

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TREVOR DANIEL PIOTROWSKI,

Defendant-Appellant.

UNPUBLISHED

May 11, 2006

No. 259364

Bay Circuit Court

LC No. 03-011122-FH

Before: Borrello, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for assault and battery, MCL 750.81(1), and resisting and obstructing arrest, MCL 750.81d(1). Defendant was sentenced as a fourth habitual offender, MCL 769.12, from 42 months' to 15 years' imprisonment on the resisting and obstructing arrest conviction and 90 days' imprisonment with credit for 90 days served on the assault and battery conviction. Defendant was not given any credit toward his resisting and obstructing arrest conviction and that sentence was to be served consecutive to any parole violation sentence defendant received. We affirm.

This case arose when defendant assaulted a neighbor. The police came to the apartment where defendant was located after the assault took place and placed defendant in handcuffs. The officers informed defendant that he was under arrest for the assault. There was testimony that defendant became disruptive, and was fighting and struggling with the officers as they attempted to get defendant into the police car after his arrest.

Defendant first argues that the trial court erred in denying his motion to dismiss the charges on the ground that his arrest was illegal. Specifically, defendant argues that the police illegally arrested him without a warrant for a misdemeanor that was not committed in their presence. This Court reviews a trial court's ruling on a motion to dismiss for an abuse of discretion. *People v Stephen*, 262 Mich App 213, 218; 685 NW2d 309 (2004). "An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made." *Id.*, quoting *People v Williams*, 240 Mich App 316, 320; 614 NW2d 647 (2000).

MCL 764.15(1) states, in part:

A peace officer, without a warrant, may arrest a person in any of the following situations:

* * *

(d) The peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.

Defendant was placed under arrest for assault and battery. MCL 750.81(1) provides that assault and battery is a “misdemeanor punishable by imprisonment for not more than 93 days.” Therefore, a police officer may arrest someone for assault and battery without a warrant if she has reasonable cause to believe an assault and battery occurred and that the person being arrested committed the crime.

In this case, the police had reasonable cause to believe that defendant had committed an assault. When the officers first responded to the scene, the victim and an additional witness informed them that defendant had assaulted the victim. The police were also given a physical description of defendant. The officers entered the apartment where they were told defendant was located, and saw a person (defendant) who matched the description they had been given. Once defendant was handcuffed for the officers’ safety and his identity confirmed, he was placed under arrest for the assault. Based on the information the police had received, the officers had reasonable cause to arrest defendant and could properly arrest him without a warrant under MCL 764.15(d).

Next, defendant argues that there was insufficient evidence for the jury to find him guilty of resisting and obstructing arrest. We review sufficiency of the evidence claims de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), to determine “whether the evidence, viewed in a light most favorable to the people would warrant a reasonable juror in finding” that all the elements of the crime were proven beyond a reasonable doubt, *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

To prove a charge of resisting and obstructing a police officer, the prosecutor must show that an individual assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer that the individual knew or had reason to know was performing his or her duties. MCL 750.81d(1). In this case, there was sufficient evidence to show that defendant resisted and obstructed the officers who defendant had reason to know were performing their duties. Prior to his arrest, defendant refused to give the police his name and refused repeated requests to get up from where he was sitting. After his arrest, the officers testified that defendant became very belligerent and began threatening them. There was testimony that defendant attempted to pull away from the officers and fought with them on the stairs of the apartment building as he was being escorted to the police car. There was also testimony that defendant grabbed the area of one officer’s belt where his pepper spray was located. One officer testified that the officers had to struggle with defendant to get him inside the car. Further, defendant told one officer that he was

going to “put a round” or “put a slug” in the officer when defendant was released from jail. This evidence was sufficient to show that defendant resisted and obstructed the police officers.¹

Defendant next argues that he was improperly sentenced as a fourth offense habitual offender because he only had two prior relevant felony convictions. Defendant failed to preserve this issue by filing a challenge to the habitual offender notice under MCL 769.13(4) and also failed to object at sentencing to the sentence enhancement on this ground. Defendant also did not file a timely motion for resentencing. Therefore, this issue is not preserved and we review for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

MCL 769.12 provides that a person who has been previously convicted of three or more felonies shall be subject to an increased sentence if convicted of a subsequent felony. Multiple convictions arising out of a single transaction count as a single prior conviction for purposes of the habitual offender statute. *People v Preuss*, 436 Mich 714, 737; 461 NW2d 703 (1990). *Preuss* declined to further define the scope of a criminal transaction. *Id.* at 738. However, it noted that “because defendant’s two breaking and entering charges from June of 1985 were separated by several days and occurred at different locations, they were properly counted separately.” *Id.* at 738. *Preuss* also noted that there is no language in the statute that would suggest that the prior convictions need to be separated by intervening convictions and sentences. *Id.* at 731.

Defendant alleges that previous convictions in 1999 for operating while intoxicated, third offense (OUIL-3rd) and resisting and obstructing were part of a single transaction. Therefore, he argues, he should have been sentenced as a third offense habitual offender. However, defendant did not provide any information about the circumstances of the two 1999 convictions or any other evidence that would support the assertion that the convictions stemmed from a single transaction. Although defendant was convicted of both offenses on the same date, this does not necessarily mean they were part of the same transaction. In any event, even if they were part of the same transaction, the felony information listed five additional felonies as support for the sentence enhancement. These convictions include California convictions for resisting and obstructing, and battery of a police officer or emergency personnel. Although the PSIR lists these convictions as misdemeanors in California, both of these convictions would have been considered a felony under Michigan law. See MCL 750.81d. Had defendant raised a timely objection to the 1999 OUIL-3rd and the resisting arrest convictions, the court may have considered the California convictions.

¹ Defendant’s argument consists primarily of an attack on the credibility of the police officers. He argues that the inconsistencies in their testimony show that they falsified the charge against him. We reject the characterization of the officers’ testimony as being inconsistent. Although one officer testified to some struggling with defendant on the stairway that the other officer did not testify to, the overall testimony of the officers was consistent. We nevertheless remind defendant that it is the jury, not this Court, which is to determine the credibility of witnesses. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

Defendant next argues that he was entitled to credit for 315 days that he served in jail before sentencing. Again, defendant did not preserve this issue by objecting at sentencing or in a timely motion for resentencing, and we review for plain error affecting substantial rights. *People v Meshell*, 265 Mich App 616, 638; 696 NW2d 754 (2005).

MCL 769.11b allows a defendant to receive credit for time spent in jail prior to sentencing when the defendant is denied bond or unable to furnish bond. *Id.* at 639-640. When a defendant is being held on a parole detainer, bond is neither set nor denied. *Id.*

When a parolee is arrested for a new criminal offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense. MCL 791.238(2). A parole detainee who is convicted of a new criminal offense is entitled, under MCL 791.238(2), to credit for time served in jail as a parole detainee, but that credit may only be applied to the sentence for which the parole was granted. *People v Stewart*, 203 Mich App 432, 433; 513 NW2d 147 (1994); *People v Brown*, 186 Mich App 350, 359; 463 NW2d 491 (1990). A parolee who is sentenced for a crime committed while on parole must serve the remainder of the term imposed for the previous offense before he serves the term imposed for the subsequent offense. MCL 768.7a(2). [*People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004).]

In *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569, 584; 548 NW2d 900 (1996), our Supreme Court concluded “that the ‘remaining portion’ clause of § 7a(2) requires the offender to serve at least the combined minimums of his sentences, plus whatever portion, between the minimum and the maximum, of the earlier sentence that the Parole Board may, because the parolee violated the terms of parole, require him to serve.” Conviction of a new felony offense amounts to an automatic revocation of parole without a parole hearing. Department of Corrections Policy Directive, 06.06.100(T). Therefore, defendant’s conviction in this case would have revoked his parole. For a parole revocation, a defendant could be sentenced from one day to the maximum sentence imposed for the original offense. *In re Wayne Co Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998).

Defendant was held on a parole detainer for a violation of his parole given on a previous OUIL-3rd and resisting and obstructing arrest convictions. According to the PSIR, defendant’s maximum discharge date for these convictions was March 20, 2006. It appears that at the time of the sentencing in this case defendant had not yet received his sentence for the parole violation. Defendant alleges that he did not receive any credit on either his earlier sentence or his present sentence for the 315 days he spent in jail before sentencing on this case. However, defendant has not presented anything to support this assertion. Therefore, defendant has not shown plain error affecting his substantial rights on this issue or that he is entitled to the 315 days credit on this sentence.

Finally, we reject defendant’s argument that the trial court gave the jury biased and prejudicial instructions. Because defendant did not object to the jury instructions at trial, we again review for plain error affecting substantial rights. *People v Rodriguez*, 251 Mich App 10, 32; 650 NW2d 96 (2002).

Defendant argues that the trial court gave prejudicial instructions during jury selection where it used an example of a neighbor assaulting another neighbor with a bat to explain reasonable doubt and the elements of assault and battery. After reviewing the jury instructions as a whole, we conclude that those instructions in their entirety fairly and accurately presented the issues to be tried and were not prejudicial to defendant's rights. *People v Dumas*, 454 Mich 390, 396; 563 NW2d 31 (1997). Defendant argues that the example given was in error because it was too similar to the facts of this case and because it implied that the judge believed that defendant was guilty. Although the trial court's example involved an assault, it was not similar to the facts of the case. The example involved an assault and attempted assault with a bat and there was no allegation of a weapon used in this case. The instructions also did not imply that the judge believed defendant was guilty. In any event, the trial court instructed the jury that its comments, rulings, and questions were not evidence and were not meant to express any opinion about the case. The trial court continued, "[i]f you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion." Further, the trial court instructed the jury that defendant is presumed innocent until the prosecutor proves him guilty beyond a reasonable doubt. Therefore, any potential error in the trial court's initial comments was cured by the court's further instructions, and defendant was not denied a fair trial.

Defendant also argues that these comments show that the trial court was biased against him. "A trial court's conduct pierces the veil of judicial impartiality where its conduct or comments unduly influence the jury and thereby deprive the defendant of a fair and impartial trial." *People v Paquette*, 214 Mich App 336, 340; 353 NW2d 342 (1995). Courts generally do not review instances of judicial misconduct where there was no objection at trial unless the comments denied defendant a fair trial. *People v Collier*, 168 Mich App 687, 697; 425 NW2d 118 (1988). As discussed above, defendant has failed to demonstrate that the judge's comments during jury selection denied him a fair trial. Defendant points to no other instances in this case that would show the judge was biased against him. Therefore, defendant's argument is without merit.

Affirmed.

/s/ Stephen L. Borrello
/s/ Henry William Saad
/s/ Kurtis T. Wilder