts only. In fact, defendant’s counsel stated, “I’m not arguing about the R&O [resisting and obstructing]: I understand there’s facts in here that could support R&O.” In these circumstances, “[d]efendant should not be allowed to assign error on appeal to something which his own counsel deemed proper at trial. To do so would allow defendant to harbor error as an appellate parachute.” *People v Roberson*, 167 Mich App 501, 517; 423 NW2d 245 (1988).

context of that statute, “knowingly” means that “the defendant must have done the act to an officer, knowing him to be an officer.” *People v Gleisner*, 115 Mich App 196, 199; 320 NW2d 340 (1982). Defendant claims that he did not know that he was being confronted by police officers; however, testimony was presented that the officers were in uniform that evening. The officer struck by defendant testified that she was in uniform and defendant looked in her direction before he struck her. While defendant’s testimony in part conflicts with that offered by the prosecution, we will not second-guess the jury’s determination of credibility. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002) (the jury determines what inferences can be drawn from the evidence and what weight to give each inference); *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992) (this Court should not interfere with the jury’s role in deciding the weight and credibility to be given to witness testimony). Viewed in a light most favorable to the prosecution, the evidence presented was sufficient for a reasonable juror to have found guilt beyond a reasonable doubt.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O’Connell
/s/ Pat M. Donofrio