

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PRENTIS APPOLLO HEARN,

Defendant-Appellant.

UNPUBLISHED

September 28, 1999

No. 212045

Allegan Circuit Court

LC No. 97-010511 FH

Before: Bandstra, C.J., and Markman and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his conviction by a jury of resisting arrest, MCL 750.479; MSA 28.747. The trial court sentenced him to two years' probation and sixty days in jail, although the court suspended the majority of the jail term. We affirm.

Defendant argues that the trial court gave erroneous responses to two questions posed by the jurors. The trial court responded to one of the questions – “[C]an we get a more precise definition of exactly what legally constitutes resistance” – by stating, “I cannot give you a definition. You’re going to have to apply your own general knowledge and common sense as to what that term means.” Defendant argues that this response was misleading and requires reversal because the court did not set forth all the elements of the resisting charge and thereby make clear to the jurors that the lawfulness of the arrest is a necessary element of the crime of resisting arrest. We disagree that the trial court’s response requires reversal.

As this Court stated in *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997), jury instructions are to be viewed as a whole rather than extracted piecemeal to establish error. As long as the instructions fairly presented the issues to the jury and protected the defendant’s rights, imperfections do not constitute error. *People v Holt*, 207 Mich App 113, 116; 523 NW2d 856 (1994). In the instant case, while it is true that the lawfulness of the arrest is a necessary element of the crime of resisting arrest, *People v Rice*, 192 Mich App 240, 243; 481 NW2d 10 (1991), the court was not obligated to repeat this element in response to the jurors’ question because (1) the court had already set forth this element in its earlier instructions, and (2) the jurors did not express confusion regarding the elements of the crime of resisting arrest but instead focused on the meaning of the term “resistance.”

See *People v Bell*, 209 Mich App 273, 275-277; 530 NW2d 167 (1995). Given that the statute in question does not define the term “resistance,” the trial court’s response to the jurors’ question – that they should use their general knowledge and common sense in defining the term – was accurate. See *People v Gregg*, 206 Mich App 208, 211-212; 520 NW2d 690 (1994). Accordingly, the instructions as a whole fairly presented the issues to the jury, sufficiently protected defendant’s rights, and do not require reversal. *Holt, supra* at 116.

The jurors’ remaining question was “[C]an we find [defendant] guilty of one charge, either assault or resisting, and innocent of the other?” The trial court responded that the prosecution had charged defendant with one statutory violation that could have occurred in two different ways – by resisting arrest or by assaulting an officer – and that the jurors could find that defendant did one, both, or neither of these things. Defendant argues that this response was erroneous because the jurors could not have found defendant guilty of resisting arrest while at the same time finding him innocent of assault. In other words, defendant contends that if he was innocent of assault, his resulting arrest based on the assault must have been illegal – meaning that he could not be guilty of resisting arrest under *Rice, supra* at 243, which indicates that the crime of resisting arrest cannot be predicated on an illegal arrest. We disagree with defendant’s argument. If the jury found defendant innocent of assault, they could nonetheless find him guilty of resisting arrest, since the standard for a legal arrest differs from the standard for a criminal conviction of assault.

A police officer may legally arrest someone without a warrant if the officer has probable cause to believe that an offense has been committed and that the suspect committed the offense. *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991). Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of criminal activity. *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998). By contrast, a criminal conviction requires the prosecution to establish each element of the crime charged beyond a reasonable doubt. *People v Gaines*, 223 Mich App 230, 237-238; 566 NW2d 35 (1997), overruled on other grounds sub nom *People v Neal*, 233 Mich App 649 (1999). Accordingly, as long as double jeopardy is not at issue,¹ acquittal of the charge for which one is arrested does not require a corresponding acquittal on a charge of resisting the arrest. See *People v Kretchmer*, 404 Mich 59, 62; 272 NW2d 558 (1978). Indeed, as long as they believed that the officer involved had probable cause to arrest defendant, the jurors could find defendant guilty of resisting arrest even if they ultimately concluded that defendant was innocent of assault. For example, the jurors might have concluded that although the arresting officer reasonably believed that defendant purposefully struck him – thereby justifying the arrest – defendant in actuality swung his arm in frustration, hit the officer accidentally, and subsequently resisted the lawful arrest. The trial court’s response to the jurors’ question was therefore accurate and does not warrant reversal of defendant’s conviction. Nor, contrary to defendant’s unpreserved argument, was the trial court obligated to sue sponte instruct the jurors that they could not convict defendant unless they concluded that he assaulted the officer in question.

Finally, defendant argues that the trial court erred by failing to give a specific instruction that the illegality of the arrest is a complete defense to a charge of resisting arrest, even if the accused used force to resist the arrest. Because defendant did not request this specific instruction below or object to its

absence, its absence warrants reversal only if our examination of the entire record indicates that the allegedly defective jury instructions caused a miscarriage of justice. *People v Hess*, 214 Mich App 33, 36; 543 NW2d 332 (1995); *People v Graves*, 458 Mich 476, 484; 581 NW2d 229 (1998). Since the trial court specifically instructed the jury that a *legal* arrest was an essential element of the crime of resisting arrest, and since the court defined the phrase “legal arrest,” we find no miscarriage of justice. Indeed, if the jurors concluded that defendant’s arrest had been illegal, then, under the trial court’s correct instructions, the amount of force used by defendant in resisting the arrest would have been irrelevant to their deliberations.

Affirmed.

/s/ Richard A. Bandstra

/s/ Stephen J. Markman

/s/ Patrick M. Meter

¹ Double jeopardy is not at issue in the instant case, since defendant was charged with only one statutory violation. Although the jurors could have found that defendant both assaulted the officer *and* resisted arrest, only one criminal conviction would have resulted from this finding.