STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 24, 2000
v	No. 210025 Wayne Circuit Court
RONALD J. COOKS, Defendant-Appellant.	LC No. 97-003597

Before: Griffin, P.J., and Holbrook, Jr., and J. B. Sullivan*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of disarming a police officer, MCL 750.479b(2); MSA 28.747(2), and resisting arrest, MCL 750.479; MSA 28.747. Subsequently, defendant was sentenced to five to ten years' imprisonment for the disarming a police officer conviction and sixteen months to two years' imprisonment for the resisting arrest conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the jury's verdict with regard to the disarming a police officer conviction was against the great weight of the evidence. We disagree.

A trial court's decision to grant or deny a motion for a new trial because the verdict was against the great weight of the evidence is reviewed for an abuse of discretion. *People v Daoust*, 228 Mich App 1, 16-17; 577 NW2d 179 (1998). A trial court may grant a motion for a new trial based on the great weight of the evidence only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998); *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). The authority to grant a new trial because the verdict was against the great weight of the evidence should be invoked only in an exceptional case in which the evidence preponderated heavily against the verdict and a serious miscarriage of justice would otherwise result. *Lemmon, supra* at 640.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The elements of the crime of disarming a police officer are as follows: (1) that defendant knew or had reason to believe that the person from whom the firearm was taken was a police

officer; (2) that at the time of the offense the police officer was performing his duties as a police officer; (3) that defendant took the firearm without the consent of the police officer; and (4) that at the time of the offense, the police officer was authorized to carry the firearm in the line of duty. MCL 750.479b(2); MSA 28.747(2). See also CJI2d 13.18. Defendant only challenges the third element. He claims that the evidence did not show that he took Officer Jones' weapon without Officer Jones' consent.

The evidence indicated that, although Officer Jones did not see defendant remove the gun from the holster, defendant was lying next to Officer Jones when the gun was removed, Officer Jones felt someone tug on the gun and heard the gun being removed from his holster, and that, when Officer Jones looked over at defendant, who was lying next to him on the street, defendant was holding Officer Jones' gun. Therefore, there was circumstantial evidence to indicate that it was defendant who removed the gun from Officer Jones' holster. Reasonable inferences and circumstantial evidence may constitute satisfactory proof of the elements of the offense. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Additionally, even though Officer Jones did not hear the holster unsnap, he testified that he felt a tug and heard a "whooshing" sound as the gun was being pulled from the holster. Officer Jones specifically testified that the gun did not fall out of the holster, it was pulled out. Because neither Officer Jones nor Officer Cox pulled the gun from the holster, it was reasonable to infer that defendant, the only other person immediately present, was the person who removed the gun from the holster. This inference is also supported by the fact that it was defendant who was in possession of the gun immediately after it was pulled from Officer Jones' holster. Officer Jones testified that he did not give defendant permission to take the gun from the holster.

Moreover, even though Officer Cox was struggling with defendant, it is clear from the evidence presented that he did not have complete control over defendant. There was no evidence to indicate, for instance, that defendant was pinned to the ground during the altercation and could not move. On the contrary, the evidence indicated that Officer Cox and defendant were wrestling on the ground when the gun was removed from Officer Jones' holster, not that Officer Cox had subdued defendant. In fact, after Officer Jones twisted the gun away from defendant, defendant pushed Officer Cox, Officer Cox landed on top of Officer Jones, and defendant got up and ran away. Clearly, defendant had not been subdued by Officer Cox to the extent that he would have been unable to grab Officer Jones' gun.

Under these circumstances, the evidence was sufficient to indicate that defendant took Officer Jones' firearm without the consent of Officer Jones. Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial on the ground that the verdict was against the great weight of the evidence. *Daoust, supra* at 16-17.

Next, we reject defendant's claim that his convictions for both disarming an officer and resisting arrest violate the prohibition against double jeopardy. The criminalization of resisting arrest and disarming an officer have different aims and protect different interests. The resisting arrest statute is intended to prevent interference with an arrest, while the disarming an officer statute is intended to prevent someone from attempting to and/or gaining access to an officer's firearm, thereby causing injury to the officer. MCL 750.479; MSA 28.747; MCL 750.479b(2); MSA 28.747(2); *People v Chatfield,* 143 Mich App 542, 546; 372 NW2d 611 (1985). The fact that two different interests are protected is an indication that there is no double jeopardy violation. *People v Lugo,* 214 Mich App

699, 708; 542 NW2d 921 (1995). Additionally, the two statutes authorize substantially different levels of punishment and have different elements. The language of the disarming a police officer statute also indicates that the Legislature intended multiple punishments. MCL 750.479(b)(3); MSA 28.747(2)(3). Because it appears that the Legislature intended to create two distinct offenses to protect against different forms of misconduct and to address different dangers, we conclude that defendant's convictions under both statutes do not violate the double jeopardy prohibitions against multiple punishments.

We also reject defendant's claim that the trial court's comment to the jury that "[t]here's really nothing to ask" when responding to the jury's note was prejudicial and requires reversal of his disarming an officer conviction. The trial judge was merely indicating that the jury was responsible for finding the facts and therefore there was nothing further to ask of the trial judge because it was their obligation to find the facts and apply the applicable law. Even if the remark was somewhat prejudicial, any prejudice was cured when, pursuant to defendant's request, the trial judge re-instructed the jury with regard to CJI2d 13.18. After reviewing the instructions in their entirety, it does not appear there was error requiring reversal in this case. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

Finally, we reject defendant's claim that the trial court abused its discretion in sentencing him to five to ten years' imprisonment for disarming an officer. *People v Milbourn*, 435 Mich 630, 654; 461 NW2d 1 (1990). Defendant's five-year minimum sentence is proportionate under the circumstances. This was a very serious offense. Serious injury or death could have resulted. Additionally, defendant had two prior felony drug convictions and was on parole at the time of the instant offense. Indeed, defendant was paroled just three months prior to the instant offense. Under these circumstances, the trial court did not abuse its discretion in sentencing defendant to a minimum term of five years' imprisonment. *Milbourn, supra.*

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joseph B. Sullivan