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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 16, 2026 10:31 AM
v	No. 368962 Wayne Circuit Court
DEANTRAE COREY ONEAL, Defendant-Appellant.	LC No. 19-005370-01-FC

Before: CAMERON, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

Defendant appeals his convictions on three counts of resisting or obstructing a police officer, arguing that the trial court erred with its evidentiary decisions and jury instructions. Because there were no reversible errors, we affirm.

I. BACKGROUND

This case began when three police officers—Officer Bush, Officer Rodriguez, and Officer Reyes-Morales—observed defendant driving with his high-beam lights. The officers parked their vehicle behind defendant's vehicle in an apartment building parking lot. While still in the vehicle, Officer Bush illuminated the driver's side of defendant's vehicle and saw defendant reach down toward the floorboard. The officers then exited their vehicle, approached defendant's vehicle, and requested defendant's driver's license and registration. After defendant told Officer Bush that he did not have his license with him, Officer Bush requested defendant to exit the vehicle. Defendant refused to exit the vehicle after multiple requests, so Officer Bush opened the door of defendant's vehicle to remove him.

Officer Bush then saw defendant reach up and press the "reverse" button near the steering wheel. The vehicle moved in reverse, which resulted in injuries to Officer Bush and Officer Reyes-Morales. Defendant eventually exited the car and began to flee the scene. While on the ground, Officer Bush saw defendant pull what appeared to be a weapon from his hip area, and in response, Officer Bush discharged his weapon in defendant's direction. Defendant fired back at the officers, striking Officer Rodriguez in the abdomen. Defendant fled the scene and was found by other officers in a nearby area.

Defendant was charged with three counts of assault with intent to murder, MCL 750.83; second-degree home invasion, MCL 750.110a(3); three counts of resisting or obstructing a police officer, causing a bodily injury requiring medical care, MCL 750.81d(2); carrying a concealed weapon, MCL 750.227; felon in possession of a firearm, MCL 750.224f; and three counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant's defense theory was that the officers lied about the events that happened. The prosecutor moved before trial to preclude testimony pertaining to an internal investigation into Officer Bush relating to a vehicular pursuit that ended in a fatal crash. The trial court granted the prosecutor's motion in limine because it found that allowing such evidence would create a "side show" of the prosecutor attempting to defend Officer Bush, thereby creating confusion of the issues for the jury.

At trial, the prosecutor moved to declare that Officer Rodriguez was unavailable and requested to read his preliminary examination transcript into evidence instead of live testimony. The prosecutor explained that an out-of-state subpoena was being prepared for Officer Rodriguez, who moved to Texas, but the prosecutor learned ten days prior that the officer's job required him to be in South Africa during the trial. The trial court found that Officer Rodriguez was unavailable, that the prosecutor made a diligent and good faith attempt to locate and subpoena Officer Rodriguez, and that Officer Rodriguez's preliminary testimony could be used because defendant's counsel had an opportunity to cross-examine with similar motive. Officer Rodriguez's preliminary examination testimony was read to the jury and included the following statements from his direct and cross-examination: Officer Rodriguez did not observe defendant reaching for the gear shift to put the vehicle in reverse, but did see defendant shoot him in the stomach.

The jury ultimately found defendant guilty of three counts of resisting or obstructing a police officer and acquitted him on all other charges. Defendant now appeals.

II. ANALYSIS

A. OFFICER BUSH'S DISCIPLINARY RECORDS

On appeal, defendant first argues that the trial court erred by granting the prosecutor's motion in limine and barring defendant from questioning Officer Bush about disciplinary action relating to another incident. We review for an abuse of discretion the trial court's ruling on whether to admit evidence. *People v Thorpe*, 504 Mich 230, 251; 934 NW2d 693 (2019). The trial court abuses its discretion if its decision falls outside the range of principled outcomes; decisions on close evidentiary questions ordinarily will not amount to an abuse of discretion. *Id*. at 251-252. Defendant also claims that the trial court's decision violated his Sixth Amendment right of confrontation, which is a question of law which we review de novo, independently, and without deference to the trial court's decision. *People v Bruner*, 501 Mich 220, 226; 912 NW2d 514 (2018).

MRE 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. When making its determination, the trial court can consider "how directly the evidence tends to prove the fact for which it is offered, how essential the fact sought to be proved is to the case, the potential for

confusing or misleading the jury, and whether the fact can be proved in another manner without as many harmful collateral effects." *People v Daniels*, 311 Mich App 257, 273; 874 NW2d 732 (2015).

The trial court found that evidence relating to the other incident involving Officer Bush would confuse the jury and therefore excluded the evidence under MRE 403 on that basis. Defendant argues that the evidence should have been admissible under MRE 608(b) for specific instances of conduct concerning the witness's character for untruthfulness. Even if evidence may be admissible under MRE 608(b), such evidence can still be excluded under MRE 403 if its probative value is substantially outweighed by danger of confusing the jury. See *People v Brownridge*, 459 Mich 456, 460-462; 591 NW2d 26 (1999).

When considering the probative value of prior testimony which a party claims to be indicative of untruthfulness, courts have considered the following factors:

> (1) whether the prior judicial finding addressed the witness's veracity in that specific case or generally; (2) whether the two sets of testimony involved similar subject matter; (3) whether the lie was under oath in a judicial proceeding or was made in a less formal context; (4) whether the lie was about a matter that was significant; (5) how much time had elapsed since the lie was told and whether there had been any intervening credibility determination regarding the witness; (6) the apparent motive for the lie and whether a similar motive existed in the current proceeding; and (7) whether the witness offered an explanation for the lie and, if so, whether the explanation was plausible. [*United States v Clanton*, 763 F Supp 3d 261, 268 (ED NY, 2025) citing *United States v Cedeño*, 644 F3d 79, 82-83 (CA 2, 2011).].

And when the prior proceeding involves a review of an officer's conduct, the factors may favor precluding the evidence of credibility during the prior proceeding. See *Clanton*, 763 F Supp 3d at 268-269.

Here, it was not an abuse of discretion for the trial court to find that possible jury confusion about the other incident involving Officer Bush substantially outweighed the probative value of such evidence. The disciplinary proceedings were internal to the police department, not in a court or court-like setting. There is nothing in the record to suggest that the disciplinary proceedings were conducted under oath, under true adversarial conditions, or with the assistance of counsel. The possible confusion to the jury was apparent: the facts were not entirely on point to those in this case, and to argue that Officer Bush lied during the previous incident would essentially result in a separate trial of Officer Bush. Therefore, the trial court did not abuse its discretion in not allowing evidence of Officer Bush's other disciplinary action.

B. UNAVAILABLE WITNESS

Defendant also argues on appeal that it was error for the trial court to rule that Officer Rodriguez was not available to testify and to allow the prosecutor to use the officer's preliminary examination testimony. We review for clear error the trial court's decision regarding a witness's unavailability. *People v Garland*, 286 Mich App 1, 7; 777 NW2d 732 (2009). Clear error occurs

when the Court is left with a definite and firm conviction that a mistake has been made. *Avery v State*, 345 Mich App 705, 715-716; 9 NW3d 115 (2023). We review for an abuse of discretion the trial court's decision on whether the prosecutor exercised due diligence in producing a witness, *People v Bean*, 457 Mich 677, 684; 580 NW2d 390 (1998), and whether to give the jury an instruction regarding a missing witness, *People v Eccles*, 260 Mich App 379, 389; 677 NW2d 76 (2004).

The former testimony of a witness may be admissible if the witness is unavailable. MRE 804(b)(1). For a witness to be unavailable, the prosecutor must have been unable to procure the witness's attendance "by process or other reasonable means"; the prosecutor must also show due diligence. MRE 804(a)(5). To show due diligence, the prosecutor must have made "diligent good-faith efforts" to procure the testimony. *Bean*, 457 Mich at 684. The prosecutor is not required to make every possible effort to produce a witness but only reasonable efforts. *Eccles*, 260 Mich App at 391.

The trial court did not err in finding that the prosecutor performed with due diligence in trying to procure Officer Rodriguez's testimony. Although the prosecutor should have alerted the trial court and defense counsel sooner about the officer's unavailability, any delay did not affect the ability of the prosecutor to procure the witness. Even if the prosecutor had informed defendant and the trial court as soon as the prosecutor learned about the trip to South Africa, it is unclear how such knowledge would have successfully procured the officer's presence in the courtroom ten days later. Because the trial court did not err in finding that the prosecutor performed due diligence, it did not abuse its discretion in not instructing the jury with M Crim JI 5.12. See *Eccles*, 260 Mich App at 388, 391.

Further, the trial court did not abuse its discretion by allowing Officer Rodriguez's preliminary examination testimony to be used. The United States Constitution and Michigan Constitution provide a criminal defendant with the right to confront a witness against him. US Const, Am VI; Const 1963, art 1, § 20. In general, this bars the use of a witness's testimonial statements if the witness is unavailable for trial unless defendant had a prior opportunity to cross-examine the witness. *Crawford v Washington*, 541 US 36, 59; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

The prosecutor may use preliminary examination testimony when a witness cannot be produced at trial, MCL 768.26, if defendant had both an opportunity and similar motive to develop the testimony on cross-examination, MRE 804(b)(1). The right of confrontation is not violated by the use of preliminary examination testimony if the prosecutor exercised due diligence to produce the missing witness and the previous testimony bore satisfactory indicia of reliability. *Bean*, 457 Mich at 682-683.

The record shows that defendant's attorney had a similar motive when examining Officer Rodriguez during the preliminary examination and during trial. Critical factors covered throughout the preliminary examination included the events that resulted in defendant's resisting and obstructing charges, including the actions of the officers and defendant, and these actions were specifically explored during defense counsel's cross-examination of Officer Rodriguez. Even though there were different burdens of proof at play between the preliminary examination and at trial, defense counsel appeared to thoroughly cross-examine Officer Rodriguez regarding the

critical components of this case. Therefore, the trial court did not err in allowing the prosecutor to use Officer Rodriguez's preliminary examination testimony.

C. UNANIMITY INSTRUCTION

Lastly, defendant argues that plain error occurred because the jury was not given special instructions regarding reaching a unanimous verdict. Because defendant did not request the special instruction and did not object to the trial court's proposed instructions, the issue was not preserved and will be reviewed for plain error. *People v Carines*, 460 Mich 750, 752-753; 597 NW2d 130 (1999). This Court will not reverse unless defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Thorpe*, 504 Mich at 252-253. On appeal, defendant also argues that failure to request such instruction was ineffective counsel. For an ineffective assistance of counsel claim, we review for clear error the trial court's factual findings and review de novo questions of constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Because an evidentiary hearing was not conducted in this case, this Court's review of the facts is limited to errors apparent on the existing record. *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020).

A specific unanimity instruction may be required instead of the model instruction on unanimity "in cases in which more than one act is presented as evidence of the actus reus of a single criminal offense and each act is established through materially distinguishable evidence that would lead to juror confusion." *People v Chelmicki*, 305 Mich App 58, 67-68; 850 NW2d 612 (2014) (cleaned up). In this case, the evidence for the three counts of resisting arrest resulted from one continuous sequence of events and the only difference between the counts was the victim involved. Because the evidence focused on all of defendant's acts as one transaction, see *People v Cooks*, 446 Mich 503, 522-524; 521 NW2d 275 (1994), a specific unanimity instruction was not necessary in this case. Therefore, because there was no error by using the general unanimity instruction, trial counsel was not ineffective for failing to object to the trial court's jury instructions, see *People v Darden*, 230 Mich App 597, 605; 585 NW2d 27 (1998), and defendant's conviction will not be reversed on this basis.

Affirmed.

/s/ Thomas C. Cameron
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle