STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN E. DEAN, JR.,

Defendant-Appellant.

UNPUBLISHED
February 14, 1997

No. 187056
St. Joseph Circuit
LC No. 94-007665

Before: Neff, P.J., and Hoekstra and G.D. Lostracco,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of four counts of resisting and obstructing an officer, MCL 750.479; MSA 28.747, for actions taken by defendant at his home when four law enforcement officials responded to investigate a domestic situation. Defendant was sentenced to two years' probation, with the first six months to be spent in jail. He now appeals as of right, and we affirm in part and reverse in part.

Defendant first argues that his four resisting and obstructing convictions should be reversed because they were based upon one single, continuous transaction, which the prosecutor artificially severed into four counts. Specifically, defendant argues that his interactions were only with Officer Hicks, and that he was not even aware of the other three officers until he was subdued on the ground.

The decision whether a prosecution violates a defendant's right to be free from double jeopardy is a question of law reviewed de novo on appeal. *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996). Here, we conclude that separate counts for resisting and obstructing more than one officer are not violative of double jeopardy protections. The legislative purpose behind the resisting and obstructing statute, MCL 750.479(b); MSA 28.747(2), has been recognized to be the protection of officers from physical violence and harm. *People v Kretchmer*, 404 Mich 59, 64; 272 NW2d 558 (1978); *People v Baker*, 127 Mich App 297, 299-300; 338 NW2d 391 (1983). Accordingly, we conclude that the proper "unit of prosecution" for resisting and obstructing is each officer resisted. See

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

People v Wakeford, 418 Mich 95; 341 NW2d 68 (1983) ("unit of prosecution" for armed robbery statute was person(s) assaulted and robbed); *People v Mathews*, 197 Mich App 143, 145; 494 NW2d 764 (1992) (under felonious driving statute, "unit of prosecution" was person(s) injured). Defendant's four convictions do not violate double jeopardy.

Notwithstanding our conclusion that the proper "unit of prosecution" is each officer resisted, we agree with defendant that in the instant case, two of his convictions were not supported by sufficient evidence, and reverse two of defendant's four convictions. The evidence at trial was not sufficient to establish that defendant resisted Deputies Palmer and Van Camp, who were originally stationed at the back of the house and did not come to the front until defendant was already preventing Officers Hicks and Deuel from entering the residence. At this point, under the facts of this case, defendant, through his words and actions, had already resisted and obstructed Officers Hicks and Deuel, and Deputies Palmer and Van Camp were merely assisting in effectuating defendant's arrest. Accordingly, we reverse defendant's convictions involving resistance to Deputies Palmer and Van Camp.

Defendant next argues that he was denied a fair trial by an impartial jury because the trial court presented an improper and prejudicial hypothetical to the jury during voir dire. However, defendant did not object to the use of the example below, and the issue is not preserved for appellate review. Regardless, we note that a trial court has considerable discretion in both the scope and conduct of voir dire. *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). Although we believe that the trial court's use of the hypothetical at issue, which involved a football player tackling his wife and was apparently intended to elicit information regarding the prospective jurors' beliefs on whether law enforcement officials should become involved in domestic situations, could have been prejudicial in another setting, here we conclude that the trial court sufficiently apprised the jury of the fact that the hypothetical was unrelated to the case at bar. Specifically, the trial court repeatedly emphasized that the scenario being described was a "hypothetical" based upon a story the judge had read in a newspaper. At one point he stated that he wanted to "back away from [using the hypothetical] because I don't know what the facts in this case are going to show, and I don't want to portray a circumstance where you [the jurors] think that this happened." Later during the voir dire, which was based in part upon questions submitted to the trial court by the prosecution and defense, the trial court further stated:

> Right now we're assuming that the defendant did nothing wrong before the officers arrived. And we're also assuming that he did something to frustrate their investigation. I don't know that that's what happened, but I can't imagine why this question would be given to me to ask you unless we're going to hear something like that. And so I tried to use this football player hypothetical, which I'm sure is not going to be anything close to our case, so that we have a safe hypothetical to talk about without anybody becoming confused that this is what the evidence is going to show. That's what I'm trying to do. It's hard to talk about this when we don't know what the evidence is going to be. I appreciate that. It's very difficult for me to talk about. But I want you, as a juror, to assume the defendant did nothing wrong.

Based upon the foregoing, we believe that the trial court's use of the example at issue did not deny defendant an impartial jury.

Defendant also argues that errors committed by his trial counsel denied him the effective assistance of counsel. We have reviewed defendant's numerous claims of error, and find them to be without merit. Even assuming arguendo that defendant's claims of error were substantiated, defendant cannot show prejudice from any of the alleged errors. *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994).

We likewise find without merit defendant's claim that the cumulative effect of errors at trial denied him a fair trial.

Defendant also requests that, if a remand is ordered by this Court, any further proceedings be before a different judge. Because we are not remanding defendant's case to the trial court, this issue is moot.

Affirmed in part, and reversed in part.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco