

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOSHEA TYRONE PRUITT,

Defendant-Appellant.

UNPUBLISHED

January 29, 2009

No. 280421

Muskegon Circuit Court

LC No. 07-054629-FH

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Defendant was found guilty by a jury of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1), and was sentenced as a fourth habitual offender, MCL 769.12, to 2-1/2 to 15 years' imprisonment. He appeals as of right. We affirm.

In February 2007, defendant was being moved from cell 39 in the Muskegon County Jail to cell 28 after an altercation in cell 39. Defendant followed directions to leave cell 39, entered an elevator to the second floor, and properly exited the elevator on the second floor. Defendant then did not want to go into cell 28; rather, he wanted to go into "security." Over the defense's objection, Deputy Herman testified that defendant was instructed by Deputy Pearo that if the officers had to physically touch him to move him to cell 28 he would be charged with resisting or obstructing an officer. Deputy Pearo and Sergeant Burns similarly testified to this statement. Defendant refused to continue down the hallway to cell 28 so he was forcibly taken down to the ground by Sergeant Burns and Deputy Pearo. Following two doses of pepper spray, defendant was handcuffed and escorted to cell 28.

On appeal, defendant argues the trial court erred by admitting Deputy Herman's testimony regarding Deputy Pearo's statement to him on the ground that the statement was hearsay. We disagree.

Evidentiary issues that are properly preserved are reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002); *People v Unger*, 278 Mich App 210, 216; 749 NW2d 272 (2008). An abuse of discretion occurs when the trial court chooses an outcome falling outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003); *People v Carnicom*, 272 Mich App 614, 616-617; 727 NW2d 399 (2006). "A trial court's decision on a close evidentiary decision does not amount to an abuse of discretion." *People v Sabin (After Remand)*, 463 Mich 43, 67; 614 NW2d 888 (2000). If

evidence is erroneously admitted, this Court will find the error harmless unless it prejudices the defendant. *People v Bartlett*, 231 Mich App 139, 159; 585 NW2d 341 (1998); *People v Rodriguez (On Remand)*, 216 Mich App 329, 332; 549 NW2d 359 (1996).

Defendant claims the trial court erred by allowing Deputy Herman's alleged hearsay testimony in evidence. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). "Where a witness testifies that a statement was made, rather than about the truth of the statement itself, the testimony is not hearsay." *People v Harris*, 201 Mich App 147, 151; 505 NW2d 889 (1993), citing *People v Sanford*, 402 Mich 460, 491; 265 NW2d 1 (1978).

In *Sanford*, our Michigan Supreme Court allowed a detective to testify to an event he witnessed; specifically that he saw the complaining witness identify the defendants. The Court ruled this was non-hearsay because the detective was not testifying to the truth of the identification statement, only to the fact that it was made and the circumstances surrounding it. 420 Mich at 491

As in *Sanford, supra*, Deputy Herman's testimony was not hearsay because he was not testifying to the truth of the statement by Deputy Pearo (i.e., that defendant would in fact be charged with obstructing or resisting a police officer), only to the fact that the statement was made and the circumstances surrounding it. Accordingly, the trial court correctly determined the testimony in question was admissible as non-hearsay. MRE 801(c); *Sanford, supra*. The trial court did not abuse its discretion in allowing Deputy Herman to testify about Deputy Pearo's statement to defendant. *Hine, supra*; *Babcock, supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra