STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY CHESTER BASTION,

Defendant-Appellant.

UNPUBLISHED
April 29, 2021

No. 351728
Ottawa Circuit Court
LC No. 18-042539-FH

Before: BECKERING, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

A jury convicted defendant, Wesley Chester Bastion, of resisting and obstructing in violation of MCL 750.81d(1), associated with his response when sheriff deputies sought to execute an arrest warrant. The trial court sentenced him to 60 days in jail. Defendant argues on appeal that the trial court erred by excluding evidence relevant to his defense and, in so doing, violated his constitutional right to a fair trial. We agree.

I. RELEVANT FACTS

On December 14, 2016, defendant was arrested after marijuana plants were found in his home. He was charged with three counts of possession of marijuana with intent to deliver. According to the record before us, defendant had no prior criminal history. The case languished for 16 months and on April 4, 2018, the prosecution was granted dismissal by *nolle prosequi*. Through e-mail, defense counsel and the prosecution reached an agreement that if the prosecutor's office reinstated the charges, defendant would be advised and permitted to self-surrender. The prosecutor's e-mail states this unequivocally: "*As agreed, I will let you know when those* [*charges*] *are authorized and sworn too* [sic] *so that your client can turn himself in.*" (Emphasis added).

The record does not indicate when the charges were reinstated, but it is undisputed that the prosecution, contrary to its written agreement, did not notify defense counsel in order to arrange for defendant's self-surrender. Instead, on September 5, 2018—nearly three years after his initial arrest and more than five months after the *nolle prosequi*—a bench warrant was issued for defendant's arrest.

Ottawa County Sheriff's Deputy Gregory Walski testified that at around 8:30 p.m. on September 5, 2018, he was dispatched to pick up defendant on an arrest warrant[1]. After confirming that he had the right house, ensuring on his computer system that the arrest warrant was "confirmed and valid," and viewing a photo of defendant on his computer system, Walski parked his vehicle out of sight[2] and approached defendant's front door in full uniform. He saw defendant through the glass-front storm door, standing on an interior staircase near the small foyer landing. After verbally confirming defendant's identity, Walski instructed him to come outside. Defendant asked why, and Walski said that he wanted to talk to him. Defendant would not come out, so Walski explained why he was there, "Mr. Bastion, Wesley, you have a felony arrest warrant, you are under arrest and I need you to come outside." Almost simultaneously with this statement, defendant leaned over and flicked the door handle, which Walski surmised was him locking the door. Defendant proceeded to ask questions about the warrant while talking to his wife, Andrea Bastion, and calling his attorney. Walski repeatedly informed defendant that he was under arrest because of a warrant and instructed him to come outside.

Defendant testified that he and his family had just gotten back from hockey practice, finished dinner, and were getting the kids ready for bed when there was a knock at the door, on a weeknight, after dark. Defendant went to the door, where he saw Walski standing off the stoop. Defendant asked Walski what he was there for, and Walski informed him he was there to serve a warrant for defendant's arrest. Defendant asked if he could see the warrant, but Walski responded that he didn't have one. Defendant asked Walski what the warrant was for, and Walski responded that he didn't know. Defendant testified that he was pleasant and told Walski that he thought it was a mistake, so he wanted to get some information from his lawyer first. Walski agreed that defendant advised him that he had a lawyer and had concerns about an arrest warrant. He agreed that defendant remained within his sight at least 90% of the time and did not attempt to flee or threaten him. He also agreed that defendant, and also possibly Andrea, asked for a paper copy of the warrant, but Walski did not have one; his information was limited to what was on his patrol car's computer screen.

Andrea testified that she was suspicious because Walski did not know the reason for issuance of an arrest warrant. Because she believed there was some mistake, she called their attorney. Defendant's counsel admitted into evidence phone records to establish that Andrea had called their attorney.[3]

---

[1] The arrest warrant was admitted into evidence and produced to the jury. The parties stipulated that the charges underlying the arrest warrant should be stricken from the document as irrelevant. Defense counsel confirmed that he expressly agreed with this stipulation.

[2] Officer Walski testified that parking the patrol vehicle out of sight minimizes the risk that the subject of the arrest warrant will see the officer coming and shut the blinds and lock the house. The goal is to encourage the individual to engage with the officer at the doorstep and exit the house without resistance, making effectuation of an arrest warrant easier.

[3] Andrea testified that the phone records show she called their attorney at 8:31 p.m., but he did not answer his phone. At 8:41 p.m., their attorney called back. Andrea was on the phone with their

Walski testified that the felony arrest warrant authorized him to enter defendant's house without permission in order to apprehend defendant. But because defendant had locked the door, Walski proceeded to issue verbal instructions for defendant to come outside. Defendant continued to refuse, at which point Walski stated, "Look, Mr. Bastion, you realize that I'm doing my job, here to do my job," and defendant responded, "Yes." Walski stated, "And that, you're affecting – you're obstructing my ability to do my job by not coming outside right now," and again, defendant said "Yes." Defendant and Andrea proceeded to walk up and down the stairs near the foyer and confer, drawing their two children's attention as well. Walski notified dispatch of defendant's refusal to exit the home and called his supervisor. Walski's supervisor instructed him to call a couple of patrol cars for back up and enter the home to make the arrest.

Two Ottawa County Sheriff's officers proceeded toward defendant's home to serve as backup for Walski. Officer Maber Nasif was the first to arrive. He was in uniform. Walski estimated that Nasif arrived 10 minutes after Walski had arrived on the scene. Upon Nasif's arrival, Walski advised defendant, "Hey, we're going to – we're going to – we're going to break this door down. We're just waiting for Colson to show up."

Nasif testified that he stood three feet from the front door, where he observed Walski tell defendant and Andrea to come outside at least three times, explaining and trying to persuade defendant to comply with the warrant process. Nasif also asked defendant to come out of the home to "take care of the warrant," but defendant would not come out.

Defendant and Andrea both testified that they informed the deputies that defendant was not refusing or resisting arrest, they were just trying to "figure out what was going on" and to clear things up with their lawyer. Defendant claimed at trial that he initially was not certain Walski was an officer because he could not see him clearly in the dark. Andrea testified similarly. Defendant said his suspicions were aroused when Walski did not have a paper copy of the arrest warrant and could not answer basic questions, such as the date of the warrant and the nature of the charges against him. But defendant admitted, "Once Nasif arrived and we saw a marked car, we knew they were police officers for sure."

Andrea testified that she had defendant's attorney on the phone and asked Walski to speak with him. Walski testified that when Andrea opened the storm door to hand the deputy her cell phone, he yanked the door open and attempted to get past her to defendant. According to Walski and Nasif, Andrea used her body to physically obstruct their entry to the house, but the deputies were eventually able to get her outside. While this was happening, Walski observed defendant approach the wooden front door, "slam" it shut, and apparently lock it because Walski tried to open it but was unable to do so.[4] According to Walski, only seconds passed from the time defendant slammed the front door shut and when he opened it again, as Walski had turned to assist

---

attorney for nine minutes. The phone call ended after Andrea was pulled out of the home and her phone fell on the ground.

[4] Defendant admitted that he did shut the door. He at first stated that he did not remember if he had locked the door, then responded, "Probably, but only briefly."

Nasif, who was entangled with Andrea while trying to place her in handcuffs. According to defendant, he closed the door because the family's 55-pound dog became agitated over the deputies' treatment of Andrea, and defendant wanted to crate him.[5] Defendant testified that once he realized the situation was not going to be resolved peaceably, he opened the door and surrendered. Walski recalled the entire interaction—from the time he arrived on scene to the point defendant was in custody—lasting around 22 minutes.

Defendant pleaded guilty to the marijuana charge, but the prosecution charged him with resisting and obstructing on the basis of the conduct described above. Prior to defendant's trial for resisting and obstructing, the prosecution filed two motions[6] in limine seeking to preclude as irrelevant any evidence associated with the procedural steps leading up to the issuance of the warrant, including the agreement between defendant's attorney and the prosecutor reflected in the e-mail exchange quoted above, indicating that if the prosecutor refiled the marijuana charge, he would notify defense counsel and allow defendant to surrender himself. The prosecutor argued that the self-surrender agreement was irrelevant to the resisting and obstructing offense essentially because the elements of the offense do not require proof as to the reason why defendant chose to obstruct, he just has to knowingly obstruct a police officer in the performance of his duties. Defendant opposed the motion, claiming that the evidence went to his state of mind and whether he knowingly failed to obey a lawful command. The trial court granted the motions, prohibiting defendant from explaining or illustrating with evidence why he was attempting to consult with his lawyer and why he thought the warrant was a mistake.

II. DISCUSSION

On appeal, defendant contends that the trial court's ruling prohibiting him from admitting evidence and testimony about the circumstances of his prior arrest on the marijuana charges, dismissal of that case, and the agreement between the prosecutor and defendant's attorney that defendant could self-surrender should the prosecutor decide to refile the charges, violated his constitutional right to a fair trial by depriving him of his defense that he did not obstruct the officers in violation of MCL 750.81(d) because he did not knowingly fail to obey a lawful command. We agree.

This Court reviews a trial court's evidentiary ruling for an abuse of discretion. *People v Holtzman*, 234 Mich App 166, 190; 593 NW2d 617 (1999). The trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "Few rights are more fundamental than that of an accused to present evidence in his . . . own defense." *People v Unger* (*On Remand*), 278 Mich App 210, 249; 749 NW2d 272 (2008). However, the right is not unlimited; a defense "must still comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *People v King*, 297 Mich App

[5] Walski testified that he did not remember the presence of any dog at the incident.

[6] The prosecution filed a motion in limine, followed by a motion for clarification as to the extent of the trial court's order prohibiting evidence relating to the marijuana case and a self-surrender agreement between defendant's attorney and the prosecutor.

465, 473, 474; 824 NW2d 258 (2012). To the extent this issue implicates the right to present a defense, our review is de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

Relevant evidence is generally admissible. See MRE 402. "Relevant evidence has two characteristics: it is material and has probative force." *People v Starr*, 457 Mich 490, 497; 577 NW2d 673 (1998) (quotation marks and citations omitted). To be material, evidence does not need to relate to an element of the charged crime or an applicable defense. *People v Brooks*, 453 Mich 511, 518; 557 NW2d 106 (1996). Rather, the "relationship of the elements of the charge, the theories of admissibility, and the defenses asserted governs what is relevant and material." *People v Yost*, 278 Mich App 341, 403; 749 NW2d 753 (2008) (citation and quotations omitted).

To establish the crime of resisting or obstructing a police officer under MCL 750.81d(1), the prosecutor must prove that: "(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties[,]" and (3) "that the officers' actions were lawful." *People v Quinn*, 305 Mich App 484, 491-492; 853 NW2d 383 (2014) (internal quotation marks and citations omitted). Notably, ML 750.81d(7)(a) defines "[o]bstruct" as "the use or threatened use of physical interference or force *or a knowing failure to comply with a lawful command*." (Emphasis added).

Defendant's proffered defense was that the officers were making a mistake in arresting him, and that he took time to figure out "what was going on" before he surrendered to the police. Thus, his defense was that he was not resisting the arrest, but was taking a brief amount of time to clarify whether the officers were making a mistake—to determine whether their arrest warrant was lawful. Defendant wished to offer evidence of the circumstances giving rise to his belief that the arrest was a mistake and of the need to therefore clarify the status of his arrest with his attorney. Thus, the evidence excluded by the trial court provided the context for defendant's actions and was directly related to defendant's proffered defense.

The fact that the prosecution made a promise in writing and then broke it by sending a police officer to defendant's home to arrest him without notifying defendant's counsel that charges had been reinstated or giving defendant the agreed-upon opportunity to surrender himself, while perhaps not directly relevant to the elements of resisting and obstructing, was highly relevant to defendant's conduct resulting in the charges. See *Yost*, 278 Mich App at 403. It was also probative to the extent that it speaks to whether defendant was knowingly resisting a lawful command. Thus, the evidence was relevant because it was material and probative, see *Brooks*, 453 Mich at 518, and the trial court abused its discretion by excluding it. In so doing, the court also violated defendant's right to a fair trial.

Defendant is entitled to a new trial, with admission of the evidence concerning the prosecution's agreement to permit self-surrender and to give notice when the charges were reinstated. To be clear, today's decision does not condone resisting lawful commands by a police officer executing a valid arrest warrant until one has a chance to confer with his or her lawyer and satisfy him- or herself that the warrant is indeed valid and the arrest lawful. Moreover, even after admission of the evidence at issue, a jury could still find defendant guilty of resisting and

obstructing. However, fundamental fairness demands that the jury should be presented with the whole story before making that decision.

Vacated and remanded. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Douglas B. Shapiro

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY CHESTER BASTION,

Defendant-Appellant.

UNPUBLISHED
April 29, 2021

No. 351728
Ottawa Circuit Court
LC No. 18-042539-FH

Before: BECKERING, P.J., and SAWYER and SHAPIRO, JJ.

SHAPIRO, J. (*concurring*).

I concur fully in the majority opinion. I write only to respond to the dissent's suggestion that the ruling in this case defines "a right to resist an arrest when the defendant is unsure whether it is lawful or not." The dissent reads the majority far too broadly. This case was not simply a issue of someone questioning whether their arrest was lawful. Rather, it arises out of the prosecution's breach of a written agreement that defendant would not be arrested, but would instead be permitted to surrender himself and that the prosecution would notify his counsel when the dismissed marijuana charge was refiled so that the necessary arrangements could be made. This is not a typical situation and our opinion does not create the right that the dissent suggests, nor does it "encourag[e] resistance." We reverse because it is inconsistent with fundamental justice to bar defendant from introducing evidence of the prosecution's promise and breach that directly gave rise to the incident.

/s/ Douglas B. Shapiro

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY CHESTER BASTION,

Defendant-Appellant.

UNPUBLISHED
April 29, 2021

No. 351728
Ottawa Circuit Court
LC No. 18-042539-FH

Before: BECKERING, P.J., and SAWYER and SHAPIRO, JJ.

SAWYER, J. (*dissenting*).

I respectfully dissent.

The police arrived at defendant's residence after a warrant was issued for defendant's arrest for marijuana charges. The police informed defendant that he was required to come outside and submit himself for arrest. Defendant failed to comply, indicating that the officers might be mistaken and that he had to clear things up with his lawyer. An officer agreed to speak with defendant's attorney on the phone, but, when defendant's wife extended her arm from behind a locked door with the phone, the officer pulled the door open. Defendant's wife was pulled away from the door and an officer moved past her toward defendant, but he shut and locked the door. As the officers struggled with defendant's wife, defendant encouraged his wife to comply with the officers' orders and he surrendered himself.

Defendant argues that the trial court erred and denied him a fair trial by holding that evidence indicating that he was expecting to turn himself in was irrelevant. Specifically, the trial court granted plaintiff's motion to exclude evidence that the prosecutor had told defendant's attorney that he would be permitted to turn himself in if the prosecutor refiled charges against defendant. Generally, a trial court's decision on an evidentiary issue will be reversed on appeal only when there has been a clear abuse of discretion. *People v Holtzman*, 234 Mich App 166, 190; 593 NW2d 617 (1999). The trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). To the extent this issue implicates the right to present a defense, this Court

reviews "the constitutional question whether a defendant was denied [their] constitutional right to present a defense" de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

The prosecutor had e-mailed defendant's attorney to inform him that he would be refiling possession with intent to distribute marijuana charges against defendant, and, as agreed, that he would inform defendant's attorney when the charges were authorized so as to allow defendant to turn himself in. Plaintiff moved to exclude mention of any facts relating to defendant's marijuana possession case during his trial for resisting and obstructing a police officer, asserting that it was irrelevant and would be confusing to the jury. Plaintiff wanted to exclude any mention of plea negotiations, conversations with the prosecutor, and police reports regarding the marijuana case. The trial court granted plaintiff's motion, reasoning that defendant's understanding that he would be surrendering himself was not relevant to whether he knowingly failed to comply with a lawful command.

"Generally, all relevant evidence is admissible at trial." *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001); See also MRE 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. "Under this broad definition," evidence that is useful in shedding light on any material point is admissible. *Aldrich*, 246 Mich App at 114. To be material, evidence does not need to relate to an element of the charged crime or an applicable defense. *People v Brooks*, 453 Mich 511, 518; 557 NW2d 106 (1996). Rather, the "relationship of the elements of the charge, the theories of admissibility, and the defenses asserted governs what is relevant and material." *People v Yost*, 278 Mich App 341, 403; 749 NW2d 753 (2008) (citation and quotations omitted).

To prove the crime of resisting or obstructing a police officer under MCL 750.81d(1), the prosecutor must establish that "(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties" and (3) "the officers' actions were lawful." *People v Quinn*, 305 Mich App 484, 491-492; 853 NW2d 383 (2014) (quotation marks and citations omitted). The legality of the officers' actions is "an actual element of the crime of resisting or obstructing a police officer under MCL 750.81d." *People v White*, 498 Mich 935, 936 n 1; 871 NW2d 716 (2015).

Defendant's proffered defense was that the officers were making a mistake in arresting him, and that he was taking time to figure out "what was going on" before he surrendered to the police. But defendant does not dispute that the police were lawfully performing their duties when they asked him to surrender himself in light of the arrest warrant. That defendant thought that the officers might have been mistaken is not relevant to whether he obstructed the officers. The resisting and obstructing statute defines "obstruct" as "the use or threatened use of physical interference or force *or a knowing failure to comply with a lawful command*." MCL 750.81d(7)(a) (emphasis added). Defendant argues that his belief that the officers may have been mistaken was relevant to whether he "knowingly" failed to comply with the officers' directions. But defendant does not dispute that the officers were acting legally, and the specific reason for not complying is not relevant to whether he knew that he was failing to comply with the lawful order to surrender. In other words, the evidence may have explained defendant's actions, but it would not have helped

the jury determine whether he knew that he was failing to comply with the directions of the officers. The officers, whom defendant recognized as officers attempting to execute an arrest warrant, ordered defendant to present himself for arrest. The reasons for not complying and shutting the door on the officers could not refute the fact that defendant knew he was not complying with the orders of the police, which were lawful. Because defendant knew the police were performing their duties by enforcing a valid arrest warrant, and knew that the officers were police, his delay could not be justified by his belief, valid or not, that he was not supposed to be taken in and would instead surrender himself. Thus, the trial court's decision to exclude the evidence was within the range of reasonable and principled outcomes and did not constitute an abuse of discretion.

Defendant also argues that the trial court denied him a fair trial because he was not allowed to present the defense that he was justified in his delay in complying with the officers' orders. The United States Constitution provides criminal defendants with the right "to present a complete defense." US Const, Ams VI, XIV; *People v King*, 297 Mich App 465, 473; 824 NW2d 258 (2012), citing *Crane v Kentucky*, 476 US 683, 690; 106 S Ct 2142; 90 L Ed 2d 636 (1986). "Few rights are more fundamental than that of an accused to present evidence in his . . . own defense," *People v Unger* (*On Remand*), 278 Mich App 210, 249; 749 NW2d 272 (2008); however, the right is "not unlimited and is subject to reasonable restrictions." *King*, 297 Mich App at 473-474. A defense "must still comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id*. at 474 (citations and quotation marks omitted). The right to present a defense is limited "only to relevant and admissible evidence." *People v Solloway*, 316 Mich App 174, 198; 891 NW2d 255 (2016).

That defendant thought the officers were making a mistake and that he wished to clarify whether he was required to comply was not a valid defense to his crime. His understanding of his attorney's communication with the prosecutor regarding the status of his arrest on a warrant for marijuana-related charges was not relevant to whether he obstructed the police. Thus, the trial court did not deny defendant an opportunity to present a defense by excluding evidence of the agreement from the trial. Moreover, defendant did present evidence that he did not comply with the officer's orders because he thought that the officers were mistakenly arresting him, and he also presented evidence that he did not refuse the officers' direction to present himself for arrest, but merely delayed doing so to clarify his confusion. Thus, regardless of the evidentiary ruling, defendant was not precluded from presenting the defense.

The majority asserts that the prosecution's broken promise of allowing defendant to self-surrender was "probative to the extent that it speaks to whether defendant was knowingly resisting a lawful command." *Ante*, slip op at 5. I fail to see how denying a defendant the opportunity to self-surrender, even if promised, renders an arrest pursuant to an arrest warrant unlawful. It may reflect poorly on the prosecutor and, depending on the circumstances, even perhaps give rise to some sort of remedy. But it does not render the arrest unlawful and give a defendant the right to resist an otherwise lawful arrest. The majority asserts that "today's decision does not condone resisting lawful commands by a police officer executing a valid arrest warrant until one has a chance to confer with his or her lawyer and satisfy him- or herself that the warrant is indeed valid and the arrest lawful." *Id.* Yet that is exactly what the majority's opinion does. Our Supreme Court in *People v Moreno*, 491 Mich 38; 814 NW2d 624 (2012), recognized that a person may resist an unlawful arrest. But the majority's decision now extends that principle to include a right

to resist an arrest when the defendant is unsure whether it is lawful or not. I see nothing good coming from a position of encouraging resistance to a lawful arrest rather than expecting a person to submit to a lawful arrest and deal with ancillary issues at a later time.

I would affirm.

/s/ David H. Sawyer