STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONY THOMAS ROCKWELL,

Defendant-Appellant.

UNPUBLISHED
April 6, 1999

No. 203519
Jackson Circuit Court
LC No. 97-078901 FH

Before: Cavanagh, P.J., and MacKenzie and McDonald, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for breaking and entering with intent to commit larceny, MCL 750.110; MSA 28.305, and resisting and obstructing a police officer, MCL 750.479; MSA 28.747. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12; MSA 28.1084, to ten to twenty years' imprisonment for the breaking and entering conviction and three to fifteen years' imprisonment for the resisting and obstructing a police officer conviction. We affirm.

I

Defendant's first claim of error on appeal is that the trial court erred when it failed to instruct the jury on the defense of voluntary intoxication. We review jury instructions in their entirety to determine if there is error requiring reversal. Even if jury instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Whitney*, 228 Mich App 230, 252; 578 NW2d 329 (1998).

The trial court must instruct the jury on any theory or defense which is supported by evidence presented at trial. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995). When a defendant requests an instruction on intoxication, the trial court must give the instruction if "there was testimony which would warrant a jury in saying that the intoxication . . . was of a degree which rendered him incapable of entertaining the intent charged." *People v Kirk*, 151 Mich 253, 258; 114 NW 1023 (1908).

After carefully reviewing the record, we conclude that the trial court did not err in failing to give the requested instruction on voluntary intoxication. Defendant testified that, on the day of the incident, he had consumed a considerable quantity of alcohol, and he was "pretty trashed." Officer Kennedy confirmed that defendant's breath smelled of alcohol. Nevertheless, the evidence presented at trial does not demonstrate that defendant was so intoxicated as to render him incapable of having the intent to commit the charged offenses. Officer Kennedy stated that defendant "didn't seem to be stumbling [or] falling down." Defendant testified that he accompanied the codefendant because he "was not going to let [the codefendant] take [his car] without [him]." Defendant acknowledged that he had had the presence of mind to put on his coat before following the codefendant outside. When asked why he ran[1] from the police, defendant stated, "Because a crime had been committed, and I knew it." Considering the above testimony, we conclude that defendant did not present evidence from which a jury could find that his "mental faculties were so far overcome by the effect of intoxication, as to render him incapable of entertaining the intent" to commit the charged offenses.[2] *People v Savoie*, 419 Mich 118, 133-134; 349 NW2d 139 (1984), quoting *Roberts v People*, 19 Mich 401, 418 (1870). Because the defense of intoxication was not supported by sufficient evidence presented at trial, the trial court did not err in refusing to give the instruction.[3] See *Mills, supra*.

II

Defendant next argues that insufficient evidence was presented to support his conviction of resisting and obstructing a police officer. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court 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. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

The elements of the crime of resisting arrest are (1) the defendant must have resisted arrest; (2) the arrest must have been lawful; (3) the person making the arrest must have been an officer of the law; (4) the defendant must have intended to resist the officer; (5) the defendant must have known that the person he was resisting was an officer; and (6) the defendant must have known that the officer was making an arrest. *People v Julkowski*, 124 Mich App 379, 383; 335 NW2d 47 (1983).

In the present case, ample evidence was presented to support defendant's conviction of resisting and obstructing a police officer. In running from the police, defendant actively interfered with the police officers' investigation of the alarm at 1601 Cooper. Moreover, defendant knew that he was fleeing from the scene of a crime. Cf. *People v Pohl*, 207 Mich App 332, 333; 523 NW2d 634 (1994). Furthermore, the evidence established that defendant refused to be fingerprinted and photographed at the police station. Defendant's noncompliance hindered the officers' execution of their duties. Cf. *People v Davis*, 209 Mich App 580, 586; 531 NW2d 787 (1995). Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found defendant guilty of resisting and obstructing a police officer.

III

In addition, defendant contends that the trial court abused its discretion when it admitted a pair of boots as evidence at trial because the chain of custody for the boots was not established. The admission of evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Warren*, 228 Mich App 336, 341; 578 NW2d 692 (1998).

The admission of real evidence does not require a perfect chain of custody. Once the proffered evidence is shown to be what its proponent claims to a reasonable degree of certainty, any deficiency in the chain of custody goes to the weight afforded to the evidence, rather than its admissibility. *People v White*, 208 Mich App 126, 130-133; 527 NW2d 34 (1994).

We find that a sufficient foundation was laid for the admission of the boots. Both Officer Williams and defendant himself testified that the boots in question were in fact defendant's. Although the evidence technician testified that he had not taken the boots from defendant and he did not know who had given them to him, this defect in the chain of custody goes to the weight given to the evidence, not its admissibility. See *id*. The trial court did not abuse its discretion in admitting the evidence at trial.

IV

Defendant next argues that the sentence imposed by the trial court is disproportionate. A trial court's imposition of a particular sentence is reviewed on appeal for an abuse of discretion, which will be found where the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Defendant maintains that his sentences are disproportionate in light of the fact that the codefendant received a sentence of three to six years' imprisonment. However, a court is not required to consider the sentence of a codefendant when sentencing a defendant. *In re Jenkins*, 438 Mich 364, 376; 475 NW2d 279 (1991).

In sentencing defendant, the trial court emphasized defendant's extensive criminal record. A trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). Defendant's sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender, and the trial court therefore did not abuse its discretion in sentencing him. See *Milbourn, supra*.

V

Defendant also asserts that the trial court improperly admitted evidence that defendant had committed other crimes. However, because defendant did not object to the admission of this evidence below, our review of this issue is only for manifest injustice. See *People v Ramsdell*, 230 Mich App 386, 404; 585 NW2d 1 (1998).

Contrary to defendant's argument, MRE 609 does not require the trial court to hold a separate hearing to determine whether evidence of a defendant's prior convictions is more prejudicial than probative. Defendant has not shown that the trial court abused its discretion in permitting the prosecutor to impeach him with evidence of his prior convictions of larceny in a building, MCL 750.360; MSA 28.592, and larceny from a motor vehicle, MCL 750.356a; MSA 28.588(1). See *Warren*, *supra*. With regard to the admission of evidence that defendant had been arrested for drunk driving, that he had been banned from a certain bar, and that he might have smoked crack with the codefendant if they had not been apprehended by the police, we find no manifest injustice because defendant himself volunteered this information during his testimony.

VI

Defendant further claims that the trial court's instructions were flawed. However, defendant did not object or request that the instructions at issue be given at trial. Therefore, our review is limited to the issue whether relief is necessary to avoid manifest injustice. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). Manifest injustice occurs where the erroneous or omitted instruction pertains to a basic and controlling issue in the case. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). As a general rule, this Court is hesitant to reverse a lower court because of an error in jury instructions where no objection was raised at trial. *People v Hess*, 214 Mich App 33, 36; 543 NW2d 332 (1995).

We conclude that relief is not necessary to avoid manifest injustice. See *Haywood*, *supra*. Defendant argues that the trial court erred in reading CJI2d 5.1 instead of CJI2d 3.4; however, defendant did not request that CJI2d 3.4 be given. We reject defendant's assertion that the trial court should have given CJI2d 13.5, as defendant did not argue below that his arrest was illegal. Finally, the trial court did not err in failing to give CJI2d 13.6, as a court has no duty to instruct sua sponte on lesser included offenses in cases that do not involve a first-degree murder charge. See *Ramsdell*, *supra* at 403.

VII

Finally, defendant argues that the trial judge should have disqualified himself because he had previously accepted the codefendant's guilty plea. We disagree. This Court has previously declined to adopt a rule of automatic disqualification on this basis. See *People v Rider*, 93 Mich App 383, 388; 286 NW2d 881 (1979). Because the record does not reflect a showing of actual bias or prejudice against defendant, disqualification was not warranted. See *People v Gomez*, 229 Mich App 329, 331; 581 NW2d 289 (1998).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Barbara B. MacKenzie
/s/ Gary R. McDonald

[1] Defendant testified that he "wasn't even capable of running." However, because defendant admitted that he was trying to elude the police, the speed of his gait is irrelevant.

[2] In arguing that he was entitled to an instruction on the defense of intoxication, defendant emphasizes testimony that he refused to allow the police to fingerprint him. However, this evidence, by itself, does not establish that defendant was so intoxicated that he was incapable of forming the requisite intent to commit breaking and entering.

[3] The trial court refused to instruct on the intoxication defense because defendant testified that he was simply present and did not take part in the breaking and entering. In fact, a defendant has the right to raise inconsistent defenses where the defenses are supported by the evidence. See *People v Lemons*, 454 Mich 234, 245; 562 NW2d 447 (1997). However, where the trial court reaches the right result for the wrong reason, this Court will not reverse. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).