

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRAL WINDMON,

Defendant-Appellant.

UNPUBLISHED

August 17, 2010

No. 291664

Jackson Circuit Court

LC No. 07-003911-FH

Before: WILDER, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1), and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(A).

On June 18, 2007, shortly before 1:30 a.m., police officers were dispatched to a domestic dispute. When Officer Eric Roth arrived, he saw defendant in the driveway holding a small infant and defendant was either placing items in a vehicle or preparing to enter the vehicle. Officer Roth asked defendant what was going on and defendant said “nothing.” Officer Roth then asked to see identification and defendant responded “fuck you” and said that he did not have any identification. Officer Roth testified that defendant smelled of alcohol and his speech was slurred. Defendant was “obviously very upset,” was very hostile, and was being very loud. Defendant’s fists were clenched. On further requests for identification, defendant told Officer Roth that he did not need to provide identification at his own residence and that the officer had no right to be there. Officer Roth testified that defendant said, “You need to leave or he will fuck me up.”

Shortly thereafter a second officer arrived, Officer Thomas Tinklepaugh. Officer Tinklepaugh went to the female who was standing on the front porch while Officer Roth remained with defendant in the driveway area. The officers’ focus was to keep defendant and the female separated at that point. Officer Tinklepaugh testified that he smelled intoxicants on defendant’s breath. Officer Roth continued to try to talk to defendant, asking him what was going on and defendant persisted in loudly yelling profanities at him, telling the officer to leave his property because he had no right to be there. When defendant began approaching the front porch where the female was, Officer Roth tried to place himself between the two people. At that

point, defendant announced that he had a gun “[i]n a very threatening and aggressive manner.” Officer Roth testified that he immediately felt threatened, asked where the gun was, and at the same time grabbed defendant’s left arm.

Officer Tinklepaugh heard defendant’s statement about having a gun and approached. Defendant jerked his arm away from Officer Roth’s grip. While Officer Tinklepaugh was attempting to secure defendant’s left wrist, defendant’s wife took the baby from defendant. When his right arm was free of the baby, defendant immediately threw a punch at Officer Tinklepaugh’s face and neck. Officer Tinklepaugh and defendant struggled and then went down to the ground. While both officers were trying to secure defendant’s arms, defendant continued to struggle against them and would neither listen to commands to stop fighting nor advise the officers as to where the gun was located. Eventually handcuffs were placed on defendant and a semi-automatic, loaded handgun was located in defendant’s waistband area.

When Officer Tinklepaugh attempted to walk defendant to the patrol car while Officer Roth was securing the gun in his vehicle, defendant’s continued struggle caused both he and Officer Tinklepaugh to fall to the ground. A third police officer, Officer Jason Ganzhorn, arrived at the scene. As Officer Tinklepaugh was walking defendant to the patrol car, defendant continued struggling and using profanities. Defendant then refused several requests to get in Officer Ganzhorn’s patrol car. Defendant placed his feet on the frame of the patrol car and was pushing back against Officer Tinklepaugh. After several hand stuns were administered by the officers against defendant, defendant had a seat in the patrol car and was transported to the county jail.

Defendant was originally charged with carrying a concealed weapon, MCL 750.227, assaulting, resisting, or obstructing Officer Tinklepaugh, MCL 750.81d(1), and felony firearm, MCL 750.227b. An amended information eliminated the charge of carrying a concealed weapon. Defendant was convicted by a jury as charged.

On appeal, defendant appears to argue that the evidence was insufficient to support his conviction for assaulting, resisting, or obstructing Officer Tinklepaugh because defendant’s statement “Oh, yeah, I’ve got a gun” was not particularly threatening thus he properly responded to the officer’s unjustified use of physical force against him. After de novo review of the evidence, in a light most favorable to the prosecution, we conclude that a rational juror could find the essential elements of the crime proved beyond a reasonable doubt. See *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

To establish criminal liability under MCL 750.81d(1), the prosecutor must prove that (1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person was a police officer performing his duties. See MCL 750.81d(1); *People v Ventura*, 262 Mich App 370, 377-378; 686 NW2d 748 (2004). Defendant does not dispute that he knew Officer Tinklepaugh was a police officer performing his duties. Instead, defendant seems to argue that he had the right to assault, resist, or obstruct Officer Tinklepaugh in response to the police officer’s attempt to restrain his left arm after he announced that he had a gun. This argument is without merit.

Prior to defendant's announcement that he had a gun, defendant was exhibiting clearly volatile and hostile behavior toward the police officers. Defendant was yelling obscenities at them. His fists were clenched. It was apparent that defendant had been drinking alcohol. It was 1:30 in the morning. Defendant threatened Officer Roth that he would "fuck him up" if he did not leave the property. And then defendant announced that he had a gun, but he never advised that he had the right to carry a gun and he never advised where the gun was located. In light of all of these circumstances, the police officers responded to the announcement that defendant had a gun with reasonable caution and care to protect themselves as well as to ensure the public safety. Police officers faced with potentially dangerous situations have a wide degree of discretion in determining how to respond. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 659; 363 NW2d 641 (1984). And contrary to defendant's claim, the admission that he had a gun was "particularly threatening" in light of defendant's aberrant behavior and actions. In any case, a person may not assault, resist, or obstruct a police officer performing his duties. *Ventura*, 262 Mich App at 376-377. In light of the overwhelming evidence against defendant, a rational juror could find beyond a reasonable doubt that defendant assaulted, resisted, or obstructed Officer Tinklepaugh knowing that he was a police officer performing his duties.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Henry William Saad