

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN EARL O'CONNOR,

Defendant-Appellant.

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UNPUBLISHED

July 1, 2008

No. 278002

Wexford Circuit Court

LC No. 06-008115-FH

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of resisting or obstructing an officer, MCL 750.81d(1), for which the trial court imposed a sentence of time served plus twelve months' probation. We affirm. This case is being decided without oral argument under MCR 7.214(E).

**I. Facts**

On the day at issue, the police responded to a shooting and found defendant, defendant's nephew, and others in the presence of a person who had just been shot and seriously injured. After tending to the victim and seizing the gun involved, the police began questioning witnesses. A police officer testified that defendant was apparently intoxicated and argumentative—if not combative. Defendant identified one of the others present as the shooter. When an officer began interviewing defendant's nephew, who suffered from some mental impairment, defendant approached them. According to the officer, defendant was asked to step back, but continued to approach. Defendant also exclaimed that “nothing” had happened and that his nephew did not know anything, and told his nephew not to say anything. The officer further testified that he placed defendant under arrest and grabbed his arm, but that defendant “stiffened” and pulled away.

Defendant took the stand in his own defense. On cross-examination, the prosecuting attorney, questioned defendant over an objection concerning matters that took place earlier on the day of the shooting. The prosecutor asked defendant whether he and the shooter had gone to the victim's house to fight, whether the shooter and the victim had fought earlier, and whether the victim owed defendant money. The prosecutor's theory was that the shooting resulted from a dispute involving a drug deal, and that defendant sought to keep the police from questioning his nephew for that reason.

## II. Cross-Examination

We review a trial court's evidentiary decisions for an abuse of discretion. *People v Martzke*, 251 Mich App 282, 286; 651 NW2d 490 (2002). An abuse of discretion occurs where the trial court chooses an outcome falling outside a "principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Defendant first argues that what occurred earlier in the day in question was irrelevant, because motive is not an element of the crime of resisting or obstructing a police officer. For that reason, defendant further contends, the trial court erred in allowing the prosecutor to cross-examine him about the earlier events. We do not agree that the evidence of motive was irrelevant.

A jury is entitled to hear the complete story of the matter in issue. *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996). Accordingly, "Evidence of other criminal acts is admissible when so blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime." *Id.* at 742, quoting with approval *State v Villavicencio*, 95 Ariz 199, 201; 388 P2d 245 (1964).

Although motive is not an element of the offense in question, it was nonetheless relevant as an aid to the jury's understanding of the evidence involving the crime's elements. The evidence that defendant may have been involved in a financial dispute with the victim provided the context for the evidence that suggested that defendant used force to evade one officer and interfered with another officer's attempt to obtain information from defendant's nephew. Indeed, eliciting information about motive is one of the bases for which evidence of other bad acts may be introduced. MRE 404(b)(1). When defendant took the stand and offered the innocent explanation that he was only trying to assist his mentally handicapped nephew, he made other potentially less innocent motives relevant to a proper understanding of the events at issue.

Defendant additionally argues that, to the extent that the evidence in question was relevant, it nonetheless should have been barred on the ground that its probative value was substantially outweighed by the risk of unfair prejudice. See MRE 403. We disagree.

Defendant testified that the victim owed him money because he had stolen 27 methadone pills from him. The prosecutor neither elicited nor injected any information concerning whether defendant possessed the methadone legally, and there was no other testimony concerning controlled substances. Because that testimony only touched upon controlled substances, and did not exclude the possibility that defendant possessed them legally, the probative value of the evidence was clearly not substantially outweighed by the danger of unfair prejudice. MRE 403.

For these reasons, we conclude that the trial court's decision to allow this cross-examination did not fall outside the principled range of outcomes.

## III. Unanimity

Defendant next argues that the allegation that he physically resisted the police constituted one theory of prosecution, while the allegation that he obstructed police efforts to obtain information from his nephew constituted an alternate theory. Therefore, defendant further

argues, the trial court should have instructed the jury that it must agree unanimously on at least one of those theories. We disagree.

“Questions of law, including questions of the applicability of jury instructions, are reviewed de novo.” *People v Perez*, 469 Mich 415, 418; 670 NW2d 655 (2003). However, there was no request for a special unanimity instruction below, leaving this issue unpreserved.<sup>1</sup> A defendant pressing an unpreserved claim of error must show a plain error that affected substantial rights; the reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In *People v Cooks*, 446 Mich 503, 512-513; 521 NW2d 275 (1994) our Supreme Court explained that a specific unanimity instruction is not required in every case. Rather,

if alternative acts allegedly committed by defendant are presented by the state as evidence of the actus reus element of the charged offense, a general instruction to the jury that its decision must be unanimous will be adequate unless 1) the alternative acts are materially distinct (where the acts themselves are conceptually distinct or where either party has offered materially distinct proofs regarding one of the alternatives), or 2) there is reason to believe the jurors might be confused or disagree about the factual basis of defendant’s guilt. [*Id.* at 524.]

Accordingly, although a special unanimity instruction may be appropriate in connection with a separate defense or materially distinct impeachment evidence concerning a particular allegation, where the sole task for the jury is to determine credibility in connection with allegations of a single course of conduct, the factual basis for a specific unanimity instruction does not exist. *Id.* at 528-529.

Defendant characterizes physical resistance to the police and interference with police questioning as different actions, thus constituting two wholly separate theories of criminal liability. We disagree. In *Cooks*, our Supreme Court regarded three separate allegations of sexual penetration of a minor taking place on separate days to be a single course of criminal conduct, such that the trial court properly denied a requested special unanimity instruction. *Cooks, supra* at 505-507, 528. In this case, the evidence indicates that defendant persistently attempted to insinuate himself into the discussions going on between the police and defendant’s nephew, then offered some resistance when he was arrested as the result. The interference with

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<sup>1</sup> Defendant also argues that his trial counsel was ineffective for failing to preserve this issue. However, defendant failed to address this argument in the body of his brief and failed to cite any authority. Therefore, he abandoned this claim of error. See *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000); MCR 7.212(C)(7). In any event, we conclude that this issue is without merit. Because no special unanimity instruction was required, defendant’s trial counsel was not ineffective for failing to request one. See *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

the interview with the nephew and physical resistance to his arrest thus constituted a single course of conduct. Therefore, the trial court did not plainly err when it gave a general unanimity instruction.

Affirmed.

/s/ Patrick M. Meter  
/s/ Michael R. Smolenski  
/s/ Deborah A. Servitto