DIVISION ONE
FILED: 11-02-2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	)	No. 1 CA-CR 09-0330
	)	DEPARTMENT E
v.	)	**MEMORANDUM DECISION**
ED EAGLEMAN, Appellant.	)	(Not for Publication - Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. No. CR2008-169133-001 DT

The Honorable Barbara L. Spencer, Judge Pro Tempore

AFFIRMED

Terry Goddard, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
And Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

Robert L. Dossey, P.C. — Chandler
By Robert L. Dossey
Attorneys for Appellant

S W A N N, Judge

¶1 Ed Eagleman ("Defendant") appeals his convictions of resisting arrest under A.R.S. § 13-2508 and aggravated assault

on a peace officer under A.R.S. § 13-1204(A)(8), both class 6 felonies. He contends that the resisting arrest charge fails because he could not know he was being arrested. He also contends that the aggravated assault conviction must be reversed because his eyesight was too impaired to permit him to have formed the necessary intent, and because he should have been allowed to introduce evidence that he was not booked for assault by the officer he was charged with assaulting. Because Defendant knew the police were trying to restrain him, we affirm the conviction for resisting arrest. And because Defendant has not demonstrated error related to the other issues he raised, we affirm the conviction for aggravated assault.

FACTS AND PROCEDURAL HISTORY

¶2 On November 3, 2008, Defendant's domestic dispute with his fiancée prompted a 911 call. At least five Phoenix Police officers responded to the call. Four of the officers entered Defendant's apartment and spoke to his fiancée in the living room, and the fiancée indicated that Defendant was "in the back bedroom."

¶3 The officers identified themselves to Defendant and ordered him to come out of the bedroom. Defendant refused, telling the officers to come into the bedroom and get him.

¶4 The officers made their way down the hall that led to the bedroom. One stayed in the hall while three entered the

bedroom. There they found Defendant sitting on a bed with his fists in his lap. Defendant testified without contradiction that he was not wearing his glasses.

¶5 The officers informed Defendant that they wished to detain Defendant until they sorted out the dispute. During the attempt to accomplish that detention by handcuffing Defendant, a scuffle occurred. During that scuffle, Defendant allegedly collided with Officer Sarah Roberts and drove her into a piece of furniture. The two other officers in the room then struggled with Defendant and eventually succeeded in handcuffing him. Officer Roberts later booked Defendant on Resisting Arrest and Kidnapping charges.

¶6 Defendant was brought to trial on charges of Resisting Arrest and Aggravated Assault of Officer Roberts. Although Defendant testified that he was trying to cooperate with the police and that a misunderstanding had led to the scuffle, the police testified that he was aggressive and taunted them. And while Defendant testified that without his glasses he could not see well enough to make out Officer Roberts and that his collision with her was unintentional, the officer testified that Defendant lunged at her. The jury convicted Defendant on both the Resisting Arrest and Aggravated Assault charges.

¶7 Defendant was sentenced to concurrent terms of 3.75 years for each offense. Defendant timely appealed. We have

jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

¶8 Defendant raises three issues on appeal. First, he contends that because the police told him they were placing him in an "investigative detention" and never told him he was being arrested, he could not form the intent necessary to "resist arrest." Second, Defendant argues that his uncorrected vision is so impaired that he could not see Officer Roberts and therefore could not "knowingly" touch her, an essential element of the assault charge. Finally, Defendant argues the trial court committed reversible error by refusing to allow testimony that Defendant was not booked on the assault charge.

DISCUSSION

I. DEFENDANT'S RESISTANCE TO THE HANDCUFFING CONSTITUTED RESISTING ARREST.

¶9 Defendant argues that because the officers informed him that he was being placed under "investigative detention," he could not form the intent to resist "arrest." Here, the investigative detention involved handcuffing Defendant. The threshold question, therefore, is whether an investigative detention effectuated by handcuffs is an "arrest" under A.R.S. § 13-2508.

¶10 Because the definition of "arrest" requires statutory interpretation, our review is de novo. *City of Tucson v. Clear*

Channel Outdoor, Inc., 218 Ariz. 172, 178, ¶ 5, 181 P.3d 219, 225 (App. 2008). "In interpreting statutes, our central goal 'is to ascertain and give effect to the legislature's intent.'" *Yarbrough v. Montoya-Paez,* 214 Ariz. 1, 5, ¶ 12, 147 P.3d 755, 759 (App. 2006) (quoting *Washburn v. Pima County,* 206 Ariz. 571, 575, ¶ 9, 81 P.3d 1030, 1034 (App. 2003)). "To determine legislative intent, we look first to the language the legislature has used as providing 'the most reliable evidence of its intent.'" *Id.* (quoting *Walker v. City of Scottsdale,* 163 Ariz. 206, 209, 786 P.2d 1057, 1060 (App. 1989). We must also construe statutory provisions in a manner consistent with related provisions. *Goulder v. Ariz. Dep't of Transp., Motor Vehicle Div.,* 177 Ariz. 414, 416, 868 P.2d 997, 999 (App. 1993).

¶11 The offense of Resisting Arrest is codified in A.R.S. § 13-2508(A):

> A. A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonably known to him to be a peace officer, acting under color of such peace officer's official authority, from effecting an arrest by:
>
> 1. Using or threatening to use physical force against the peace officer or another; or
>
> 2. Using any other means creating a substantial risk of causing physical injury to the peace officer or another.

And "[a]n arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest." A.R.S. § 13-3881(A).

¶12 Our supreme court has held: "A defendant is arrested when his liberty of movement is interrupted and restricted by the police." *State v. Leslie*, 147 Ariz. 38, 43, 708 P.2d 719, 724 (1985). "Whether the defendant has been arrested is to be tested by the objective evidence and not by the subjective beliefs of the parties." *State v. Winegar*, 147 Ariz. 440, 448, 711 P.2d 579, 587 (1985). "Indeed, '[a] certain set of facts may constitute an arrest whether or not the officer intended to make an arrest and despite his disclaimer that an arrest occurred.'" *Id.* (quoting *Taylor v. Ariz.*, 471 F.2d 848, 851 (9th Cir. 1972) (holding an arrest occurred even though a police officer did not intend to make an arrest)).

¶13 Here, the parties agree that the officers were attempting the "actual restraint" of Defendant using handcuffs. We therefore conclude that the "investigative detention" in this case was an arrest under § 13-3881(A). Whether the officers originally intended an arrest, or whether their intent changed over the course of the encounter, does not change the objective fact that Defendant's liberty of movement was interrupted.

¶14 Equally irrelevant is whether Defendant believed that he was being placed in an "investigative detention" instead of an

arrest. To form the intent to resist arrest, Defendant need only be aware that a peace officer was attempting to arrest him, that is, that a peace officer was attempting to place Defendant in an actual restraint or gain Defendant's submission to custody. Defendant testified, "I knew they were going to handcuff me." From this evidence, the jury could properly find he had formed the intent to resist arrest.

II. THERE WAS SUFFICIENT EVIDENCE FROM WHICH THE JURY COULD CONCLUDE THAT DEFENDANT "KNOWINGLY TOUCHED" THE OFFICER.

¶15 *Defendant contends that because his eyesight was so impaired that he could not see the police officer he was con***v***icted of assaulting, the state could not prove he knowingly touched the officer. The question whether the facts were such that defendant did not "knowingly touch" the officer was one of credibility, which is the sole province of the jury. *See State v. Hoskins*, 199 Ariz. 127, 145-46, ¶¶ 77-78, 14 P.3d 997, 1015-16 (2000) (approving jury instruction that charged jurors to "decide the believability of witnesses").

¶16 We review a claim of insufficient evidence de novo. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). But as an appellate court:

> We do not . . . reevaluat[e] the evidence to determine whether we would have convicted defendant . . . . Rather, we must view the evidence in the light most favorable to sustaining the verdict, and we must resolve all reasonable inferences against defendant. If "substantial evidence" exists to support the

> verdict, we will not disturb the jury's decision. By "substantial evidence" we mean evidence that would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is presented.

State v. Atwood, 171 Ariz. 576, 596-97, 832 P.2d 593, 613-14 (1992)*, overruled on other grounds by State v. Nordstrom*, 200 Ariz. 229, 241, ¶ 25, 25 P.3d 717, 729 (2001).

¶17 Here the jury heard testimony from an optometrist, who had examined Defendant, to the effect that Defendant could probably see a person standing beside him well enough to distinguish the person's sex and ethnicity, and that at a distance of two feet Defendant could make out shapes and faces. The jury heard Defendant testify that without his glasses he saw the police in the room as "black objects" and could not determine how many of them were there. It also heard Defendant's testimony that he reached out to protect a small box he could see on his bed, and from this evidence could well have made inferences concerning Defendant's eyesight. We conclude that based on the evidence before it, the jury could properly conclude that Defendant saw the officer well enough to knowingly touch her.

III. THE COURT DID NOT ABUSE ITS DISCRETION BY EXCLUDING TESTIMONY THAT DEFENDANT WAS NOT BOOKED FOR ASSAULT.

¶18 Defendant contends that because the officer he was charged with assaulting did not actually book him for assault, she effectively admitted that no assault had occurred. He

therefore argues that the trial court erred by not allowing Defendant to introduce evidence of this "prior inconsistent act[]" to impeach the officer.

> Decisions on the admission and exclusion of evidence are "left to the sound discretion of the trial court," *State v. Murray*, 162 Ariz. 211, 214, 782 P.2d 329, 332 (App. 1989), and will be reversed on appeal only when they constitute a clear, prejudicial abuse of discretion. *Selby v. Savard*, 134 Ariz. 222, 227, 655 P.2d 342, 347 (1982). The prejudice must be sufficient to create a reasonable doubt about whether the verdict might have been different had the error not been committed. *State v. Williams*, 133 Ariz. 220, 225, 650 P.2d 1202, 1207 (1982).

State v. Ayala, 178 Ariz. 385, 387, 873 P.2d 1307, 1309 (App. 1994).

¶19 "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of Arizona or by applicable statutes or rules." Ariz. R. Evid. 402. But "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence." Ariz. R. Evid. 403.

¶20 Whether Defendant was guilty of assault was the ultimate issue for the jury, and "testimony tending to establish the opinion of the witness as to defendant's guilt" is therefore generally inadmissible unless it "assist[s] the trier of fact to understand the evidence or to determine a fact in issue." *State v. Williams*, 133 Ariz. 220, 228, 650 P.2d 1202, 1210 (1982)

(citing Ariz. R. Evid. 704 cmt.). "[O]rdinarily it would be neither necessary nor advisable to ask for a witness' opinion of whether the defendant committed the crime . . . more prejudice than benefit is to be expected from this type of questioning." *Fuenning v. Superior Court (Stover)*, 139 Ariz. 590, 605, 680 P.2d 121, 136 (1983). Because the trial court could have reasonably concluded Officer Roberts' decision not to book would have a prejudicial impact that substantially outweighed its probative value, it did not abuse its discretion in excluding the testimony.

CONCLUSION

¶21 For the foregoing reasons, we affirm Defendant's convictions.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
PHILIP HALL, Presiding Judge

/s/
_____
SHELDON H. WEISBERG, Judge