

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LOUIS DEMAESTRI,

Defendant-Appellant.

UNPUBLISHED

September 25, 2008

No. 278613

Presque Isle Circuit Court

LC No. 06-092332-FH

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Defendant was convicted by a jury of resisting or obstructing a law enforcement officer in the performance of his duties, MCL 750.81d(1), and was sentenced to two days in jail. He appeals as of right. We affirm.

I

Defendant was convicted of resisting or obstructing sheriff's deputy Joseph Mulka in an incident that occurred on August 5, 2006. Deputies Mulka and David Schmoldt testified that they were patrolling the Shoepac Lake State Forest Campground, which was known for generating a lot of disturbance complaints. As the deputies drove through the campground, some sort of disturbance occurred, resulting in one person's arrest. While Deputy Schmoldt was placing the arrestee in his patrol car and Deputy Mulka was trying to calm and disperse several other persons who were upset by the arrest, defendant walked up to Deputy Mulka, invading his personal space. Defendant demanded to know what was going on and insisted that he had a right to be informed. Deputy Mulka ordered defendant to stand back. When defendant stood his ground, Deputy Mulka told him "to back up or he would be going to jail." Defendant stepped back and asked again what was going on. Deputy Mulka advised defendant that someone had been arrested and then asked defendant to return to his campsite. Defendant refused and remained where he was despite the deputy's repeated requests that he go back to his campsite. Finally, Deputy Mulka told defendant, "Return to your campground or you're going to jail." Defendant replied, "I'll go to jail." Defendant was arrested for being disorderly and for resisting or obstructing. The deputies later issued defendant a citation for disorderly conduct under MCL 750.167.

Defense witness Frank Sheer, Jr., testified that a younger sister of the arrestee screamed and began to wail during the arrest. Defendant approached Deputy Mulka and "was asking what

was going on, why the girl was screaming.” A second defense witness, Christopher Gee, testified that defendant told Deputy Mulka that he had heard a girl screaming. Sheer and Gee testified that they turned away while defendant conversed with the deputy. Within moments, there was a commotion and the witnesses turned back to see defendant being arrested and then pushed into a patrol car.

Defendant, his son, and his daughter-in-law all testified that they were going for a walk when they heard a girl scream. They went to investigate the scream and found the deputies. When defendant’s son asked what was going on, Deputy Mulka walked up, invading his personal space, and told him to step back. Defendant’s son stepped back and asked again what was going on. When Deputy Schmoldt approached, defendant’s son posed the same question to him. Deputy Schmoldt told defendant’s daughter-in-law to take her husband back to their campsite. They turned and began walking away. At that point, defendant’s son realized that defendant was not with them and turned around to see the deputies pushing defendant into a patrol car.

Defendant testified that the deputies threatened his son with arrest. After his son and daughter-in-law turned to leave, defendant told the deputies, “We just wanted to see why a young girl was screaming out in agony or distress” and asked, “Why would a concerned citizen want to be arrested?” Suddenly, the deputies grabbed him and shoved him into a patrol car. When defendant asked what they were doing, he was told that he was being arrested. He allowed himself to be handcuffed and got into the car. Defendant testified that he was never directed to back away from Deputy Mulka or to return to his campsite. At trial, following defendant’s testimony, two local businessmen attested to defendant’s reputation for honesty.

II

Defendant first argues that the trial court erred in denying his motion for a new trial based on insufficient evidence. Defendant filed a motion for a new trial or judgment notwithstanding the verdict, which was in the nature of a postjudgment motion for a directed verdict. Defendant contends that the evidence presented at trial failed to prove that he obstructed Deputy Mulka by failing to comply with a lawful command. We disagree.

A trial court’s ruling on a motion for a directed verdict is reviewed *de novo* on appeal. *People v Passage*, 277 Mich App 175, 176; 743 NW2d 746 (2007). This Court “review[s] the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt.” *People v Couzens*, 480 Mich 240, 244; 747 NW2d 849 (2008). “This Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of witnesses.” *Passage*, *supra* at 177. “All conflicts in the evidence must be resolved in favor of the prosecution.” *Id.*

The elements of the charged crime are: (1) that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a law enforcement officer, and (2) that the defendant knew or had reason to know the officer was performing his duties. MCL 750.81d(1). “Obstruct” is defined to include “a knowing failure to comply with a lawful command.” MCL 750.81d(7)(a). The defendant must have actually resisted by what he said or did, but physical violence is unnecessary. See CJI2d 13.1(2). A defendant knows or has reason to know that he is resisting or obstructing a police officer in the performance of his duties when

the defendant ignores or resists the persistent commands of a police officer in full uniform. See *People v Nichols*, 262 Mich App 408, 413; 686 NW2d 502 (2004).

The evidence, taken in a light most favorable to the prosecution, showed that the deputies were patrolling the campground as part of their normal duties to prevent disturbances. A disturbance arose and one person was arrested. Deputy Mulka was attempting to disperse the remaining members of the crowd involved in the disturbance when he was accosted by defendant. Defendant interfered with the deputy's attempts to quell the disturbance by demanding to know what was going on and refusing repeated orders to leave the immediate area. A sheriff's deputy is authorized to preserve the peace, MCL 600.584(b), which includes not only investigating crimes but also preventing the commission of a crime or a breach of the peace. 63 CJS, Municipal Corporations, § 486, p 109; 80 CJS, Sheriffs & Constables, § 74, pp 164-165. Thus, a law enforcement officer is expected to be "in a constant state of readiness to quell any disturbance." *People v Weatherspoon*, 6 Mich App 229, 232; 148 NW2d 889 (1967). Deputy Mulka was performing his duties by dispersing the crowd in order to quell a disturbance. Because defendant injected himself into the crowd and added to the disturbance by demanding to know what was going on, he could lawfully be ordered to step back and leave the immediate area, commands reasonably related to dispersal of the crowd. The evidence was sufficient to show that defendant obstructed Deputy Mulka in the performance of his duties by failing to comply with a lawful command. Accordingly, we find that the trial court properly denied defendant's motion.

III

Defendant next argues that the trial court erred in denying his motion for a new trial based on juror misconduct. This Court reviews the trial court's decision on a motion for a new trial for an abuse of discretion. *People v Leonard*, 224 Mich App 569, 580; 569 NW2d 663 (1997). An abuse of discretion occurs if the trial court's decision is outside the range of principled outcomes. *People v Carnicom*, 272 Mich App 614, 617; 727 NW2d 399 (2006).

A criminal defendant has a right to be tried by a fair and impartial jury. *People v Budzyn*, 456 Mich 77, 88; 566 NW2d 229 (1997). Once a jury has been polled and discharged, its verdict cannot be impeached with a juror affidavit or testimony regarding mistakes or misconduct inherent in the verdict unless the affidavit or testimony relates to "extraneous or outside errors, such as undue influence by outside parties." *Id.* at 91. Thus, conduct inherent in the deliberative process, even if misguided, is not subject to challenge or review, *People v Fletcher*, 260 Mich App 531, 540; 679 NW2d 127 (2004), and a juror may not impeach his own verdict with a subsequent affidavit showing misconduct in the jury room, *Budzyn, supra* at 91. "A jury verdict may be challenged on the basis of juror misconduct only when the verdict is influenced by matters unrelated to the trial proceedings." *Fletcher, supra* at 540-541.

Defendant's claim of misconduct is premised solely on the hearsay statement of one juror after the verdict had been returned. Specifically, the juror indicated to a defense investigator that some members of the jury improperly considered possible penalties for the charged offense and voted to convict because they believed the offense was a misdemeanor. Because defendant claimed error in the jury's deliberative process rather than improper influence by extraneous or outside factors, he failed to establish a right to relief. *Budzyn, supra* at 91; *Fletcher, supra* at 540-541. Therefore, the trial court did not abuse its discretion in denying defendant's motion.

IV

Defendant lastly argues that he is entitled to a new trial because the verdict was against the great weight of the evidence. This issue has not been preserved for appeal because defendant did not file a motion for a new trial on this ground in the trial court. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). Although defendant argues that he preserved this issue by moving for a judgment of acquittal, such a motion does not test the weight of the prosecution's proofs; rather, it tests only the sufficiency of those proofs. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). Therefore, the great weight issue is unpreserved and appellate relief is precluded unless the defendant demonstrates a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *Musser, supra* at 218.

A motion for a new trial may be granted when a verdict is manifestly against the clear weight of the evidence, i.e., the evidence so clearly weighed in the defendant's favor that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998); *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). In reviewing a motion for a new trial on the ground that the verdict was against the great weight of the evidence, the judge must review the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds *Lemmon, supra* at 627. Generally, a verdict may be vacated only when it is not reasonably supported by the evidence and was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence. *People v Plummer*, 229 Mich App 293, 306; 581 NW2d 753 (1998); *DeLisle, supra* at 661. "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial" absent exceptional circumstances. *Lemmon, supra* at 643-644, 647. The resolution of credibility questions is within the exclusive province of the jury, *DeLisle, supra* at 662, and this Court may not resolve them anew, *Gadomski, supra* at 28.

According to the prosecution's witnesses, defendant actively interfered with the deputies' performance of their duties by injecting himself into the situation and refusing to leave the immediate area when directed to do so. According to defense witnesses, defendant may have approached the deputies, may have said something to them, and was never told to step back or to leave the immediate area. Because the prosecution's evidence, if believed, was sufficient to sustain the verdict, and the conflicts in the testimony did not present any exceptional circumstances such that the jury's resolution of witness credibility should have been disregarded, defendant has failed to show plain error.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Jane M. Beckering