

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK EMERY TICE,

Defendant-Appellant.

UNPUBLISHED

January 26, 2006

No. 256736

Newaygo Circuit Court

LC No. 04-008186-FH

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

This case arises from the investigation into a suspicious death that occurred at defendant Frank Emery Tice's hunting cabin on the night of November 26-27, 2003. A jury convicted defendant of obstructing a police officer.¹ The trial court sentenced Tice to a six-month suspended sentence and to three years' probation. Tice now appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Tice and a number of people gathered at his cabin on the evening of November 26, 2003. The group was planning on participating in an annual Thanksgiving Day deer hunt the following morning. Tice testified that, although everybody was drinking heavily that night, as far as he was aware, no one was using any drugs. When Tice's guests awoke the following morning, they discovered that one of their fellow guests, Steven Lamadline, was dead. Tice testified that he immediately called 911 after he could not wake Lamadline. Newaygo County Medical Examiner Matthew Kempf testified that Lamadline accidentally overdosed from a combination of drugs and alcohol.

Newaygo County Sheriff's Department Officer Lawrence Hoffman testified that he was the first officer on the scene at Tice's cabin, arriving at approximately 6:30 a.m. Officer Hoffman had everybody at the cabin wait in the kitchen as he secured the scene until another officer arrived. Newaygo County Sheriff's Department Officer Stanley Nieboer arrived

¹ MCL 750.81d(1).

approximately 30 to 45 minutes later. Once Officer Nieboer arrived, Officer Hoffman began taking the people in the cabin to his car and interviewing them individually.

Officer Nieboer determined that Lamadline's death was "questionable," and, therefore, requested that Detective Robert Dakin come to the cabin. When Detective Dakin arrived, Officer Nieboer explained that there was a dead man in the house and that the cause of the death was unclear. Detective Dakin stated that Tice appeared very agitated. After agreeing that Lamadline's death was suspicious, Detective Dakin declared the cabin and adjacent yard a crime scene. But Tice denied Detective Dakin's request for permission to search the cabin. Detective Dakin testified that when he attempted to clear the cabin, Tice kept stepping in front of him, physically blocking his way, and telling him that he could not search the cabin. Detective Dakin stated that Tice did this approximately four or five times. Detective Dakin further testified that when he ordered everybody to leave the house, he had to tell Tice to leave at least seven or eight times before he finally did so.

Detective Dakin testified that once Tice was outside the house, he ordered Tice to stay away from the police and to wait out by the road in order to let the police conduct their investigation. But he stated that when he got into his car to make a telephone call regarding securing a search warrant, Tice walked around the front of the car and into the front yard. Detective Dakin stated that he got out of the car, called to Officer Nieboer to escort Tice out of the yard, and instructed Tice a second time to stay out by the road. He explained that when he got back on the phone, Tice again came up the driveway and began banging on Detective Dakin's car window. Detective Dakin stated that he got out of his car again to get Tice out of the crime scene. He testified that Tice then approached him a third time, at which point he took Tice to Officer Nieboer's car and suggested he sit inside the vehicle. According to Detective Dakin, Tice asked if he was under arrest, and when he learned that he was not, he turned and walked back toward the house. Detective Dakin then arrested Tice.

Detective Dakin asserted that Tice's actions interfered with his ability to get the search warrant. He stated that each time he directed Tice to the specified area of the road, it was a command, rather than a request. He stated that not only did he tell Tice to go to the roadway and stay there, he also showed Tice what the boundaries of the crime scene were and told him not to come back into the crime scene.

Officer Hoffman confirmed that he heard Detective Dakin tell Tice several times that he needed to back off, get out of the way, and leave the crime scene so that Detective Dakin could conduct his investigation. Kempf also confirmed that Tice refused to comply with Detective Dakin's repeated order to back off and let the police conduct their investigation. Officer Nieboer confirmed that Detective Dakin gave orders for everybody to stay back by the roadway because he wanted to keep the crime scene secure. He further confirmed that Detective Dakin had advised Tice several times to stay out near the roadway, but Tice kept returning to the driveway. Officer Nieboer additionally testified that Detective Dakin showed Tice specifically where he wanted him to stay.

Tice confirmed that Detective Dakin requested permission for the police to search the cabin but that he had denied that request. Tice explained that he was afraid the police would find the marijuana that he had in the cabin. However, Tice denied refusing to leave the scene or getting in Detective Dakin's way, stating that he left the house at the same time as everybody

else. Tice explained that he was upset and nervous, and was pacing at the end of the driveway. He claimed that Detective Dakin never told him that he had to stay out by the road but merely indicated that he was to stay out of the house. Tice also insisted that Detective Dakin never physically took him out to the road and told him to stay there. He also denied approaching Detective Dakin's car repeatedly and being directed each time back to the road.

Tice explained that he decided to try to work out a deal with Detective Dakin regarding searching the house in order to avoid disturbing the judge on Thanksgiving Day. Tice stated that, when he went over to talk to Detective Dakin about the matter, he simply stood next to Detective Dakin's car, waiting to get his attention. He denied banging on the window. Tice explained that he believed that Detective Dakin was on hold when he started speaking to him. According to Tice, Detective Dakin arrested him as soon as he refused to sit in the police car.

Terry Bailey, one of Tice's guests, confirmed much of Tice's testimony. He asserted that when Detective Dakin asked everyone to leave the house, Tice immediately complied. Bailey insisted that Detective Dakin only stated that they were not allowed back into the house. Bailey also insisted that, before Tice was arrested, he never moved from the roadway after refusing to get into Officer Nieboer's car.

II. Sufficiency Of The Evidence

A. Standard Of Review

Tice argues that the prosecution failed to introduce sufficient evidence to support his conviction. This Court reviews *de novo* challenges to the sufficiency of the evidence.² When reviewing a challenge to the sufficiency of the evidence, we "must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt."³ We will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of the witnesses.⁴ Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime.⁵ All conflicts in the evidence must be resolved in favor of the prosecution.⁶

B. Evidence of Obstruction

MCL 750.81d(1) provides as follows:

² *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

³ *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

⁴ *Id.* at 514-515.

⁵ *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

⁶ *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Except as provided in subsections (2), (3), and (4), an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person⁷ who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

MCL 750.81d(7)(a) defines “obstruct” as “the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.”

The prosecution argued at trial that Tice had obstructed a police officer by (1) initially refusing to leave the crime scene in issue, (2) repeatedly reentering the crime scene after leaving it, and (3) interfering with a police officer’s attempt to secure a search warrant by telephone. Tice argues that, because the prosecution argued these three distinct theories of guilt and because the jury’s verdict does not show unanimous agreement about any one of these distinct theories, if any one of the theories was not supported by sufficient evidence at trial, then this Court must reverse his conviction.⁸ According to Tice, the prosecution presented insufficient evidence to support a finding that he interfered with Detective Dakin’s attempt to secure a search warrant because it failed to show that Tice physically interfered with Detective Dakin or that he threatened physical interference. We disagree.

The prosecution presented evidence at trial that Detective Dakin repeatedly advised Tice to stay on the shoulder of the road and to stay out of the crime scene, which included the driveway and yard of Tice’s cabin. Detective Dakin even specifically showed Tice where to stand. The prosecution also presented evidence that, despite these orders, Tice came back into the yard and driveway repeatedly, including re-entering the yard and driveway twice while Detective Dakin was on the phone, necessitating Detective Dakin to end the call. We acknowledge that Tice presented testimony that Detective Dakin did not inform him that he needed to remain out of the yard and driveway. But we reiterate that all conflicts in the evidence must be construed in the prosecution’s favor.⁹

The prosecution further presented testimony that, despite Detective Dakin’s commands, Tice came up to the detective’s car and began banging on the window, again requiring Detective Dakin to end his telephone conversation. The prosecution further elicited evidence that Tice knew that Detective Dakin was on Tice’s property in the course of conducting his duties. In light of this evidence, we conclude that the prosecution introduced sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that Tice obstructed Detective Dakin when he interrupted the detective’s phone call and physically interfered with the call by coming back into the crime scene.

⁷ “Person” includes police officers and sheriffs. MCL 750.81d(7)(b).

⁸ Tice does not argue that his right to a unanimous verdict was violated. See *People v Quinn*, 219 Mich App 571, 576; 557 NW2d 151 (1996).

⁹ *Terry, supra* at 452.

Tice relies on *People v Vasquez*,¹⁰ to argue that the prosecution failed to show that he physically interfered with the phone call. However, the statute in issue in *Vasquez*, MCL 750.479, is not the statute under which Tice was charged. Additionally, in apparent response to the *Vasquez* decision, in 2002 the Legislature enacted MCL 750.81d and revised MCL 750.479 to include a definition of “obstruct” that mirrors the definition found in MCL 750.81d(7)(a). Under this definition, failing to comply with a lawful command and physical interference are alternative theories supporting conviction.

We conclude that the evidence was also sufficient to support a finding of guilt on the theory that Tice obstructed the police by repeatedly reentering the crime scene after being instructed to stay out of it. And we note that this was after Tice obstructed the police by initially refusing to leave the crime scene, and again when Detective Dakin attempted to clear the cabin and Tice stepped in front of him about four or five times, physically blocking his way, and telling him that he could not search the cabin. Further, when Detective Dakin ordered everybody to leave the house, he had to tell Tice to leave at least seven or eight times before he finally left. In light of this evidence, we also conclude that the prosecution introduced sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that Tice obstructed Detective Dakin by failing to comply with the detective’s lawful commands.

III. Voir Dire

A. Standard Of Review

Tice argues that the trial court abused its discretion when it refused to ask two voir dire questions that Tice suggested. It is within the trial court’s discretion to conduct voir dire itself, and, accordingly, we review questions concerning the conduct or scope of voir dire for an abuse of discretion.¹¹

B. Judge’s Discretion During Voir Dire

Before conducting voir dire in this case, the trial court gave the parties the opportunity to submit voir dire questions for the trial court’s review. Tice submitted three questions, two of which the trial court did not ask. These unasked questions were: (1) “Does anyone disagree with the right of a citizen to make inquiry of a police officer as to how that police officer would perform his duties and what is expected of the citizen by the police officer?”; and (2) “Does any juror disagree with the constitutional right of a citizen to require the police to obtain a search warrant from a trial court before allowing a search of his home[, and w]ould any juror hold it against the Tice if he asserted that constitutional right to demand a search warrant before allowing a search of his home?” Tice asserts that the trial court abused its discretion in refusing to ask these two requested questions because the questions were appropriate and designed to discover information with which to develop a rational basis for excluding jurors. Moreover, Tice

¹⁰ *People v Vasquez*, 465 Mich 83; 631 NW2d 711 (2001).

¹¹ MCR 6.412(C)(1); *People v Tyburski (Tyburski II)*, 445 Mich 606, 618-619; 518 NW2d 441 (1994); *People v Sawyer*, 215 Mich App 183, 186-187; 545 NW2d 6 (1996).

asserts, none of the trial court's questions during voir dire revealed the information that Tice sought through the two excluded questions. We, however, disagree that the trial court abused its discretion in refusing to ask Tice's questions.

"The function of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially."¹² What constitutes acceptable and unacceptable voir dire practice "does not lend itself to hard and fast rules."¹³ Instead, trial courts "should be allowed wide discretion in the manner they employ to achieve the goal of an impartial jury."¹⁴ If a trial court undertakes to conduct voir dire itself, it must ask "probing questions" and "consider relevant questions posed by the attorneys."¹⁵ Therefore, in reviewing the trial court's conduct of voir dire, we must determine whether the trial court conducted a voir dire "sufficiently probing . . . to uncover potential juror bias."¹⁶ A trial court abuses its discretion when it limits voir dire to exclude an adequate showing of facts that could be employed in exercising challenges for cause and peremptory challenges.¹⁷

The two excluded questions did not address the issue of potential bias or whether an individual juror "shows a state of mind that will prevent the person from rendering a just verdict."¹⁸ Rather, they seemed to be directed at discovering which jurors were and were not sympathetic to certain rhetorical premises underlying Tice's theory of defense. In any event, with respect to the question regarding a homeowner's right to require that the police secure a search warrant before searching a home, the trial court instructed the jury as follows:

The United States and the Michigan Constitutions give every homeowner and householder the constitutional right to refuse a search within his or her premise, and they can demand that a search warrant from a court be obtained before a search is conducted.

The defendant in this case apparently exercised his right and you are not to in any way be prejudiced against him for exercising that right.

Therefore, the trial court did address the issue of a homeowner exercising the right to require the police to obtain a search warrant for a search of the home.

¹² *Sawyer, supra* at 186.

¹³ *Tyburski II, supra* at 623.

¹⁴ *Id.*

¹⁵ *People v Tyburski (Tyburski I)*, 196 Mich App 576, 589; 494 NW2d 20 (1992).

¹⁶ *Tyburski II, supra* at 609.

¹⁷ *Tyburski II, supra* at 619.

¹⁸ MCR 2.511(D)(3), (4).

Further, Tice has not shown that the presence on the jury of any one particular juror resulted in actual prejudice or that any juror was properly excusable for cause.¹⁹ Tice has also failed to establish any misconduct on the part of the jury.²⁰

Additionally, we conclude that the trial court's conduct of voir dire was sufficiently probing to uncover potential juror bias. The trial court introduced to the potential jurors all the parties, attorneys, and expected witnesses, and asked if any of them knew any of these people, and whether that would interfere with their judgment. The trial court inquired whether anyone had read or heard about the case outside of court. The trial court explored whether any of the potential jurors had been or had family members who had been the victim of a crime or accused of committing a crime, and whether that would interfere with their judgment. The trial court inquired whether any potential juror had a bias either for or against the police. The trial court explained the presumption of innocence and explored whether any potential juror could not accept this tenet. The trial court questioned the potential jurors to make sure that they all could return a verdict of guilty if the prosecution proved its case beyond a reasonable doubt, and conversely that they all could return a verdict of not guilty if it did not. Finally, the trial court inquired whether there was any other reason why the potential jurors could not fairly sit and hear the case and decide it based solely on the evidence presented in court. We conclude that this voir dire was not merely a "perfunctory exercise"²¹ but was sufficiently probing to uncover potential juror bias. Accordingly, the trial court did not abuse its discretion when it refused to ask Tice's requested questions.

We affirm.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette

¹⁹ *People v Washington*, 468 Mich 667, 675; 664 NW2d 203 (2003).

²⁰ MCR 2.611(A)(1)(b).

²¹ *Tyburski I*, *supra* at 591.