

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER RYAN HULL,

Defendant-Appellant.

UNPUBLISHED

December 13, 2011

No. 300576

Van Buren Circuit Court

LC No. 10-016969-FH

Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions for two counts of assaulting, resisting, or obstructing a police officer, MCL 750.81(d)(1); two counts of assault and battery, MCL 750.81; and possession of a controlled substance, MCL 333.74032(d). We affirm.

Defendant was involved in a fight at a bar, and Officer Wildey arrested him for assaulting two bar employees. Wildey handcuffed defendant and placed him in a patrol car. Defendant then began screaming and kicking the inside of the car, despite being told to stop. Wildey then drove defendant to the police department, where Officer Ledger assisted Wildey. Defendant continually ignored the officers' orders to exit the patrol car, requiring Wildey to forcibly remove him. Wildey testified that at this point defendant went limp and pretended to be unconscious. Defense counsel objected to Wildey's testimony on the basis of speculation, but the trial court overruled the objection.

After defendant's body went limp, Wildey administered a sternum rub to defendant, which involves quickly rubbing one's knuckles against another's sternum, in order to verify whether defendant was actually unconscious. Defendant's body moved in response to the sternum rub, indicating that he was not really unconscious. Still, defendant refused to stand up, so Wildey dragged him into the booking room. Once inside the booking room, defendant spit in Wildey's face, bit Ledger's hand, resisted the officers' attempts to adjust his handcuffs, and began screaming and struggling with the officers.

Defendant first argues that he was denied a fair trial because the trial court allowed Wildey to testify without being qualified as an expert that defendant was not really unconscious, and this testimony was unfairly prejudicial. We disagree. Defendant did not preserve the issue for appeal because his trial objection did not specify the same grounds as those he asserts on appeal. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). This Court reviews

defendant's unpreserved claim that he was denied a fair trial for plain error affecting defendant's substantial rights. *People v Conley*, 270 Mich App 301, 305; 715 NW2d 377 (2006). Under the plain error rule, defendant must show that an obvious error occurred and "that the error affected the outcome of the lower court proceedings." *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

"If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." MRE 701. In this case, Wildey testified as a lay witness. Thus, the critical inquiry is whether Wildey's testimony regarding defendant's state of consciousness was appropriate for a lay witness to give. "Any witness is qualified to testify as to his or her physical observations and opinions formed as a result of them." *Lamson v Martin (After Remand)*, 216 Mich App 452, 459; 549 NW2d 878 (1996). In general, a lay witness may testify in the form of an opinion to something he knows based on his observations, provided the testimony is not dependent on scientific, technical, or other specialized knowledge. See *People v Oliver*, 170 Mich App 38, 50; 427 NW2d 898 (1988), and *Howard v Feld*, 100 Mich App 271, 273; 298 NW2d 722 (1980).

In this case, Wildey's testimony that defendant was faking his unconsciousness was based on Wildey's knowledge regarding unconscious people and his observations of defendant. Specifically, Wildey testified that he observed that defendant kept moving his body to get more comfortable and that he reacted when Wildey administered the sternum rub. Wildey did not testify to specialized matters beyond the scope of lay knowledge or base his testimony on overly scientific or technical knowledge. *Oliver*, 170 Mich App at 50; *Howard*, 100 Mich App at 273. Rather, Wildey's opinion testimony pertained to something properly within his personal knowledge and was rationally based on his perception of defendant. *Oliver*, 170 Mich App at 50. Accordingly, Wildey's testimony was within the proper realm for a lay witness. See *People v McLaughlin*, 258 Mich App 635, 658; 672 NW2d 860 (2003) (finding testimony regarding lay opinions proper where the opinions did not involve highly specialized knowledge and were largely based on common sense).

Moreover, Wildey's testimony that defendant pretended to be unconsciousness was "helpful to a clear understanding" of his testimony and the determination of a fact in issue. MRE 701. Wildey's testimony regarding defendant's body going limp explained why Wildey had to drag defendant into the booking room and was helpful to a clear understanding of the facts of the case. *Id.*; *Oliver*, 170 Mich App at 50.

Wildey's testimony was also not unfairly prejudicial. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice" MRE 403. "All evidence offered by the parties is 'prejudicial' to some extent, but . . . [i]t is only when the probative value is *substantially outweighed* by the danger of unfair prejudice that evidence is excluded." *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995) (emphasis in the original). "Unfair prejudice may exist where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence." *People v Blackston*, 481 Mich 451, 460; 751 NW2d 408 (2008). Wildey's testimony regarding defendant's state of consciousness was probative to

whether defendant knowingly resisted and obstructed a police officer. If any minimal unfair prejudice existed, it was cured by the trial court's instructions to the jury regarding its fact-finding prerogatives and its duty to evaluate the police officers' testimony by the same standards applicable to any other witness. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Because Wildey's testimony was properly admitted and the trial court's instructions cured any unfair prejudice, defendant has not established that plain error affected his substantial rights. *Carines*, 460 Mich at 763.

In reaching our conclusion, we note that even if the trial court had excluded Wildey's testimony regarding defendant's state of consciousness, the prosecution also presented evidence that defendant was deliberately combative and uncooperative before and after his period of alleged unconsciousness. Defendant was clearly conscious at the time of his arrest as he was yelling, thrashing about, and kicking the inside of the patrol car. Moreover, defendant was clearly conscious after being dragged into the booking room at the police department. Once inside the booking room, defendant spit in Wildey's face, bit Ledger's hand, screamed at the officers, failed to follow their directives, and resisted their attempts to adjust his handcuffs. This conduct clearly falls within the ambit of resisting, obstructing, or assaulting a police officer. MCL 750.81(d)(1); *People v Nichols*, 262 Mich App 408, 411-413; 686 NW2d 502 (2004) (finding there was sufficient evidence to support the charge of resisting arrest where defendant ignored the officers' directives, bit the officers, screamed at the officers, and resisted being handcuffed). Moreover, the fact that Wildey was dressed in full uniform and drove a fully marked police car was evidence that defendant knew or had reason to know that the individuals he resisted and obstructed were police officers performing their duties. MCL 750.81(d)(1); *Nichols*, 262 Mich App at 413. Accordingly, any error in admitting Wildey's testimony regarding defendant's state of consciousness was harmless in light of the significant unchallenged evidence. MCL 769.26; MCR 2.613(A); *Blackston*, 481 Mich at 473.

Defendant next argues that he was denied a fair trial because the trial court allowed Wildey to testify that the police department determined that his use of force on defendant was appropriate. Defendant argues this testimony was inadmissible on the basis of hearsay, unfair prejudice, and lack of relevance. We disagree. At trial, the prosecutor began inquiring into the amount of force Wildey used on defendant, but then stopped that the line of questioning defense counsel objected.

Q. At some point in time you testified that you had to use some force with [defendant]?

A. Yes

Q. Does your department ever do determinations whether or not your force is appropriate?

A. Yes

Q. Was that done in this case?

A. Yes, it was.

[Defense counsel]: Objection, your Honor, relevance, your Honor.

* * *

[Prosecutor]: That's fine. I'll withdraw the questions.

Consequently, defendant's claim lacks merit because Wildey never testified what the department determined regarding the force he used on defendant because the prosecutor withdrew his questions before Wildey had an opportunity to provide such testimony.

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello