

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JABARI RASHID ATWATERS,¹

Defendant-Appellant.

UNPUBLISHED

December 20, 2002

No. 240332

Oakland Circuit Court

LC No. 2001-181043-FH

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for uttering and publishing, MCL 750.249; attempted disarming of a peace officer's firearm, MCL 750.92; assaulting an officer and resisting arrest, MCL 750.479a;² and resisting and obstructing arrest, MCL 750.479. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to consecutive terms of 2-1/2 to 15 years' imprisonment on each count. We affirm.

On October 16, 2001, defendant entered a credit union and attempted to cash a check. Ms. Lamprini Hrisanthos, the bank teller who assisted defendant, testified that she attempted to verify the signature on the check and noticed that it did not match the signature of the account holder. Ms. Hrisanthos stated that she was unable to reach the account holder and informed her supervisor of the situation. The supervisor told Ms. Hrisanthos to stall defendant while she called the police. Ms. Hrisanthos testified that when the police officer arrived he came up behind defendant, grasped his biceps, and told him to calmly walk away. The next thing Ms. Hrisanthos remembered was hearing a struggle and the officer screaming at defendant to stop.

Officer Brian McInerney testified that he responded to the scene in full uniform and informed defendant that he was under arrest for trying to cash a fraudulent check. When he tried to place defendant under arrest, Officer McInerney claimed that defendant was uncooperative and broke free from his grasp. A fight ensued and Officer McInerney testified that defendant

¹ We note that the lower court record refers to defendant as Jabari Rashard Atwaters.

² We note that 2002 PA 270, effective May 9, 2002, amended MCL 750.479a and MCL 750.479.

made several attempts to take his gun. A bystander came to Officer McInerney's assistance but defendant continued to struggle.

Officer Michael Moore was en route to the bank when he heard Officer McInerney scream for help over the radio. Upon entering the bank lobby, Officer Moore identified himself as a police officer and told defendant to stop resisting. Officer Moore testified that defendant tried to punch him in the head but missed. Within minutes of his arrival, Officer Moore claimed that he and Officer McInerney were able to get defendant on the ground. However, they were still unable to complete the arrest because defendant refused to put his hands behind his back. The officers were eventually forced to pepper spray defendant. After defendant was subdued and placed under arrest, Officer McInerney went to the hospital and received treatment for sprained and bruised wrists.

The holder of the bank account testified at trial and claimed that she did not know defendant. She further asserted that she never wrote a check to defendant and that the writing on the check differed from her husband's handwriting.

On appeal, defendant claims that he was denied a fair trial because the trial court refused to allow defense counsel to obtain civilian clothing for him. We disagree. Generally, "[a] defendant's *timely* request to wear civilian clothing must be granted." *People v Harris*, 201 Mich App 147, 151; 505 NW2d 889 (1993) (emphasis added); see also *People v Shaw*, 381 Mich 467, 474; 164 NW2d 7 (1969).

The following colloquy occurred between the trial court and defense counsel before voir dire:

Mr. Horenstein: Your Honor, I, for some reason I don't know what I thought that we weren't going to be starting until tomorrow. And I visited my client in the jail yesterday. He informed me he has no clothes. I mean he has his jailhouse blues, because he is in prison at this time.

And I went down to Judge Breck's chambers and Judge Breck was, he wasn't there and his clerk wasn't there. So I couldn't, I couldn't get the clothes Judge Breck has.

Trial Court: We're starting trial, Mr. Horenstein. At this point, you're client will have his blues on. They'll be reversed, so there's no identification in front.

Mr. Horenstein: I just, okay.

Trial Court: The time, I very clearly at the side bar here I'd indicated we'd start at 1:00 o'clock today. You were even contacted this morning and told 1:00 o'clock.

Mr. Horenstein: That's correct, your Honor.

During the trial, a witness identified defendant as wearing a blue jumpsuit with a white undershirt. However, other witnesses later stated that defendant was wearing a gray shirt.

In *People v Lee*, 133 Mich App 299, 300; 349 NW2d 164 (1984), this Court held that due process was denied when the trial court refused to grant a brief continuance to allow the defendant to obtain civilian clothing after he learned that his clothes at the jail were infested with lice. In reaching that decision, the Court noted that “this was not a case in which defendant procrastinated, failed to obtain civilian clothing, and then at trial asked for a continuance to be allowed to secure civilian clothes.” *Id* at 301. Indeed, in *People v Porter*, 117 Mich App 422, 425; 324 NW2d 35 (1982), when the defendant failed to request civilian clothing until the jury voir dire was set to begin, the trial court’s refusal to grant a continuance was upheld.

The facts in the instant case closely resemble those in *Porter, supra*. Defense counsel failed to request civilian clothing for defendant until voir dire was scheduled to begin. See *id.* at 425. The trial court also required that defendant’s clothes be reversed so that no identifying marks could be seen. See *id.* We further note that contrary to defendant’s claim on appeal, there is no indication in the record that civilian clothing was “readily available.” Rather, defense counsel stated that Judge Breck and his clerk were not in the office when he went to inquire about the clothes. On this record, we find no error in the trial court’s decision.

Defendant further alleges that there was insufficient evidence to support his conviction for resisting and obstructing Officer Moore. Essentially, defendant claims that Officer Moore merely assisted in his arrest because he arrived after defendant had already resisted Officer McInerney’s arrest attempts. We disagree. In reviewing a sufficiency of the evidence claim, we view the evidence in the 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 Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

To prove the crime of resisting arrest, the prosecution must establish that: (1) the defendant resisted an officer of the law who was making an arrest; (2) the person defendant resisted was an officer of the law; (3) the defendant knew that the person was an officer of the law; (4) the defendant knew that the officer was making an arrest; (5) the defendant intended to resist the officer; and (6) the arrest the defendant resisted was legal. CJI2d 13.1; see also *People v Julkowski*, 124 Mich App 379, 383; 335 NW2d 47 (1983). The “unit of prosecution” for resisting and obstructing a police officer is each officer resisted. See generally *People v Kretchmer*, 404 Mich 59, 64; 272 NW2d 558 (1978) (purpose of the resisting arrest statute is to protect officers from harm); *People v Wakeford*, 418 Mich 95, 112; 341 NW2d 68 (1983).

Defendant’s argument in this case is premised on the assumption that Officer McInerney had defendant on the ground before Officer Moore’s arrival and that Officer Moore merely assisted in effectuating the arrest. To support this argument, defendant cites *People v Dean*, unpublished opinion of the Court of Appeals, issued February 14, 1997 (Docket No. 187056).³ In *Dean*, this Court concluded that the defendant’s convictions for resisting and obstructing

³ We note that unpublished opinions of the Court of Appeals are not binding authority under the doctrine of stare decisis. MCR 7.215(C)(1).

arrest of two officers was not supported by the evidence because the officers responded to the scene after the defendant had already resisted and obstructed other officers.

The facts in the instant case differ from *Dean* because both officers were directly faced with defendant's resistance to arrest. The evidence is clear that defendant initially resisted Officer McInerney's attempts to arrest him by fighting and trying to escape. However, there is also evidence that defendant actively resisted Officer Moore. Indeed, Officer Moore testified that defendant tried to hit him when he arrived at the scene and identified himself as a police officer. Officer Moore further claimed that after defendant attempted to strike him, both he and Officer McInerney forced defendant to the ground. Officer McInerney acknowledged that defendant continued to fight after Officer Moore arrived and that both officers helped get defendant to the ground. Viewing the evidence in the light most favorable to the prosecution, we find that sufficient evidence existed for the jury to conclude that defendant resisted both officers.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder

/s/ Jessica R. Cooper