

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 18, 2012

v

No. 303410
Luce Circuit Court
LC No. 2010-001039-FH

LAWRENCE JOHN CROSSETT,

Defendant-Appellant.

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of resisting and obstructing a law enforcement officer, MCL 750.81d(1), and fourth-degree fleeing and eluding, MCL 257.602a(2). We affirm.

On October 2, 2010, Michigan State Trooper Wilson (Wilson) received a dispatch over his radio that defendant had assaulted a female, possessed a knife, and was driving in his car. Wilson caught up to defendant's car and engaged his siren and lights, but defendant did not yield. Pursuit continued, and as defendant neared his residence, Wilson pulled up to the side of defendant's car, but defendant still did not pull over. Upon reaching defendant's residence, both Wilson and defendant exited their vehicles. Defendant immediately began to walk toward his residence, and Wilson identified himself as a state trooper and ordered defendant to get on the ground because he was under arrest. Defendant did not obey, instead waving to the officer. There is a dispute as to why defendant was waving, but no dispute that defendant knew Wilson was a police officer. Because defendant did not obey, Wilson then tackled and physically restrained him, during which defendant continued to struggle and refused to be handcuffed until Wilson threatened to tase him.

During direct examination, defense counsel asked defendant whether he made it a "habit" to respect the police and their orders, opening the door to admission of defendant's prior acts. Defendant responded "[a]ll the time." To impeach defendant's statement, the prosecutor introduced evidence of defendant's prior conviction for resisting and obstructing a police officer. Defense counsel did not object to the introduction of this testimony but, to mitigate the harm from admission of the prior-conviction testimony, allowed defendant to explain the prior conviction during redirect. Defendant explained that in his prior conviction, a police officer had inquired what was in his pocket. Defendant had marijuana, and he told the officer that it was his

medicine and then ate it. Although defendant then possessed a valid medical marijuana card, the facts underlying the prior conviction took place in 2006, at which point medical marijuana was illegal in Michigan. Additionally, during closing arguments, the prosecutor erroneously referred to defendant's prior conviction and compared it to the instant case. Again, defense counsel did not object.

Defendant argues that defense counsel rendered ineffective assistance by eliciting his testimony that he followed police orders "[a]ll the time," opening the door for the prosecutor to impeach him with evidence from his prior conviction, and for failing to object to the prosecutor including the prior conviction in his closing argument. The determination whether a defendant has been deprived of the effective assistance of counsel presents a mixed question of fact and constitutional law, and a trial court's findings of fact are reviewed for clear error, while its constitutional determinations are reviewed de novo. *People v Dendel*, 481 Mich 114, 124; 748 NW2d 859, amended 481 Mich 1201 (2008).

Counsel is presumed to have afforded effective assistance, and the defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). To establish ineffective assistance of counsel, a defendant must show that counsel's performance was unreasonable and resulted in prejudice. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different and that the result was fundamentally unfair or unreliable. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

We do not need to determine whether counsel's performance was unreasonable because defendant's own testimony was sufficient for a reasonable trier of fact to convict him beyond a reasonable doubt. Defendant admitted that he did not stop when he saw Wilson's cruiser with lights and siren driving behind him, that he pulled in to the left lane when he saw Wilson coming, also in the left lane, and that he was traveling at 70 miles per hour. Furthermore, defendant admitted that he complied with Wilson's commands at his home because Wilson threatened to tase him. Although defendant asserted that he was in the process of complying when Wilson tackled him to the ground, the jury was entitled to reject this explanation. Defendant also testified that he was experienced post-traumatic stress disorder, a condition for which he is medicated. Again, the trier of fact is entitled to accept or reject this explanation for defendant's actions.

Although we feel that both the prosecutor and defense counsel made baffling errors of evidentiary procedure in this case, the errors do not rise to the level of ineffective assistance of

counsel. Defendant's own testimony is overwhelming enough to convict him absent the prior-conviction evidence, and because defendant has not shown that but for these errors there was a reasonable probability that he would not have been convicted, therefore the lawyers' errors do not warrant a new trial.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Stephen L. Borrello
/s/ Michael J. Riordan