

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NIJAD GEORGES MEHANNA,

Defendant-Appellant.

UNPUBLISHED

May 14, 2020

No. 347209

Macomb Circuit Court

LC No. 2016-003329-FH

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Before: K. F. KELLY, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial conviction of assault and battery, MCL 750.81.<sup>1</sup> The trial court sentenced defendant to 45 days in jail. We affirm.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

Defendant, a criminal defense attorney, had an altercation with a police officer in a Roseville courtroom on March 16, 2016. The prosecution presented evidence that as defendant was walking from a judge’s chambers, Deputy Chief Mitchell Berlin told defendant to “keep walking you little b\*\*ch.” Subsequently, as Deputy Berlin was standing in the doorway to the courtroom, defendant bumped him and, after asking if Deputy Berlin called him a “b\*\*ch,” shoved the deputy. According to Deputy Berlin, after he told defendant that he was under arrest, defendant punched him. A court officer intervened, but defendant continued “swinging.” Defendant was ultimately restrained while on the ground.

In contrast, defendant testified that as he was attempting to pass Deputy Berlin in the doorway, Deputy Berlin pushed his stomach out and made contact with defendant before grabbing defendant’s collar. Defendant admitted to punching Deputy Berlin, but claimed that he acted in self-defense after Deputy Berlin initiated physical contact. Defendant further denied hearing that

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<sup>1</sup> The jury also convicted defendant of assaulting, resisting or obstructing a police officer (resisting arrest), MCL 750.81d(1), but the trial court granted defendant’s posttrial motion for a new trial on that charge.

he was under arrest or resisting arrest. Defense counsel argued that Deputy Berlin was not acting as a police officer in the lawful performance of his duties when he assaulted defendant.

The jury convicted defendant of assault and battery and resisting arrest. Defendant filed posttrial motions to vacate his assault and battery conviction on double-jeopardy grounds and for a judgment of acquittal or a new trial on the resisting arrest charge. The trial court denied defendant's motion to vacate the assault and battery conviction. It also declined to grant defendant a judgment of acquittal on the resisting arrest charge, but granted his motion for a new trial on that charge because of an instructional error. The trial court granted the prosecution's motion to stay a retrial of the resisting or obstructing charge pending this appeal.

## II. DOUBLE JEOPARDY

Defendant argues that he is entitled to have his assault and battery conviction vacated because his dual convictions and sentences for assault and battery and resisting arrest violate the double-jeopardy protection against multiple punishments for the same offense. We disagree. "A double jeopardy challenge presents a question of constitutional law reviewed de novo on appeal." *People v Ackah-Essien*, 311 Mich App 13, 30; 874 NW2d 172 (2015).

The United States and Michigan Constitutions both protect against double jeopardy, which includes protection against multiple punishments for the same offense. US Const, Am V; Const 1963, art 1, § 15. The validity of multiple punishments is generally determined under the "same-elements test," which requires a reviewing court to examine multiple offenses to determine "whether each provision requires proof of a fact which the other does not." *People v Smith*, 478 Mich 292, 305, 315-316; 733 NW2d 351 (2007) (citation omitted). If the Legislature has clearly intended to impose multiple punishments, the imposition of multiple sentences is permissible regardless of whether the offenses have the same elements, but if the Legislature has not clearly expressed its intent, multiple offenses may be punished if each offense has an element that the other does not. *Id.* at 316.

We note that, currently, defendant does not stand convicted of multiple offenses; his argument is therefore somewhat hypothetical regarding the relief this Court could grant to him, even if we found error in his original convictions. In any event, we conclude that no double jeopardy violation occurred. Regardless of whether the two charged offenses share the same elements and regardless of the intent expressed in MCL 750.81(1), there would be no double-jeopardy violation arising from defendant's convictions of both assault and battery and resisting arrest because the two offenses are not based on the same conduct. "There is no violation of double jeopardy protections if one crime is complete before the other takes place, even if the offenses share common elements or one constitutes a lesser offense of the other." *People v Lugo*, 214 Mich App 699, 708; 542 NW2d 921 (1995). In this case, the charges of assault and battery and resisting arrest were based on different conduct. It was the prosecution's theory at trial that defendant first committed an assault and battery against Deputy Berlin by shoving him, and then resisted arrest when Deputy Berlin attempted to arrest defendant for that assault. During closing arguments, the prosecution stated:

He assaulted Detective Berlin and for the, all the witnesses that came in and testified, and then he chose to continue to resist the arrest for that assault afterwards.

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The second offense is the assault and battery. And the way that I've explained it to you is, oh, he commits the assault and then he resists; it'd make more sense to switch them around. Unfortunately we don't always think about those things when we're, when we're charging them. So, the, the second offense is the assault and battery.<sup>[2]</sup>

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The, the evidence, you know, plainly establishes, and I'm asking you to find that the evidence plainly establishes that, that the Defendant assaulted Detective Berlin. And then when he had to face the consequences of that by getting arrested, he chose to arrest [sic] and fight more.

Because the two offenses were based on different conduct, and it was the prosecution's theory that the assault was complete before defendant resisted arrest, defendant properly could be convicted of both offenses without violating the double-jeopardy protection against multiple punishments for the same offense.<sup>3</sup>

### III. SUFFICIENCY OF THE EVIDENCE

Defendant also argues that the trial court erred by denying his motion for a judgment of acquittal on the charge of resisting arrest, because the evidence offered at trial was insufficient to support a conviction for that offense. We disagree. We review de novo a challenge to the sufficiency of the evidence. *People v Bailey*, 310 Mich App 703, 713; 873 NW2d 855 (2015).

When determining whether sufficient evidence was presented at trial to support a conviction, we must view the evidence in a light most favorable to the prosecution and determine whether a rational tier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). We are required to draw all reasonable inferences in support of the jury's verdict. See *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Additionally, when evaluating the sufficiency of evidence, we are required to resolve all conflicts in the evidence in favor of the prosecution. *People v Lockett*, 295 Mich App 165, 180; 814 NW2d 295 (2012). In reviewing the sufficiency of the evidence, we will not interfere with the role of the jury in determining "the weight of the

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<sup>2</sup> The prosecution's statement refers to the fact that the information listed the resisting arrest charge as Count I and the assault and battery charge as Count II, when, chronologically, the assault and battery occurred first.

<sup>3</sup> We note that even if both offenses were based on the same conduct, this Court has held that convictions of resisting arrest and assault do not violate the double-jeopardy protection against multiple punishments in light of different interests protected by the underlying statutes; the resisting arrest statute is intended to prevent interference with an arrest, while the assault statutes are intended to punish crimes against persons. *Lugo*, 214 Mich App at 708.

evidence or the credibility of witnesses.” *People v Eisen*, 292 Mich App 326, 331; 820 NW2d 229 (2012). “If the evidence presented by the prosecution in the light most favorable to the prosecution, up to the time the motion is made, is insufficient to justify a reasonable trier of fact to find guilt beyond a reasonable doubt, a directed verdict or judgment of acquittal must be entered.” See *People v Lemmon*, 456 Mich 625, 634; 576 NW2d 129 (1998).

Viewed in a light most favorable to the prosecution, the evidence offered at trial permitted a rational jury to conclude that Deputy Berlin, a police officer in uniform, told defendant he was under arrest after defendant assaulted him, that defendant responded by punching Deputy Berlin and then actively resisted the arrest, and that Deputy Berlin was acting within the scope of his duties when he arrested defendant. Therefore, the evidence was sufficient for a jury to find that defendant committed the crime of resisting arrest. Defendant’s arguments to the contrary are based on the premise that Deputy Berlin’s testimony was less credible than was defendant’s testimony. These arguments relate to the weight of the evidence rather than its sufficiency, and we decline to “reweigh the credibility of witnesses.” *Eisen*, 296 Mich App at 331. Defense counsel explored credibility issues with Deputy Berlin’s testimony and argued that defendant did not hear Deputy Berlin state that he was under arrest during the altercation, and thus could not have resisted arrest. The jury was free to believe or disbelieve all or any portion of Deputy Berlin’s and defendant’s testimony. *Id.*, see also *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008). Resolving conflicts in the evidence in favor of the prosecution, *Lockett*, 295 Mich App at 180, and drawing reasonable inferences in support of the verdict, *Nowack*, 462 Mich at 400, the prosecution presented sufficient evidence to enable the jury to find beyond a reasonable doubt that defendant resisted or obstructed Deputy Berlin in the lawful performance of his duties. Therefore, the trial court did not err by denying defendant’s motion for a judgment of acquittal with respect to the resisting arrest charge.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello  
/s/ Mark T. Boonstra