

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLIE WILLIE JONES, JR.,

Defendant-Appellant.

UNPUBLISHED

October 3, 2006

No. 262110

Oakland Circuit Court

LC No. 2004-195871-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of resisting or obstructing a police officer, MCL 750.81d(1), driving with a suspended or revoked operator's license, MCL 257.904(1), and displaying a license plate on a vehicle for which it was not issued, MCL 257.256.¹ The trial court sentenced defendant to concurrent terms of 90 days in jail for each conviction. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).²

I. Facts

Defendant was driving a Mazda with a cracked windshield when a deputy sheriff noticed that defect and checked defendant's license plate through the Law Enforcement Information Network. That check indicated that the license plate on defendant's car had been issued for a Cadillac. The deputy pulled defendant over, and defendant left his vehicle from the passenger's side. The deputy testified that he repeatedly ordered defendant to return to the car, but that defendant instead sat on top of the vehicle, ignoring the deputy's instructions and insisting that a supervisor be called. In response to defendant's continued obstinacy, the deputy used his taser.

¹ Defendant does not challenge his conviction under MCL 257.256. Therefore, defendant's conviction for displaying a license plate on a vehicle for which it was not issued is not at issue in this appeal.

² Defendant has not preserved oral argument, but this has no effect on our decision in this regard. Although plaintiff properly preserved oral argument, we elect to decide this case without it, satisfied that the briefs and record adequately present the facts and legal arguments, and that our deliberation would not be significantly aided by oral argument. MCR 7.214(E)(1)(b).

However, according to the deputy, defendant was undeterred, attempting to flee the scene and ignoring further orders to lie on the ground and put his hands behind his back. The deputy eventually managed to handcuff defendant and place him under arrest.

A witness who was nearby described observing defendant “flailing his arms” and trying to get away from the arresting deputy, despite the deputy’s repeated instructions that defendant stop resisting. The witness confirmed that the arresting deputy was able to place handcuffs on defendant only after “probably . . . 30 seconds or so of . . . struggle.”

Defendant argues on appeal that defense counsel performed inadequately. He also argues that the evidence was not sufficient to support his convictions of resisting or obstructing and driving with a suspended or revoked license. Finally, defendant contends that these two convictions were contrary to the great weight of the evidence.

II. Effective Assistance of Counsel

Defendant argues that he was denied the right to effective assistance of counsel because counsel should have introduced into evidence a recording of a 911 call that defendant made in the course of his confrontation with the arresting deputy. We review unpreserved claims of ineffective assistance of counsel for error apparent on the record. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005).

Defendant’s contention that the 911 recording would have shown that he was not resisting or obstructing the deputy is speculative at best. That defendant attempted by way of the 911 call to involve other law enforcement personnel could well confirm that a state of tumult and contentiousness had developed between defendant and the arresting deputy. Thus, it is possible that counsel did not want the tape admitted because it would have only strengthened the case against defendant. Decisions regarding what evidence to present are presumed to be matters of trial strategy, which this Court will not second guess with the benefit of hindsight. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). To establish ineffective assistance on appeal, a defendant must overcome the presumption that counsel’s decisions constituted sound strategy. *People v Reed*, 198 Mich App 639, 646; 499 NW2d 441 (1993), aff’d 449 Mich 375 (1995). On the record before us, we cannot conclude that defendant has overcome the strong presumption that counsel’s decision with respect to the 911 tape was anything other than sound trial strategy. Defendant’s claim of ineffective assistance of counsel is unavailing.

III. Evidentiary Challenges

When reviewing the sufficiency of evidence in a criminal case, we view the record evidence de novo, in the light most favorable to the prosecution, to determine whether a rational trier of fact could find that each element of the crime was proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). A new trial may be granted, on some or all of the issues, when a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). We review for an abuse of discretion a trial court’s denial of a motion for a new trial brought on the ground that the verdict was against the great weight of the evidence. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). Such a motion should be granted only when the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *People v Lemmon*, 456 Mich 625, 640, 642; 576 NW2d 129 (1998).

Finally, questions of law, including the interpretation of a criminal statute, are reviewed de novo. *People v Hill*, 269 Mich App 505, 514; 715 NW2d 301 (2006).

A. Driving with a Suspended or Revoked License

Defendant argues that (1) the prosecutor failed to prove that he had received the statutorily required notice that his driving privileges were suspended, and (2) the evidence against him was insufficient to show violation of MCL 257.904(1) because he possessed a valid out-of-state operator's license. We disagree with both assertions. MCL 257.904(1) states:

A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified . . . of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state.

Admitted into evidence was an exhibit that the arresting deputy identified as a certified copy of defendant's driving record. The exhibit indicated that defendant had never received a valid permanent Michigan operator's license, but had instead obtained a temporary instructional permit, which had expired or been revoked. Also admitted into evidence was a proof of service, dated January 13, 2004, indicating that defendant was sent notice that his driving privileges had been suspended.

Defendant asserts, without more, that "[t]he face sheet of a driving record entry alone cannot be accepted as reliable proof of a suspension or revocation," because "[d]ata entry errors are always possible." We decline to rule that only evidence which is wholly immune to possible "data entry errors" can ever satisfy the statutory notice element of MCL 257.904(1). Indeed, all written evidence is susceptible to possible data entry mistakes. Nonetheless, courts routinely rely on such evidence despite this possibility of clerical or typographical errors.

Moreover, as this Court held in *People v Glantz*, 124 Mich App 531, 533; 335 NW2d 80 (1983):

A collateral attack on the validity of the suspension of a driver's license in a case where the defendant is charged with driving while his license is suspended is improper. If defendant believed that his license was improperly suspended, his action should have been to petition for a hearing in circuit court for an order modifying or setting aside the suspension. [Internal citations omitted.]

Therefore, defendant's proper course of action would have been to challenge the accuracy of his driving record or the notice of suspension in a separate civil proceeding.

Defendant additionally challenges his conviction of driving with a suspended or revoked license by pointing to his own testimony that he had a valid operator's license from another state. However, even assuming that defendant in fact possessed a valid out-of-state license, "[a]n out-of-state license does not restore [an unlicensed] defendant's privilege to drive on Michigan roads." *Id.* at 535.

The prosecution presented sufficient evidence to prove the elements of MCL 257.904(1) beyond a reasonable doubt. Additionally, we cannot conclude that the evidence presented to the trier of fact “preponderate[d] heavily against the verdict[.]” *Lemmon, supra* at 640, 642. Defendant is entitled to no relief from his conviction for driving with a suspended or revoked license.

B. Resisting or Obstructing under MCL 750.81d

Defendant argues that “no resisting occurred after the point in time [when defendant] was advised he was under arrest,” and contends that he did not resist the arresting deputy in the first instance. Therefore, defendant suggests that insufficient evidence was presented to support his conviction for resisting or obstructing an officer, and asserts that this conviction was against the great weight of the evidence. We disagree.

The statute in question penalizes “an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties” MCL 750.81d(1). Nowhere does the statute indicate that a person must be placed under arrest before these prohibitions become operable, and defendant cites no authority that stands for the proposition that the statute must be read in this manner. Indeed, while the earlier-enacted MCL 750.479 prohibition against resisting and obstructing an officer specifically requires an “arrest,” the resisting or obstructing prohibition of MCL 750.81d, enacted in 2002, does not require an arrest. *People v Ventura*, 262 Mich App 370, 374-376; 686 NW2d 748 (2004). Rather than seeking to prohibit resisting and obstructing only during the course of an arrest, the Legislature, in enacting MCL 750.81d, sought to prohibit all resisting or obstructing of certain officers at any time during the performance of their duties. *Id.* at 377-378.

Defendant also argues that he never resisted the arresting deputy or affirmatively refused to obey the deputy’s commands. However, the evidence showed that defendant refused to obey the deputy’s command that he return to his vehicle, and that defendant refused to submit to the deputy’s authority in the absence of physical force. This evidence was corroborated by the account of an eyewitness, who described part of the exchange between defendant and the arresting deputy as a “struggle.” The jury was entitled to assess the credibility of the witnesses, and was equally free to credit or discredit the evidence as it deemed appropriate. *Lemmon, supra* 642-643; *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Given the evidence of defendant’s resistance to the arresting deputy’s instructions and authority, we cannot conclude that defendant’s conviction under MCL 750.81d was contrary to the great weight of the evidence. Nor are we convinced that rational jurors could not have found each element of the charged offense proven beyond a reasonable doubt.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper