STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD SHELTON,

Defendant-Appellant.

UNPUBLISHED
December 21, 1999

No. 211826
Kent Circuit Court
LC No. 97-009036 FC

Before: Murphy, P.J., and Hood and Neff, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of aggravated assault, MCL 750.81a; MSA 28.276(1), three counts of felonious assault, MCL 750.82; MSA 28.277, three counts of resisting and obstructing a police officer, MCL 750.479; MSA 28.747, and disarming of a police officer, MCL 750.479b; MSA 28.747(2). Defendant was sentenced as an habitual offender, third offense, MCL 769.11; MSA 28.1083, to twelve months' imprisonment for the aggravated assault conviction, thirty-two to ninety-six months' imprisonment for each felonious assault conviction, sixteen to forty-eight months' imprisonment for each resisting and obstructing conviction, and eighty to two-hundred and forty months' imprisonment for the disarming a police officer conviction. Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court abused its discretion in allowing defendant to be impeached by a prior conviction. We disagree. The trial court's decision to allow impeachment with evidence of a prior conviction is within its sound discretion, and we will not reverse that decision on appeal absent an abuse of that discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995). A prior conviction for theft which is punishable by more than one year imprisonment may be admitted if the probative value outweighs the prejudicial impact of admission of the evidence. MRE 609(a)(2); *People v Allen*, 429 Mich 558, 605-606; 420 NW2d 499 (1988). In examining the probative factor, the court is to consider the age of the conviction and the degree to which the prior conviction is indicative of veracity. *Allen, supra.* The prejudice factor escalates where the charged offense is similar to the convicted offense. *Id.*

In the present case, defendant was convicted of "theft of person" in the State of Wisconsin. The trial court found that the prior conviction was the equivalent of larceny from a person under the laws of this state, without objection from defense counsel. The prior conviction for larceny was minimally probative, *People v Nelson*, 234 Mich App 454, 463; 594 NW2d 114 (1999), and occurred with a three year period of the crimes charged in this case. The prejudicial effect was marginal because the assaultive crimes with which defendant was charged were unrelated to the conduct involved in a larceny crime. Larceny is a basic theft offense, requiring merely the intentional taking and asportation of property belonging to another without permission. *People v Parcha*, 227 Mich App 236, 245; 575 NW2d 316 (1997). Accordingly, the trial court did not abuse its discretion in allowing evidence of defendant's prior conviction.[1]

Defendant next argues that the trial court erred in failing to instruct the jury regarding self-defense. Specifically, defendant argues that because it is acceptable to act in self-defense and resist an *unlawful* arrest, it follows that defendant should have been entitled to a self-defense instruction when he resisted a lawful arrest due to the use of excessive force by police officers in effecting the arrest. We disagree. This Court examines jury instructions in their entirety to determine if there is error requiring reversal. *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999). A trial court is required to give a requested jury instruction only if it is supported by the evidence of the facts of the case. *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). Whether a jury instruction is applicable to the facts of the case is a determination within the sound discretion of the trial court. *Id.*

In order to establish lawful self-defense, the circumstances, as they appeared to the defendant, must result in a reasonable belief that the defendant was in danger of death or serious bodily harm. *People v Green*, 113 Mich App 699, 704; 318 NW2d 547 (1982). In the present case, the circumstances did not warrant a self-defense instruction. Defendant testified that he did not resist arrest and his hand got "entangled" with a gun belonging to a police officer. While defendant testified that police officers used excessive force in performing the lawful arrest, this testimony was contrary to the "injuries" received by defendant as opposed to the damage inflicted by defendant onto the arresting officers. Furthermore, defendant's girlfriend did not corroborate the testimony given by defendant. Accordingly, the trial court did not abuse its discretion in failing to instruct regarding self-defense.[2]

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Janet T. Neff

[1] We note that defendant argues for the first time on appeal that the trial court erred in assuming that the Wisconsin offense for "theft of a person" is the same crime as larceny from a person. Defendant conceded, at trial, that the Wisconsin crime of "theft of a person" was the equivalent of the Michigan offense for larceny from a person. Defendant may not waive objection to an issue at trial and raise it as error before this Court. To hold otherwise would allow defendant to harbor error as an appellate parachute. *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). Furthermore, on appeal, defendant merely argues that the two offenses may be different without a comparison of the

elements of the two statutes or citation to authority. A defendant may not merely announce a position, give cursory treatment to an issue with little or no citation to authority, and leave it to this Court to rationalize his claims. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

[2] Our conclusion, that the factual circumstances did not warrant a self-defense instruction, renders moot defendant's claim that the law concerning the use of self-defense to resist an unlawful arrest should be extended to include the right to use self-defense to resist a lawful arrest. Furthermore, in *Wess, supra* at 245, this Court questioned whether the right to resist an unlawful arrest was outmoded in contemporary society in light of the protections afforded a defendant and the number of other jurisdictions which have overturned the common-law rule allowing a defendant the right to resist a lawful arrest. Defendant's request should be directed to the Legislature.