[Cite as *State v. Ford*, 2009-Ohio-6046.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-01-039
	:	O P I N I O N
- vs -		11/16/2009
	:	
SULLIVAN L. FORD,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-10-1734

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POWELL, P.J.

{¶1} Defendant-appellant, Sullivan L. Ford, appeals his convictions in the Butler County Court of Common Pleas for assault of a peace officer and obstructing official business. For the reasons discussed below, we affirm appellant's convictions.

{¶2} On October 29, 2008, appellant was indicted on two counts of assault

of a peace officer in violation of R.C. 2903.13(A), a felony of the fourth-degree, and one count of obstructing official business in violation of R.C. 2921.31, a felony of the fifth-degree. The charges stemmed from events that occurred in the early morning hours of September 21, 2008.

{¶3} At approximately 3:30 a.m. on that date, Michael Webb, a Butler County Sheriff's Deputy, was in the upstairs bedroom of his apartment located at 10 Woodfield Court in Fairfield. Deputy Webb testified that he and his companion, Staci Hall, were in bed watching television when they heard two individuals, later identified as appellant and his girlfriend, Dana Danbury, having what was described as a "heated" conversation. From his bedroom window, Webb observed appellant and Danbury standing on the sidewalk in front of his apartment. Deputy Webb testified that he watched them for a few minutes, but returned to bed thinking that they would resolve their disagreement. He continued to listen to their exchange and after determining that the argument was escalating, returned to the window and observed Danbury "getting pretty upset" and "going toward [appellant]." Webb told Hall that he was going outside to ask appellant and Danbury to take their argument elsewhere. At the time, Webb was off-duty and was not wearing his uniform. According to Webb, he was wearing gym shorts but had no shirt on.

{¶4} In addition to being a sheriff's deputy, Webb testified that he was also "resident officer" of the apartment complex. His duties included performing maintenance work at the complex and helping to maintain order among its residents. His duties also included assisting the Fairfield Police Department in the event they responded to a scene at the complex. Webb received a discounted rental rate for his services.

{¶5} Before proceeding outside, Webb grabbed a flashlight and his wallet, which contained his badge. He stated that upon opening his front door, appellant and Danbury were approximately four to five feet away from him. Webb testified that he identified himself as being with the sheriff's department, shined the flashlight on his badge, and asked them to quiet down and leave the area.

{¶6} Appellant apologized to Webb and proceeded to walk away. Danbury did not leave and complained to Webb that appellant was in possession of her cell phone. Appellant denied having it. Webb testified that Danbury became very upset, and he told her to go down the street to the Fairfield Police Department and file a report. He then turned to go back inside his apartment.

{¶7} Deputy Webb testified that at that point, he heard appellant raise his voice and say, "I don't give a f*** if you're the sheriff or the police." Webb turned around and saw appellant coming toward him quickly and aggressively with his right arm extended. Webb testified that he blocked appellant's arm and appellant came toward him a second time. Webb grabbed appellant by the arm, told him that he was under arrest, and pushed him to the ground. Webb testified that he wrestled with appellant to try to secure him. During the course of the struggle, appellant bit Webb's wrist and arm, causing injuries.

{¶8} After hearing Webb call for her, Staci Hall came outside and called 911. Several minutes later, Officers Greg Bailes and Michael Sulfridge of the Fairfield Police Department arrived on the scene. Together, Deputy Webb and Officer Bailes handcuffed appellant. Testimony at trial indicated that appellant was yelling, screaming and cursing after being handcuffed, and refused to give his name to Bailes. The officers attempted to pick appellant up off the ground and transport him

to the police cruiser. Appellant resisted and kicked Sulfridge in the leg. Sulfridge and Bailes testified that appellant continued to resist their efforts, and they had to pull appellant into the vehicle. Once inside, appellant attempted to kick out the windows of the cruiser.

{¶9} On January 26-27, 2009, appellant was tried by a jury and convicted of assaulting Deputy Webb and obstructing official business. The jury also made a special finding with regard to the obstruction count that appellant's actions created a risk of physical harm to Webb. Appellant was acquitted of assaulting Officer Sulfridge. The trial court sentenced him to an aggregate of 18 months in prison.

{¶10} Appellant appeals his convictions, advancing four assignments of error for our review.

{¶11} Assignment of Error No. 1:

{¶12} "THE TRIAL COURT ERRED TO THE PREJUDICE OF [APPELLANT'S] SIXTH AMENDMENT RIGHT BY ENTERING JUDGMENT OF CONVICTION AFTER A TRIAL AT WHICH APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FOR HIS DEFENSE[.]"

{¶13} In his first assignment of error, appellant contends that his trial counsel's failure to impeach Webb with inconsistent preliminary hearing testimony and failure to raise the affirmative defense of self-defense constituted ineffective assistance of counsel.

{¶14} In reviewing an ineffective assistance of counsel claim, an appellate court must determine: (1) whether counsel's performance fell below an objective standard of reasonable professional competence, and (2) if so, whether there is a reasonable probability that counsel's unprofessional errors prejudiced appellant such

that he was deprived of a fair trial. *Strickland v. Washington* (1984), 466 U.S. 668, 687-688, 694, 104 S.Ct. 2052. In performing its review, an appellate court is not required to examine counsel's performance under the first prong of the *Strickland* test if an appellant fails to prove the second prong of prejudicial effect. See *State v. Salahuddin*, Cuyahoga App. No. 90874, 2009-Ohio-466, ¶28, citing *State v. Bradley* (1989), 42 Ohio St.3d 136. '"The object of an effectiveness claim is not to grade counsel's performance."' Id., quoting *Bradley* at 142.

{¶15} In order to first demonstrate an error in counsel's actions, an appellant must overcome the strong presumption that licensed attorneys are competent, and that the challenged action is the product of sound trial strategy and falls within the wide range of reasonable professional assistance. *Strickland* at 690-91. In establishing resulting prejudice, an appellant must show that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. Id. To that end, the trial must be shown to be so demonstrably unfair that there is a reasonable probability that the result would have been different absent the attorney's deficient performance. Id. at 693.

{¶16} Appellant initially challenges his trial counsel's failure to impeach Webb with his October 2008 preliminary hearing testimony by showing that Webb made prior inconsistent statements. According to appellant, Webb testified at the preliminary hearing that he was not in the performance of his official duties at the time of the alleged assault. Appellant also argues that Webb's testimony at the hearing that he "threw some shorts on" prior to leaving his apartment was inconsistent with his testimony at trial that he was already wearing gym shorts. Appellant further contends that there were inconsistent statements made regarding

whether Webb had placed his forearm on appellant's neck or chest during the struggle. Appellant argues that his trial counsel's failure to impeach Webb with this testimony prejudiced the result of his trial.

{¶17} At the outset, we note that a transcript of the preliminary hearing is not part of the appellate record and, as a result, this court is unable to review the testimony in question. Nevertheless, even if the preliminary hearing transcript was subject to our review, based upon the arguments advanced by appellant in his brief, he has failed to demonstrate that his trial counsel's performance was so seriously flawed and deficient so as to constitute ineffective assistance. We note that generally, the scope of cross-examination falls within the ambit of trial strategy, and debatable trial tactics do not establish an ineffective assistance claim. See *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, ¶101.

{¶18} However, an examination of counsel's performance in this case is not necessary, as appellant has not established a reasonable probability that he was prejudiced as a result of his counsel's alleged ineffectiveness. First, whether appellant was already wearing gym shorts or had put them on prior to leaving his apartment, and whether Webb had his forearm on appellant's neck or chest are, at best, minor points which would have had no impact on the result of appellant's trial. In addition, there was evidence presented at trial that Webb was in the performance of his official duties at the time of the altercation. Webb testified that when he confronted appellant, he identified himself as being with the sheriff's department and showed appellant his badge. Therefore, it cannot be said that appellant would have been acquitted of the felony assault charge had his counsel used Webb's preliminary hearing transcript for impeachment purposes on this issue.

{¶19} Appellant also contends that his trial counsel was ineffective for failing to request a jury instruction on self-defense. Self-defense is an affirmative defense, and a defendant attempting to invoke it must prove: "(1) that the defendant was not at fault in creating the situation giving rise to the affray, (2) that the defendant had a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force, and (3) that the defendant did not violate any duty to retreat or avoid the danger." *State v. Voss*, Warren App. No. CA2006-11-132, 2008-Ohio-3889, ¶54, quoting *State v. Gillespie*, 172 Ohio App.3d 304, 308, 2007-Ohio-3439, ¶12. (Internal citations omitted.) The defendant must prove each of these elements by a preponderance of the evidence. Id. In determining whether a defendant has "sufficiently raised an affirmative defense such as self-defense to warrant a jury instruction, the test to be applied is whether the defendant has introduced evidence that, if believed, is sufficient to raise a question in the minds of reasonable persons concerning the existence of the offense." Id. at ¶55.

{¶20} Our review of the record indicates that there was insufficient evidence presented at trial to warrant an instruction on self-defense. Although appellant contends that he was not at fault for creating the situation that gave rise to the altercation, the evidence presented demonstrated otherwise. Both Deputy Webb and Staci Hall testified that appellant came at Webb in an aggressive manner after initially walking away from him. In addition, contrary to appellant's argument, there was no evidence presented that appellant believed he was in imminent physical danger prior to confronting Webb. As a result, no reasonable jury could have found that appellant acted in self-defense, and his trial counsel's strategic decision not to seek a jury

instruction on self-defense did not constitute ineffective assistance of counsel.

{¶21} Based on the foregoing, appellant's first assignment of error is overruled.

{¶22} Assignment of Error No. 2:

{¶23} "THE TRIAL COURT ERRED TO THE PREJUDICE OF [APPELLANT] BY PERMITTING THE PROSECUTING ATTORNEY TO USE A PEREMPTORY CHALLENGE TO DISMISS A PROSPECTIVE AFRICAN-AMERICAN JUROR IN SUCH A MANNER AS TO DEPRIVE [APPELLANT] OF HIS RIGHTS TO EQUAL PROTECTION AND A FAIR TRIAL."

{¶24} In his second assignment of error, appellant argues that the trial court erred in overruling his objection to the state's use of a peremptory challenge to exclude an African-American juror from the panel. Appellant contends that the manner in which the state used its peremptory challenge constituted purposeful discrimination in violation of his right to equal protection and a fair trial under *Batson v. Kentucky* (1986), 476 U.S. 79, 106 S.Ct. 1712.

{¶25} In *Batson*, the United States Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibits the use of peremptory challenges in a discriminatory manner to exclude potential jurors solely on account of their race. *Batson* created a three-part test for determining whether a prosecutor's use of a peremptory challenge is impermissibly based on race.

{¶26} First, a defendant must establish a prima facie showing of intentional discrimination by demonstrating that the state has used a peremptory challenge to exclude a potential juror on the basis of race. *State v. McCuller,* Butler App. No. CA2005-07-192, 2007-Ohio-348, ¶9, citing *State v. Manns*, 169 Ohio App.3d 687,

2006-Ohio-5802, ¶31. In so doing, the defendant must point to facts and relevant circumstances which raise an inference that the prosecutor used the peremptory challenge to exclude a juror on account of their race. Id.

{¶27} Once a defendant has established a prima facie case of discrimination, the burden then shifts to the state to provide a race-neutral explanation for the peremptory challenge. Id. at ¶10. "The state's explanation need not rise to the level of a 'for cause' challenge; rather, it need only be based on a juror characteristic other than race and not be pretextual." Id., quoting *State v. Jordan*, 167 Ohio App.3d 157, 2006-Ohio-2759, ¶28. Moreover, the state's explanation for striking the prospective juror is not required to be persuasive, or even plausible. *Manns* at ¶32. Instead, the issue is the "facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." Id., quoting *Hernandez v. New York* (1991), 500 U.S. 352, 111 S.Ct. 1859.

{¶28} Finally, the trial court must determine, based on all the circumstances, whether the defendant has demonstrated purposeful discrimination. Id. at ¶33. The court must decide whether the prosecutor's race-neutral explanation is credible, or is instead a pretext for discrimination. Id. The ultimate burden of persuasion regarding racial motivation rests with the opponent of the peremptory strike. *State v. Whatley,* Cuyahoga App. No. 86267, 2006-Ohio-2465, ¶32. In addition, "[b]ecause this stage of the analysis rests largely on the trial court's evaluation of the prosecutor's credibility," the findings of the trial court are given great deference and will not be reversed on appeal unless they are found to be clearly erroneous. *Manns*, 2006-Ohio-5802 at ¶33.

{¶29} In this case, the state exercised a peremptory challenge to exclude prospective juror number 9, an African-American man. During voir dire, the juror advised that his niece had been murdered approximately one month prior, and that the case was under investigation in a nearby county. In responding to appellant's *Batson* objection, the state argued as follows:

{¶30} "Your [h]onor, the reason [for striking the juror] would be the fact that he said that his niece was just murdered a month ago. * * * [T]he fact that he had such a serious, traumatizing case so close to a trial, in my opinion, it's a wild card. I would not want a juror that has that, that feeling sitting on a jury. I don't know how they're going to react. I don't know if after they listen to the testimony it's going to sway him one way or the other. That would be my reason for asking that he be dismissed."

{¶31} In responding to the state's explanation, appellant argued generally that the state's reason was incredible and merely pretext for discrimination. The trial court overruled appellant's objection, finding that the state had provided a credible, race-neutral explanation to justify excusing the juror.

{¶32} Upon review, we conclude that the trial court properly found that the state's proffered explanation was facially race-neutral, as nothing in the state's explanation relies on the race of the juror. Moreover, appellant failed to reference any specific facts or circumstances which would demonstrate that the state's reason constituted pretext or would otherwise suggest that it was engaging in purposeful discrimination. See *McCuller*, 2007-Ohio-348 at ¶16. As a result, the trial court's decision to overrule appellant's *Batson* objection was not clearly erroneous. Appellant's second assignment of error is therefore overruled.

{¶33} Assignment of Error No. 3:

{¶34} "THE TRIAL COURT ERRED WHEN IT ALLOWED THE STATE TO PRESENT EVIDENCE OF [APPELLANT'S] EXISTING ARREST WARRANTS[.]"

{¶35} In his third assignment of error, appellant contends that the trial court erred in permitting the state to present evidence that at the time of the alleged assault and obstruction of his arrest, appellant had two outstanding arrest warrants. Appellant has not advanced any specific arguments in support of his claim, and argues generally that "[c]learly, the admissibility of this evidence violated both [Evid.R. 403(A) and Evid.R. 404(B)]." We find this contention without merit.

{¶36} The admissibility of relevant evidence rests within the sound discretion of the trial court. *State v. Jones,* Butler App. No. CA2006-11-298, 2008-Ohio-865, ¶10, citing *State v. Sage* (1987), 31 Ohio St.3d 173, paragraph two of the syllabus. Absent an abuse of discretion, as well as a showing that the appellant suffered material prejudice, an appellate court will not disturb a trial court's ruling as to the admissibility of evidence. *State v. Martin* (1985), 19 Ohio St.3d 122, 129. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *State v. Hancock,* 108 Ohio St.3d 57, 2006-Ohio-160, ¶130. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *State v. Yeager,* Summit App. No. 21510, 2005-Ohio-4932, ¶29.

{¶37} It is well-established that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that a person acted in conformity therewith on a particular occasion. Evid.R. 404(B); *State v. Walker,* Butler App. No. CA2006-04-085, 2007-Ohio-911, ¶11. Such evidence may be used for other purposes, however, including proof of motive, opportunity, intent,

preparation, plan, knowledge, identity, or absence of mistake or accident. Evid.R. 404(B); *Walker* at ¶11. Nevertheless, even if the evidence meets the prerequisites of Evid.R. 404(B), it may still be excluded under Evid.R. 403(A) if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury. *State v. Hart*, Warren App. No. CA CA2008-06-079, 2009-Ohio-997, ¶11.

{¶38} In this case, Officer Bailes testified that appellant refused to provide his name to the police. After receiving his name from a resident at the apartment complex, Bailes testified that he made a radio transmission to the Fairfield Police Department to ascertain whether appellant had any outstanding warrants. Bailes was advised that appellant had two existing warrants.

{¶39} In ruling on appellant's objection to this testimony, the court instructed the jury to consider Bailes' testimony for the limited purpose of whether it was relevant to the state's claim that appellant obstructed his arrest and had a motive to do so. The court admonished the jury not to consider the testimony regarding the existence of the warrants as evidence of appellant's character.

{¶40} Upon review, we conclude that the trial court did not abuse its discretion in permitting Officer Bailes to testify regarding the existence of the warrants. The record indicates that this evidence was offered by the state to demonstrate appellant's motive for obstructing his arrest and not his character. See, generally, *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, ¶124 (evidence of a defendant's outstanding warrants is admissible to demonstrate motive.) We further find that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice to appellant or confusing the jury, particularly in light of the instruction

given by the trial court.

{¶41} Appellant's third assignment of error is overruled.

{¶42} Assignment of Error No. 4:

{¶43} "THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW AND/OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE TO SUSTAIN APPELLANT'S CONVICTIONS FOR ASSAULT ON A PEACE OFFICER AND OBSTRUCTING OFFICIAL BUSINESS[.]"

{¶44} In his final assignment of error, appellant contends that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence.

{¶45} Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Whitaker,* Butler App. No. CA2008-01-034, 2009-Ohio-926, ¶6; *State v. Everitt,* Warren App. No. CA2002-07-070, 2003-Ohio-2554, ¶25. In reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52; *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Smith,* 80 Ohio St.3d 89, 113, 1997-Ohio-355; *State v. Haney,* Clermont App. No. CA2005-07-068, 2006-Ohio-3899, ¶14. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

{¶46} Unlike a sufficiency of the evidence challenge, a manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. *State v. Ghee,* Madison App. No. CA2008-08-017, 2009-Ohio-2630, ¶9, citing *Thompkins* at 387. A court considering whether a conviction is against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of the witnesses. *State v. Hancock,* 108 Ohio St.3d 57, 2006-Ohio-160, ¶39. However, while appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, these issues are primarily matters for the trier of fact to decide since it is in the best position to judge the credibility of the witnesses and the weight to be given to the evidence. *State v. Gesell,* Butler App. No. CA2005-08-367, 2006-Ohio-3621, ¶34; *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Therefore, upon review, the question is whether in resolving conflicts in the evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Good,* Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶25; *Thompkins,* 78 Ohio St.3d at 387.

{¶47} Furthermore, as this court has previously noted, "a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." *State v. Smith,* Fayette App. No. CA2006-08-030, 2009-Ohio-197, ¶73; *State v. Urbin,* 148 Ohio App.3d 293, 2002-Ohio-3410, ¶31. As a result, this court's determination that a conviction is supported by the manifest weight of the evidence will also be dispositive of the issue of sufficiency. *State v. Rodriguez,* Butler App. No. CA2008-07-162, 2009-Ohio-4460, ¶62.

{¶48} Appellant initially contends that the evidence presented did not support his conviction for assaulting Deputy Webb. R.C. 2903.13(A) provides, in pertinent part: [n]o person shall knowingly cause or attempt to cause physical harm to another * * *." Generally, assault is a misdemeanor of the first degree. R.C. 2903.13(C). However, where the victim of the offense is a peace officer engaged in the performance of his official duties, the crime is elevated to a fourth-degree felony. See R.C. 2903.13(C)(3).

{¶49} The Ohio Revised Code defines the culpability element "knowingly" as "when [a defendant] is aware that his conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B). To act knowingly, a defendant merely has to be aware that the result may occur, and it is not necessary to demonstrate that the defendant intended to cause physical injuries. *State v. Nutekpor,* Wood App. No. WD-05-062, 2006-Ohio-4641, ¶15, citing *State v. Edwards* (1992), 83 Ohio App.3d 357, 361; *State v. Hawkins*, Montgomery App. No. 21691, 2007-Ohio-2979, ¶31. In addition, the Ohio Supreme Court has concluded that if a defendant's mental state is difficult to establish with direct proof, it may be "inferred from the surrounding circumstances." *State v. Logan* (1979), 60 Ohio St.2d 126, 131.

{¶50} Although he does not dispute that he bit Deputy Webb, appellant contends that his actions were done in self-defense. However, as discussed in our resolution of appellant's first assignment of error, the evidence presented at trial did not support appellant's contention that he acted in self-defense. Webb testified that appellant walked toward him aggressively after first turning to walk away from him. Stacy Hall testified similarly that appellant approached Deputy Webb in a threatening

manner before extending his arm toward him. In light of this evidence, no reasonable jury could have found that appellant's act of biting Webb constituted self-defense.

{¶51} Appellant also argues that Deputy Webb was not acting in the performance of his official duties at the time of the alleged assault.[1] In support of his argument, appellant directs our attention to *State v. Duvall* (June 6, 1997), Portage App. No. 95-P-0141, 1997 WL 361698. In *Duvall*, the Eleventh Appellate District considered whether the legislature intended the phrase "in the performance of their official duties" contained in R.C. 2903.13(C)(3) to include uniformed, off-duty police officers employed as private security personnel. Id. at *2. The court held that in determining what comprises a peace officer's "official duties," the focus must be on the activities in which the peace officer was engaged at the time they were assaulted. Id. at *5. The court concluded that "[i]f the peace officer was engaging in a duty imposed upon him by statute, rule, regulation, ordinance or usage, regardless of his duty status, that officer is 'in the performance of [his] official duties' for purposes of R.C. 2903.13(C)(3)." Id. It distinguished that situation from one in which a peace officer is assaulted while in their own home, watching television or reading a book. Id. In such a circumstance, the peace officer would not be considered to be in the performance of an official duty and the elevated penalty for assault would not be applicable. Id.

{¶52} Appellant argues that the foregoing distinction is present in the instant case, as he contends that at the time of the assault, Deputy Webb was simply an "angry resident" who was disturbed late at night while in bed watching television.

1. Appellant does not dispute that Webb was a peace officer. The definition of a peace officer includes a deputy sheriff. See R.C. 2935.01(B).

Appellant further argues that under the theory presented by the state, an assault of an off-duty law enforcement officer at their home would always result in a felony assault conviction. We find no merit to these arguments.

{¶53} At trial, Webb testified that the argument between appellant and Danbury "drew [his] attention," but that he was not necessarily worried about being personally bothered by the argument. He further testified that as resident officer of the complex, it was within his job duties to investigate the situation. Immediately upon opening the door to his apartment, Webb shined a flashlight on his badge and informed appellant and Danbury that he was a law enforcement officer. The fact that he was not wearing his deputy uniform at the time is irrelevant to the inquiry of whether he was in the performance of his official duties. Ohio courts have held that peace officers have a continuing obligation to observe and enforce the laws of this state, even when they are off-duty and employed as private security detail. See, e.g., *State v. Glover* (1976), 52 Ohio App.2d 35; *State v. Underwood*, 132 Ohio Misc.2d 1, 2005-Ohio-2996. Based on the evidence presented at trial, the jury, as the fact-finder, could have reasonably determined that Deputy Webb was in the performance of his official duties at the time of the assault.

{¶54} Upon a thorough review of the record, and based upon the foregoing, we find that appellant's conviction for assault of a peace officer was not against the manifest weight of the evidence and was therefore supported by sufficient evidence.

{¶55} Appellant also challenges the sufficiency and weight of the evidence with regard to his conviction for obstructing official business.

{¶56} R.C. 2921.31(A) provides that "[n]o person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of

any authorized act within the public official's capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties." The proper focus in a prosecution for obstructing official business is on the defendant's conduct, verbal or physical, and its effect on the public official's ability to perform their lawful duties. *State v. Bailey*, Fayette App. No. CA2007-04-013, 2008-Ohio-3075, ¶28, citing *State v. Neptune* (Apr. 21, 2000), Athens App. No. 99CA25. In order to be convicted for obstructing official business, there must be evidence that a defendant actually interfered with the performance of an official duty and made it more difficult. *State v. Whitt* (June 18, 1990), Butler App. No. CA89-06-091. However, the state is not required to prove that the defendant successfully prevented an officer from performing their official duties. Id.

{¶57} A person acts purposely when "it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature." R.C. 2901.22(A). "The purpose with which a person does an act is determined from the manner in which it is done, the means used, and all the other facts and circumstances in evidence." *Bailey* at ¶28.

{¶58} Upon review of the record, we find that the jury did not lose its way in convicting appellant for obstructing official business, as the evidence presented at trial indicated that appellant purposely interfered with the officers' attempt to arrest him, and made the performance of their duty more difficult. Despite being told to stop resisting his arrest, the evidence indicated that appellant continued to fight Webb and Bailes before finally being placed in handcuffs. Thereafter, appellant began

screaming and cursing, refused to obey the officers' orders to remain seated on the ground, and refused to give them his name. He also resisted being transferred to the police cruiser and had to be pulled into the vehicle. Once inside, he attempted to kick the windows out of the cruiser. On this evidence, it cannot be said that his conviction for obstructing official business is against the manifest weight of the evidence or was not supported by sufficient evidence.

{¶59} Appellant's fourth assignment of error is overruled.

{¶60} Judgment affirmed.

YOUNG and HENDRICKSON, JJ., concur.