

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE GOREE,

Defendant-Appellant.

UNPUBLISHED

April 19, 1996

No. 167146

LC No. 91-053917-FH

Before: Hood, P.J., and Young and T.L. Brown,* JJ.

PER CURIAM.

Defendant appeals by right from his conviction of two counts of assault with intent to do great bodily harm less than murder in violation of MCL 750.84; MSA 28.279, and two counts of reckless use of a firearm in violation of MCL 752.a863; MSA 28.436(24). We affirm.

I

Defendant's convictions arose from a New Year's celebration at his house during which defendant and his guests admitted firing guns (a misdemeanor) to usher in the new year. Officers were dispatched to defendant's home on report of the gunfire. Officer Farrow was the first to arrive and observed several people firing guns on defendant's lawn. The officer testified that she observed defendant discharging a firearm as she arrived. When the group detected the presence of Officer Farrow, they ran into defendant's home, then returned to the outside without firearms and began collecting spent shells.

Although there is some dispute as to how and by whom the ensuing melee was initiated, there is a core of facts which are common to both the defense and prosecution versions of events. Officer Farrow approached the group in an effort to get identification of the members of the shooting party. She was rebuffed in this effort and the shooting party retreated into defendant's home. Thereafter, Officer Farrow sought to gain admission into defendant's home to obtain the identities of the members of the shooting party. Defendant denied her request to enter his house, whereupon Officer Farrow forced her way into defendant's home. Once inside, Officer Farrow was physically assaulted by

* Circuit Judge, sitting on the Court of Appeals by Assignment

defendant. Defendant claimed he assaulted her only with his fists, while Officer Farrow claimed defendant assaulted her with a flashlight defendant took from her during the melee.

At some point in the tumult, Officer Patz arrived to support Officer Farrow. He was knocked unconscious by blows from a police flashlight, and suffered a skull fracture. More officers arrived and persons were arrested, including defendant.

A preliminary examination was held and the presiding district judge held that Officer Farrow acted lawfully in entering defendant's home without a warrant to effectuate a misdemeanor arrest after she saw defendant commit the offense of discharging a firearm within city limits. Defendant later moved to quash the Information on the ground that the police had illegally entered his home and that he had lawfully and reasonably resisted entry and arrest by the officers. The circuit court ruled that defendant's refusal to provide identification constituted resisting and obstructing a police officer (a felony), providing Officer Farrow the right to enter his home to make the arrest for that offense.

Codefendants moved for reconsideration of this ruling and defendant joined. The circuit court reversed its earlier ruling, holding that, even if an officer is in pursuit of a person who has committed a misdemeanor, the officer cannot follow the individual into his residence. The cases against the codefendants were dismissed. However, defendant proceeded to trial on the assault with intent to commit great bodily harm charges because there was an issue of whether he used reasonable force in repelling the "illegal" arrest.

II

A

Defendant first challenges the sufficiency of evidence supporting his convictions for assault with intent to do great bodily harm.¹ We must review the evidence de novo, in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

The elements of assault with intent to commit great bodily harm are (1) an attempt or offer with force or violence to corporally hurt another, and (2) an intent to do great bodily harm less than murder. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992). Minimal circumstantial evidence is sufficient to show a defendant's state of mind. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

As a defense to the assault charges, defendant argued at trial and on appeal that he was justified in using force to repel the officers because they were attempting to effectuate an illegal arrest. A person has a right to defend himself in resisting an unlawful arrest so long as the force used was reasonably necessary. *People v Krum*, 374 Mich 356, 361; 132 NW2d 69 (1965); *People v Dillard*, 115 Mich App 640, 641; 321 NW2d 757 (1982). The right to resist an unlawful arrest is, however, merely one

aspect of self-defense. *People v Eisenberg*, 72 Mich App 106, 111; 249 NW2d 313 (1976). An unlawful arrest is

nothing more than assault and battery against which the person sought to be restrained may defend himself as he would against any other unlawful intrusion upon his person or liberty. [*Id.*]

Defendant's chief contention is that the force he used to resist the illegal arrest was reasonable. Considering the evidence in the light most favorable to the prosecution, a trier of fact could have found that defendant committed an assault in repelling the officers and used excessive force in so doing. The record establishes that defendant repeatedly struck the officers in the head with a dangerous weapon, a police flashlight,² with the intent to inflict great bodily harm.³ The officers did not draw their weapons during their attempt to arrest defendant and were significantly outnumbered by hostile persons congregated in defendant's home at the time of the attempted arrest.

While Michigan case law does not specifically define what constitutes reasonable force, it directs that the amount of force must be gauged in proportionality to the seriousness of the "danger" being resisted. *Eisenberg*, 72 Mich App at 112.⁴ We decline defendant's invitation to invade the province of the jury and weigh anew the credibility of the participants' versions of the events. *Jaffray*, *supra*.

B

Defendant next claims reversible error in the trial court's refusal to allow examination of Officer Farrow on her knowledge of the law governing misdemeanor arrests. Specifically, defendant sought to inquire when Officer Farrow became aware that it was illegal to enter a home to make a misdemeanor arrest. On appeal, defendant claims that this thwarted line of inquiry was relevant to show that Officer Farrow did not know the law at the time of the arrest and, consequently, was "not acting in good faith" because of her ignorance of the law. We review the admission of evidence under an abuse of discretion standard. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). The trial court did not abuse its discretion in disallowing the question at issue.

Officer Farrow testified that, at the time of the incident, she was unaware police officers were not allowed to enter a private home to effectuate a misdemeanor arrest. Defense counsel then asked the following question:

Well, did you subsequently become aware that the law in this state was that you could not enter a home to make a misdemeanor arrest?

The question drew an objection to relevancy, which was sustained. The good faith of the officer was not relevant at trial, and the court properly ruled with respect to this issue.

Defendant also challenges the trial court's admission of spent shells and live ammunition collected in and outside defendant's home by the police. Defendant objected on the grounds of relevance and prejudice.

Defendant was charged with assault with a dangerous weapon "to-wit: a gun," and the jury was instructed that it could find him guilty of the lesser-included offense of reckless discharge of a firearm, which it did. Defendant was also charged with possession of a firearm during the commission of a felony. Defendant argues on appeal that he admitted discharging a firearm, so the evidence was improperly used to show that the officers were acting reasonably in response to the "firepower" represented by the collection of gun shells offered and to show that defendant was a "bad man." Notwithstanding, the evidence was relevant to the crime charged and the testimony of Officer Farrow regarding the activities she observed upon arriving at defendant's home.

Further, we reject as without merit defendant's argument that the gun shell evidence was unfairly prejudicial. Any evidence tending to prove guilt is prejudicial to an accused, but mere prejudice of this type is not the kind which MRE 403 contemplates. *People v Siler*, 171 Mich App 246, 253; 429 NW2d 865 (1988). In light of defendant's own admission, we find that this evidence was both relevant and not unfairly prejudicial.

C

Defendant also alleges prosecutorial misconduct. During his closing argument, the prosecutor stated:

Now, in executing these functions, sometimes police officers can make mistakes and sometimes they are too fastidious in the act of their duties, but given the situation you have in this neighborhood where guns are being fired, where there's a potential threat and actual threat to people and property, you would [*sic*] rather have your officers ignore their duties or try to do what they can to protect the public and maintain order. You should consider that.

In addition, consider that Officer Farrow and Officer Patz have to make their decision on the spot instantly. In this case you have trained lawyers filing briefs that are multiple pages long. You have hearings being held. I don't know how long Judge Benson took to decide this case, but he could have taken as long as he wanted to weigh the police conduct.

You have trained lawyers and judges taking days, weeks, months, to evaluate the police conduct here.

The trial court, outside the presence of the jury, sua sponte challenged the propriety of the argument and later gave a curative instruction making it clear that the good faith of the officers in making the arrest was not at issue in the case.

The curative instruction given properly stated the law and corrected any error occasioned by the prosecutor's argument. See *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

D

Defendant's final argument on appeal is that the trial court failed to grant him sufficient jail credit time in its sentence. Defendant was free on bond during trial and was properly credited for the five days he spent in jail. *People v Whiteside*, 437 Mich 188, 196; 468 NW2d 504 (1991). Defendant was also properly credited for the time between his first sentencing and resentencing when the court made the effective date retroactive to the first sentencing date.

Defendant received the correct amount of credit for time served.

Affirmed.

/s/ Harold Hood

/s/ Robert P. Young, Jr.

/s/ Thomas L. Brown

¹ Defendant also claims error in the bindover decision. However, this issue was not raised in the defendant's statement of questions presented and is waived for review. *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990).

² One officer was held to the ground as she was hit in the head with the flashlight.

³ The officers suffered serious, though not permanent, injuries.

⁴ See also *Williams v State*, 160 Ind App 294; 311 NE2d 619, 621 (1974) (degree of permissible force used to resist an illegal arrest may not be disproportionate to that used to take the arrestee into custody).