

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES MARTIN WHITE,

Defendant-Appellant.

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UNPUBLISHED  
February 18, 2010

No. 290518  
Ingham Circuit Court  
LC No. 08-000545-FH

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of first-degree home invasion, MCL 750.110a(2), and resisting arrest (resisting and obstructing), MCL 750.81d(1). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's home invasion conviction arises out of his attempt to flee from police officers. A fugitive warrant had been issued for defendant, upon information that defendant was a parole absconder. Michigan State Police Trooper Pete Smith testified that he and other members of the district fugitive team received information concerning defendant's location. The officers subsequently observed defendant enter an automobile, and the officers followed that car in an unmarked vehicle while calling for a marked car from the Lansing Police Department to assist. Smith observed Lansing Police Officer Bill Windom, in uniform and driving a marked patrol car, make a traffic stop of the vehicle in which defendant was riding. Defendant left the car and looked at Windom. According to the officers, Windom identified himself as a police officer and told defendant to stop.

Instead, defendant began to run, and Smith chased him. Smith was wearing street clothes and a blue t-shirt with "police" written on the front and back in large letters. Smith chased defendant several hundred yards and into a residential area. Smith testified that he repeatedly identified himself as an officer and told defendant to stop and get on the ground. Smith lost sight of defendant briefly, but then he heard the back door of a house slam. Smith went to the door and heard screaming coming from inside the home. Smith opened the door, entered the home, and saw defendant running through the kitchen. Smith pursued defendant through the home, repeatedly telling him to stop. Defendant continued to run. Smith testified that, because he could not see defendant's hands, he pulled his taser from his belt and shot defendant with it. After being tazed, defendant complied with Smith's commands to stop.

On appeal defendant concedes that the prosecution presented sufficient evidence of resisting and obstructing; however, he argues that prosecution presented insufficient evidence to support his home invasion conviction, because the prosecution failed to present evidence that defendant intended to commit the crime of resisting and obstructing when he entered the home.

We review a defendant's allegations regarding insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

In relevant part, MCL 750.110a(2) provides that "a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling . . . is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling . . . another person is lawfully present in the dwelling." Thus, the relevant elements are: (1) the defendant entered a dwelling without permission; (2) while intending to commit or actually committing a felony while entering, exiting, or present within the dwelling; and (3) another person was lawfully present in the dwelling. See *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004). Here, defendant's charge of first-degree home invasion was predicated on his resisting and obstructing charge. The elements of resisting and obstructing an officer are (1) that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know the officer was performing his duties. *People v Ventura*, 262 Mich App 370, 377-378; 686 NW2d 748 (2004). "Obstruct" is defined by the statute as "the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a).

Defendant essentially admits that he entered the home without permission while it was occupied. The trial testimony supports that admission. We disagree with defendant's apparent assertion that, despite the evidence that defendant was initially fleeing from police, the crime ended when the police lost sight of him, therefore defendant's entry into the home was not coupled to a felony. Defendant's crime of resisting arrest is a continuous one in these circumstances. The evidence supported a finding that defendant continued to resist arrest, and the officers' repeated lawful orders to stop, when he entered the home with Smith close behind him. The jury could also find that defendant intended to use the home as a hiding place, tried to flee when he realized that Smith had again located him, and only stopped because Smith tazed him. Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). While this version of events would require the jury to select what portions of each witness's testimony to believe, a jury is free to believe or to disbelieve all or part of any of the evidence presented. *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Viewing the evidence in the light most favorable to the prosecution, we thus find that the prosecution presented sufficient evidence to support defendant's home invasion conviction.

Defendant next argues that the sentence for his home invasion conviction constituted cruel and unusual punishment. The sentence imposed by the trial court was within the scored sentencing guidelines for this offense. While we generally must affirm such a sentence unless the trial court erred in scoring the guidelines or relied on inaccurate information, MCL 769.34(10), this limitation on review is not applicable to claims of constitutional error. *People v Conley*, 270 Mich App 301, 316; 715 NW2d 377 (2006).

Nevertheless, a sentence within the guidelines range is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). A sentence that is proportionate does not constitute cruel and unusual punishment. *Terry*, 224 Mich App at 456. See also *People v Drohan*, 264 Mich App 77, 91-92; 689 NW2d 750 (2004), aff'd 475 Mich 140 (2006). Defendant has not rebutted this presumption. According to the presentence investigation report, defendant was on parole absconder status at the time of the instant offenses. In his favor, this was apparently because he was being sought as a witness in connection with a 2008 homicide case and the Department of Corrections automatically sends out a warrant in such instances to ensure that the witness is present to testify. However, defendant has multiple prior adult felony and misdemeanor convictions, including breaking and entering a structure, breaking and entering a motor vehicle, fleeing and eluding, unauthorized driving away of an automobile, receiving or concealing stolen property, and larceny. He also has a juvenile criminal history. In addition, he was on parole when he committed the instant offenses, and he has committed previous offenses while on parole. Reviewing the circumstances of the offense and offender, we find that defendant's sentence does not rise to the level of cruel and unusual punishment.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Mark J. Cavanagh  
/s/ Alton T. Davis