

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH RAY BAGGETT,

Defendant-Appellant.

UNPUBLISHED

July 1, 2008

No. 276551

Berrien Circuit Court

LC No. 2006-403588-FC

Before: Markey, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant was charged with resisting arrest, MCL 750.81d(1), resisting and obstructing a police officer, causing bodily injury, MCL 750.81d(2), and domestic violence, MCL 750.81(2). A jury convicted him of resisting arrest, and acquitted him of the other two charges. He was sentenced as a habitual offender, fourth offense, MCL 769.12, to 16 to 180 months' imprisonment, and ordered to pay \$9,485.52 in restitution. He appeals as of right, and we affirm.

The charges arose out of an altercation defendant had with police officers and a state trooper after they responded to a neighbor's call concerning an argument defendant was having with his live-in girlfriend. Defendant resisted arrest and the three officers attempted to subdue him. Officer Michael Lanier broke his hand after punching defendant in the ribs. The resisting and obstructing charge of which defendant was acquitted was based on the personal injury to Lanier.

Defendant first argues that the trial court improperly ordered him to pay restitution for Officer Lanier's injuries, although the jury acquitted defendant of resisting arrest causing injury. This Court reviews a restitution order for an abuse of discretion. *People v Gubachy*, 272 Mich App 706, 708; 728 NW2d 891 (2006). When the question of restitution involves a matter of statutory interpretation, our review is de novo. *Id.* Crime victims have both a statutory and constitutional right to restitution. Const 1963, art 1, § 24; MCL 780.766; *People v Grant*, 455 Mich 221, 229; 565 NW2d 389 (1997). Under MCL 780.766(2), "when sentencing a defendant convicted of a crime, the court shall order . . . that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate." "[I]n determining the amount of restitution to order under [MCL 780.766], the court shall consider the amount of the loss sustained by any victim as a result of the offense." MCL 780.767(1).

Defendant essentially argues that he cannot be required to pay restitution for an injury he was not convicted of causing. We disagree. A sentencing court may order a defendant to pay restitution to compensate all the victims who were injured in his course of conduct, even though the specific criminal acts committed against some of the victims were not the basis of the defendant's conviction. *People v Gahan*, 456 Mich 264, 265; 571 NW2d 503 (1997). The trial court is authorized by statute to order restitution to any victim of a defendant's course of conduct that gave rise to the conviction. MCL 780.766(2). Here, Officer Lanier was a victim of defendant's course of conduct that gave rise to the conviction: defendant resisted Trooper Churchill's efforts to arrest him, and, in the process of assisting Trooper Churchill in the arrest, Officer Lanier was injured. Because Officer Lanier was injured due to defendant's course of conduct that gave rise to his conviction, the trial court did not abuse its discretion by entering the restitution order, notwithstanding that the jury acquitted defendant of the charge of resisting and obstructing causing injury to Lanier.

Defendant asserts that the trial court found that he did not commit the charge of resisting arrest with respect to Officer Lanier, when it refused to score defendant for acquitted conduct under OV 13; therefore, ordering him to pay restitution was error. The trial court made the following factual findings with respect to OV 13: ". . . I think it's not appropriate to score him where the jury—where the jury has found him not guilty." The fact that the trial court did not score defendant for an offense variable has no bearing on the trial court's decision to order restitution. Further, the trial court never made a factual finding that defendant did not cause the injury by resisting arrest. It simply recognized that defendant was acquitted of the charge.

Defendant also argues that the trial court failed to make the requisite factual findings linking defendant's conduct to the monetary loss. Defendant did not preserve this issue below; therefore, our review of this unpreserved, nonconstitutional allegation of error is for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763, 773; 597 NW2d 130 (1999). There was no plain error. Defendant was required to challenge the amount of restitution to trigger the trial court's duty of settling the dispute by a preponderance of the evidence; defendant did not do so. *Grant, supra* at 243. Defendant did not do so. Therefore, the trial court was not required to make factual findings to resolve a dispute over the restitution, and plain error did not occur.

Defendant next alleges that his right to a fair trial was compromised by prosecutorial misconduct when, on cross-examination, the prosecutor repeatedly asked defendant if the police officers were either mistaken or lying. Because defendant failed to object to the alleged misconduct, this Court reviews this issue for plain error. *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001).

Although some of the questioning was improper, we find no error requiring reversal because there is no basis to conclude that it affected the outcome of defendant's trial, or that it resulted in the conviction of an actually innocent defendant or that it was a determinative factor in defendant's conviction at all, or that the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. See *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). The jury apparently judged defendant's veracity based on the evidence; it acquitted him of two of the three charged crimes. There is no reason to conclude that the line of questioning somehow hampered defendant's defense or undermined the judicial process.

Moreover, a curative instruction could have cured any possible prejudice. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001).

Defendant finally argues that the trial court violated his due process rights by empanelling a jury whose members were referred to by number only. Defendant expressed satisfaction with the jury at the close of voir dire, thereby waiving any issue pertaining to the composition of the jury on appeal. *People v Hubbard (After Remand)*, 217 Mich App 459, 466-467; 552 NW2d 493 (1996) (expressing satisfaction with a jury at the close of voir dire, waives a party's ability to challenge the composition of the jury subsequently impaneled and sworn).

We note, however, that there is no evidence that the jurors' biographical information was withheld from the parties, and both the trial court and the parties conducted voir dire. Defendant fails to demonstrate that the use of numbers prevented him from conducting meaningful voir dire or that his presumption of innocence was compromised. See *People v Williams*, 241 Mich App 519, 523-524; 616 NW2d 710 (2000). The jury in this case was "anonymous only in a literal sense, so none of the dangers of an 'anonymous jury' was [sic] implicated." *People v Hanks*, 276 Mich App 91, 94; 740 NW2d 530 (2007).

Affirmed.

/s/ Jane E. Markey
/s/ Helene N. White
/s/ Kurtis T. Wilder