

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN RUSSELL LAMB,

Defendant-Appellant.

UNPUBLISHED

August 2, 1996

No. 178964

LC No. 94-003655-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

APRIL LYNN LUMLEY,

Defendant-Appellant.

No. 180211

LC No. 94-003656-FH

Before: Sawyer, P.J., and Bandstra and M.J. Talbot,* JJ.

PER CURIAM.

Defendants Lamb and Lumley were both convicted by jury of resisting and obstructing a police officer, MCL 750.479; MSA 28.747. Defendants appeal as of right. Because defendants' convictions arise out of the same course of events and defendants' appeals present the same issues, these cases were consolidated on appeal. We affirm.

Defendants first argue that their convictions must be reversed due to an invalid waiver of their right to counsel. We disagree. The record reveals that defendants repeatedly refused the assistance of court appointed counsel. This constitutes a knowing and intelligent waiver. *People v McEwen*, 34 Mich App 683, 684; 192 NW2d 12 (1971). The record demonstrates that defendants unequivocally

* Circuit judge, sitting on the Court of Appeals by assignment.

refused the help of court appointed counsel, that defendants knowingly, intelligently, and voluntarily decided to proceed in propria persona, and that the trial court impliedly determined that allowing defendants to proceed in propria persona would not unduly inconvenience the court. *People v Anderson*, 398 Mich 361, 367-368; 247 NW2d 857 (1976). Further, the trial court was not required to provide defendants with the funds to retain counsel of their own choosing. *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973). Defendants did not establish adequate cause for what was, in effect, a request for substitute appointed counsel. *People v Meyers, (On Remand)*, 124 Mich App 148, 165; 335 NW2d 189 (1983); *People v Anglin*, 111 Mich App 268, 278; 314 NW2d 581 (1981).

Additionally, although the mandates of MCR 6.005(D) were not strictly complied with until the day of jury selection, the record shows that defendants were unresponsive to the court's admonishments, would not consult with counsel unless the court provided them funds to retain counsel of their own choice, and continued to refuse court appointed counsel even after there was strict compliance with MCR 6.005(D). Thus, no prejudice resulted from the court's failure to fully comply with MCR 6.005(D) prior to the day of jury selection and any such error was harmless. MCR 2.613(A).

Defendants next argue that there was insufficient evidence to support their convictions. We disagree. Viewed in a light most favorable to the prosecution, the evidence supports the conclusion that Lamb knowingly interfered when the police attempted to detain Lumley and that Lumley, in turn, physically interfered as the officers subdued Lamb. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995).

Finally, defendants argue that the trial court erred when instructing the jury. Specifically, defendants argue that the trial court erred in instructing the jury that to convict, it must find that the police officer was carrying out "lawful duties." Defendants contend that the trial court erred in using the term "lawful duties" instead of the term "lawful acts" as recommended by defendants. We disagree. The instruction given adequately advised the jury of the issues to be tried and sufficiently protected the rights of defendants; thus reversal is not required. *People v Gaydosh*, 203 Mich App 235, 237; 512 NW2d 65 (1994); see also *People v Stiles*, 99 Mich App 116, 119; 297 NW2d 631 (1980).

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Michael J. Talbot