STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEDIDIAH WYATT HUSTON,

Defendant-Appellant.

UNPUBLISHED
June 20, 2024

No. 363460
Osceola Circuit Court
LC No. 2022-006000-FH

Before: GARRETT, P.J., and RIORDAN and LETICA, JJ.

PER CURIAM.

A jury found defendant guilty of fourth-degree fleeing and eluding, MCL 750.479a(2), and resisting or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to serve concurrent terms of 28 months to 15 years' imprisonment. Defendant appeals by right, raising challenges based on the sufficiency of the evidence and prosecutorial error. We affirm.

I. BACKGROUND

On February 1, 2022, Michigan State Police Trooper Kyle Wansten was on road patrol when he observed defendant driving 64 miles per hour in a 55 mile-per-hour zone with a defective taillight. The trooper turned his fully marked patrol car around, but lost sight of defendant's vehicle. When the trooper caught up with defendant's vehicle, he turned on his lights and siren to attempt a traffic stop. After pursuing defendant for approximately one minute, the trooper terminated the pursuit pursuant to policy. The trooper testified that when he was following defendant's vehicle with his lights on, they were traveling at speeds between 80 and 100 miles per hour. The trooper turned off his lights and siren, dropped his speed down to 55 miles per hour, and continued following behind defendant's vehicle. According to the trooper, during this period, defendant's driving was "very erratic." After about seven minutes of following defendant, the trooper attempted a second traffic stop by turning on his lights. Trooper Wansten testified:

> Again, [defendant] did not pull over. I pulled up next to [defendant]'s vehicle so parallel with his vehicle. I had my passenger side window down. He had his driver side window down and I could see [defendant] sitting in the driver's seat. I gave

him two loud verbal commands; pull over, pull over. [Defendant] looked at me, raised his hands up to acknowledge that he did hear me and refused to pull over.

After the trooper pulled up alongside defendant, they traveled a short distance. The trooper then pulled in front of defendant's vehicle and defendant stopped. The trooper approached defendant's vehicle and gave him several commands. The trooper told defendant to put his hands on the steering wheel, which defendant did. The trooper then told defendant to open the door and exit the vehicle, which he did not do. In response, the trooper opened the door and took defendant to the ground, placing him into custody. The dashcam video that captured this incident was played for the jury.

During defendant's arrest, defendant told the trooper that his girlfriend, who was a passenger in the vehicle, was pregnant and that they were on the way to the hospital. But, according to Trooper Wansten, defendant and his girlfriend were driving away from Cadillac Hospital and were nowhere near Reed City Hospital. After the trooper heard that defendant's girlfriend was pregnant, he called an ambulance for her. An Osceola County Emergency Medical Services (EMS) paramedic responded. At trial, the paramedic testified that defendant's girlfriend told him that that she was in labor, but she refused medical treatment.

After the prosecution rested, defendant called his girlfriend to testify and testified himself. Defendant testified that he and his girlfriend went out to eat when she suddenly began having contractions. According to defendant's girlfriend, she "had a complicated pregnancy" and "was told by the doctor that [she] could hemorrhage and bleed out and die within a few minutes." She testified that her "maternal fetal clinic" was affiliated with Spectrum Health and agreed that she told defendant to drive her to Reed City Hospital even though he suggested going to Cadillac Hospital because it was closer. According to defendant, he was driving quickly because he was panicking and trying to get her to the hospital. Once the couple realized that police were behind them, they called 911 to report that they were having an emergency and on the way to the hospital. Defendant testified that he saw that the lights on the patrol car had been turned off while they were on the phone with 911; therefore, he believed that the patrol car was escorting them to the hospital. But Trooper Wansten testified that he was never contacted by 911 dispatch telling him that defendant had called 911.

Regarding defendant's knowledge of the police, the following exchange occurred between the prosecutor and defendant:

Q. Was it true that the police were behind you—

A. Obviously, yeah. You seen the video.

Q. Okay. And you said it was also true that he ordered you to stop your vehicle?

A. When he pulled up beside me, yes. And I immediately stopped. Yes.

Q. Okay. So prior to that, when you're going a 100 plus, according to the trooper, did you see the red bubble behind you?

A. No.

Q. Okay. So you didn't see it the first time that you just took off?

A. No. My old lady said the cops were behind us. I was driving.

* * *

Q. Okay, so she tells you the cops are behind you?

A. Yeah.

Q. And you don't stop?

A. Yeah, because their lights weren't on.

Q. Okay. . . . [W]hen did she tell you cops were behind you?

A. The first time that she seen that the cops were behind us the lights weren't on. Then he flicked them on and we called 911.

Defendant testified that when the trooper turned on his lights the second time and pulled up beside him, defendant stopped immediately. Defendant further testified that he fully complied with the trooper's orders as quickly as he could.

Defendant's girlfriend also testified that defendant was compliant with the trooper. And she explained that she refused medical treatment that evening simply because she "couldn't afford it." She gave birth to the couple's child on February 17, 2022.

After the jury convicted defendant as charged, he appealed.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW AND GOVERNING LAW

"Challenges to the sufficiency of the evidence are reviewed de novo." *People v Wang*, 505 Mich 239, 251; 952 NW2d 334 (2020). "In determining whether sufficient evidence exists to sustain a conviction, this Court reviews the evidence in the light most favorable to the prosecution, and considers whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018) (quotation marks and citation omitted). This " 'standard of review is deferential: a reviewing court is *required* to draw all reasonable inferences and make credibility choices in support of the jury verdict.' " *Id.*, quoting *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (emphasis added in *Oros*). " 'It is for the trier of fact, *not the appellate court*, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.' " *Id.*, quoting *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002) (emphasis added in *Oros*). " 'Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.' " *Id.*, quoting *Nowack*, 462 Mich at 400. "[B]ecause

it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Chelmicki*, 305 Mich App 58, 66; 850 NW2d 612 (2014) (quotation marks and citation omitted; alteration in *Chelmicki*).

B. RESISTING OR OBSTRUCTING

Defendant argues the prosecution did not present sufficient evidence to support his conviction of resisting or obstructing, MCL 750.81d(1). We disagree.

Under MCL 750.81d(1), "[a]n individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony . . . ." To prove a charge of assaulting, resisting, or obstructing a police officer, the prosecution 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 . . . was a police officer performing" their lawful duties at the time. See *People v Quinn*, 305 Mich App 484, 491; 853 NW2d 383 (2014) (quotation marks and citation omitted). The term " '[o]bstruct' includes 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).

Defendant argues that there was insufficient evidence presented to prove beyond a reasonable doubt that he resisted or obstructed Trooper Wansten. Defendant contends that the video played during trial contradicted much of the trooper's trial testimony regarding the traffic stop. Defendant also asserts that the evidence at trial showed that he fully complied with the trooper and any instance of noncompliance was the result of the trooper failing to give him sufficient time to comply.

During trial, the trooper testified that he "gave [defendant] commands to put his hands on the steering wheel" and defendant complied. The trooper also told defendant to "shut the vehicle off," which defendant did not do. The trooper further "gave [defendant] several commands to open the door and exit the vehicle[.]" Instead, the trooper opened the door and took defendant to the ground. In sum, the trooper testified that defendant "refused to turn the vehicle off, refused to open the door when instructed to do so, and refused to get out of the vehicle when instructed to do so." Although unable to estimate the exact time elapsed after a command was given, the trooper testified that defendant had "enough time to comply."

In contrast, defendant testified that the trooper approached defendant's vehicle with his gun drawn, "[c]ame over to the door, ripped it open, [and] didn't give [defendant] . . . time . . . to get out of the car" before throwing him onto the ground. Defendant also testified that he "hit the push button" to turn off the vehicle "as soon as we came to a stop." But defendant also later testified that he complied with the trooper's command to shut the car off by hitting the push button, explaining that "[i]t may look like [the car's] still on because push buttons the lights will still be on when you hit them." Defendant's girlfriend also testified that defendant was compliant with the trooper, who "opened the door, grabbed [defendant], and pulled [him] out [of the car.]"

In the dashcam video played for the jury, Trooper Wansten can be heard offscreen, yelling: "Hey. Hands. Put your hands on the steering wheel. Don't f****** move. You understand me?"

Defendant responded: "Yeah," interjecting "she's having a baby," as Trooper Wansten directed him to "[t]urn the car off" three times. Trooper Wansten also ordered defendant to "[o]pen the door" as defendant continued to talk to him. Trooper Wansten responded: "No," adding "on the ground, on the ground. Don't move."

Because only the audio from this exchange was captured on the dashcam video, defendant's argument on appeal essentially asks this Court to credit his and his girlfriend's testimony over Trooper Wansten's testimony. Because we are required to draw all reasonable inferences and make credibility choices in support of the jury verdict, Trooper Wansten's testimony was sufficient for a rational jury to conclude that defendant received a lawful command and failed to comply. The trooper testified that he told defendant to turn off the car, open the door, and get out of the car, and that defendant failed to follow his instructions. After considering the testimony and watching the dashcam video, the jury resolved the conflicting testimony and determined that defendant failed to comply with at least one of the trooper's commands. On appeal, we do not second-guess the jury's credibility determinations, but must make credibility determinations that support its' verdict. *Oros*, 502 Mich at 239. In this case, the jury credited the trooper's testimony and the fact that seconds passed between the trooper's command and defendant's failure to comply is not dispositive because resistance "can occur in even the briefest of moments[.]" *People v Morris*, 314 Mich App 399, 415; 886 NW2d 910 (2016).

C. FLEEING AND ELUDING

Defendant also argues that the prosecution did not present sufficient evidence to support his fourth-degree fleeing and eluding conviction. Specifically, defendant argues that the evidence was insufficient to support a finding that he intended to flee or elude the police and affirmatively took action to avoid capture. We disagree.

Fourth-degree fleeing and eluding is governed by MCL 750.479a, which provides:

> (1) An operator of a motor vehicle . . . who is given by hand, voice, emergency light, or siren a visual or audible signal by a police . . . officer, acting in the lawful performance of his . . . duty, directing the operator to bring his . . . motor vehicle . . . to a stop shall not willfully fail to obey that direction by increasing the speed of the vehicle . . . , extinguishing the lights of the vehicle . . . , or otherwise attempting to flee or elude the police . . . officer. This subsection does not apply unless the police . . . officer giving the signal is in uniform and the officer's vehicle . . . is identified as an official police . . . vehicle . . . .

To establish a defendant's guilt of fourth-degree fleeing and eluding, the prosecution must prove that (1) defendant was driving a motor vehicle, (2) a uniformed police officer was driving an adequately identified law enforcement vehicle while performing his or her lawful duties, (3) the officer visually or audibly signaled the defendant to stop his vehicle, (4) the defendant willfully failed to obey the officer's order, and (5) the defendant attempted to flee from the officer or avoid being caught, including by speeding up or turning off his vehicle's lights. Compare *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999) (*Grayer I*) (outlining the elements of third-degree fleeing and eluding that requires proof of an additional element).

In *Grayer I*, this Court interpreted the language of an earlier version of MCL 750.479a(1) and held that this "statute criminalizes the conduct of a person who fails to obey the direction of an officer by increasing the speed of the vehicle, extinguishing the lights of the vehicle, or *otherwise* attempting to flee or elude[.]" *Grayer I*, 235 Mich App at 740 (quotation marks omitted). The statute's "use of the ejusdem generis clause 'or otherwise attempting' means that acts or conduct of the same kind, class, or character as speeding or extinguishing lights are also included within the offense." *Id*. at 740 n 2. Further, the terms "flee" and "elude" "connote an intent to take affirmative action, not simply [a] fail[ure] to submit." *Id*. at 740-741. Therefore, the prosecution must "demonstrate that the defendant refused to obey by trying to flee or avoid capture, which element necessitates a finding of some intent on the part of the defendant to flee or avoid capture." *Id*. at 741-742. Yet, "[t]he clear language of the statute reveals no requirement that the defendant's speeding exceed a certain level or that the speeding occur over a long distance in order for the elements of the statute to be met." *Id.* at 741. And although a defendant's actions after the vehicle pursuit cannot "form the basis for the fleeing and eluding conviction, [those] actions constitute[] circumstantial evidence of [the] defendant's intent to flee and elude the police while he was operating his vehicle." *People v Grayer*, 252 Mich App 349, 356; 651 NW2d 818 (2002) (*Grayer II*). Fleeing and eluding is a general intent crime and requires only the "intent to do the physical act of fleeing and eluding a police officer." *People v Ambramski*, 257 Mich App 71, 73; 665 NW2d 501 (2003).

We conclude that sufficient evidence was presented for a rational jury to find defendant guilty of this offense. The evidence presented at trial clearly established that Trooper Wansten was in uniform, that he was driving a marked patrol car, and that defendant was driving a vehicle. Initially, the trooper saw defendant speeding, driving 64 mph in a 55-mph speed zone. After defendant passed Trooper Wansten, the trooper noticed that defendant's vehicle also had a defective taillight. By the time the trooper turned his vehicle around, defendant was gone due to his excessive speed. After the trooper regained sight of defendant's vehicle, defendant was driving over 100 miles per hour. Once the trooper caught up to defendant, he activated his vehicle's emergency lights and siren for approximately a minute. Yet, defendant did not stop, but continued to travel between 80 and 100 mph. Pursuant to police policy, the trooper elected to end his pursuit with the lights and siren; however, he continued to follow defendant, who was driving his vehicle erratically, at a lower speed. Later, the trooper attempted a second traffic stop, turning on his lights. Again, defendant did not pull over. At that point, the trooper pulled his vehicle parallel to defendant's vehicle, yelling through the respective vehicles' open windows: "Pull over. Pull over." According to the trooper, defendant looked at him, raised up his hands to acknowledge that he had heard him, but refused to pull over. After the trooper pulled his vehicle in front of defendant's vehicle, defendant finally stopped his vehicle.

Defendant's argument on appeal is that as to the trooper's second attempt to stop defendant's vehicle, defendant "pulled over as quickly as humanly possible." According to defendant, he was simply transporting his pregnant girlfriend to the hospital for emergency assistance. And, although, at an earlier point, he had noticed the trooper's lights, the trooper deactivated them, leading defendant to presume that the trooper had learned of the couple's 911 call and was escorting them to the hospital. In defendant's view, he had no intent to flee or elude.

Again, the jury heard defendant's claimed justification for failing to heed the trooper's initial use of the lights and siren and the trooper's subsequent use of the lights and commands

before it convicted him. Notably, despite the alleged emergency, defendant and his girlfriend did not travel to the nearest hospital, defendant's girlfriend declined medical assistance and an EMS transport, and the couple's baby did not arrive for sixteen days after the traffic stop.

Indeed, during trial, defendant admitted that he knew that the trooper turned his lights on two separate occasions. Again, the defense theory was that defendant called 911 when he noticed the lights to explain why he was driving so quickly and not stopping. Intrinsic to this argument is defendant's acknowledgment that the trooper was commanding him to stop. Moreover, the evidence further supported a rational inference that defendant saw the trooper turning around and purposefully sped up to avoid being stopped. Likewise, defendant's failure to comply with the trooper's commands during the traffic stop was further circumstantial evidence that defendant acted with the requisite intent to flee and elude. See *Grayer II*, 252 Mich App at 356 ("Although the foot chase and defendant's actions after the vehicle pursuit ended could not form the basis for the fleeing and eluding conviction, the actions constituted circumstantial evidence of defendant's intent to flee and elude the police while he was operating his vehicle."). Again, "minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *Chelmicki*, 305 Mich App at 66 (quotation marks and citation omitted). Drawing all reasonable inferences in support of the jury's verdict, *Oros*, 502 Mich at 239, we conclude that a rational jury could determine that defendant intentionally fled from or attempted to elude the trooper, *Chelmicki*, 305 Mich App at 66.

III. PROSECUTORIAL ERROR

A. STANDARD OF REVIEW AND GOVERNING LAW

"To preserve a claim of prosecutorial error, a defendant must timely and specifically challenge the prosecutor's statements or conduct." *People v Thurmond*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 361302); slip op at 9. This Court reviews a claim of prosecutorial error de novo to determine whether the identified conduct deprived the defendant of a fair trial. See *People v Dunigan*, 299 Mich App 579, 588; 831 NW2d 243 (2013).

"A prosecutor commits error by 'abandon[ing] his or her responsibility to seek justice and, in doing so, den[ying] the defendant a fair and impartial trial.' " *Thurmond*, ___ Mich App at ___; slip op at 10 (citation omitted; alterations in *Thurmond*). Statements by the prosecution must be considered in the context of the entire case and "are to be evaluated in light of defense arguments and the relationship the comments bear to the evidence admitted at trial." *People v Dobek*, 274 Mich App 58, 64; 732 NW2d 546 (2007). A "prosecutor is entitled to attempt to introduce evidence that he legitimately believes will be accepted by the court, as long as that attempt does not prejudice the defendant." *People v Noble*, 238 Mich App 647, 660-661; 608 NW2d 123 (1999). Accordingly, "prosecutorial [error] cannot be predicated on good-faith efforts to admit evidence." *Id*. at 660. See also *People v Solloway*, 316 Mich App 174, 203; 891 NW2d 255 (2016).

B. IMPERMISSIBLE CHARACTER EVIDENCE

At trial, this exchange occurred between Trooper Wansten and the prosecutor:

> *Q*. Okay. And did you search the vehicle?

A. I did.

Q. Did you find anything else to note in there?

A. I did. Methamphetamine in the vehicle.

Defendant objected, arguing that this evidence was not relevant and that the trooper's testimony tainted the jury.[1] After excusing the jury, the trial court asked the prosecutor why he had asked the question. The prosecutor replied that it was relevant to defendant's state of mind, it could explain defendant's erratic driving, and it could also explain why defendant did not follow the trooper's commands. The court noted that defendant was separately charged regarding the methamphetamine and that the cases were not being tried together. The court also expressed its concern that this matter was being raised during trial and asked whether there were any tests showing that defendant was under the influence of methamphetamine at the time he was operating the vehicle. The prosecutor responded that there was a laboratory report showing that the substance was found inside the vehicle.[2] And after the prosecutor conceded that possession of a substance did not necessarily show that defendant was driving under its' influence, the prosecutor reiterated that in light of defendant's proffered reason for failing to stop, there was an additional reason for his failure to do so. Defendant then contended that mentioning methamphetamine was detrimental to his case. Defendant added that his girlfriend was also charged with the drug's possession and had admitted that the pipe found inside the car was hers. Noting that defendant also had a pending charge regarding the possession of methamphetamine, the trial court determined that the cases should have been consolidated if the prosecutor desired to admit the evidence that the police found methamphetamine. Rather than declaring a mistrial, the court ruled that it would instruct the jury to disregard the trooper's testimony. And although defendant demanded a new jury, the trial court declined his request. Thereafter, the trial court specifically instructed the jury to "disregard any testimony" that it "heard about any illegal substances." And, in its final instructions, the trial court directed the jury to base its decision solely on the evidence properly admitted during trial and not to consider "stricken testimony" in deciding the case.

Because defendant objected to the prosecutor's line of questioning as irrelevant and subsequently argued that the prosecutor's actions "tainted the whole case," this issue is preserved. See *Thurmond*, __ Mich App at ___; slip op at 9. On appeal, defendant contends that the prosecutor committed error by violating the evidentiary limits of MRE 404(b)(1), denying him a fair trial.

MRE 404(b)(1) prohibits the use of "other acts" evidence to prove a person's character and show that an individual acted in conformity with that character on a particular occasion. Stated otherwise, when evidence of other acts is relevant only because it tends to show that the defendant acted in conformity with his character, it is not admissible. MRE 404(b)(1). "Underlying the rule

[1] Defendant represented himself at trial.

[2] Twelve days before trial began, the prosecution filed its witness and exhibit list, referencing the State Police lab report as one of its' proposed exhibits.

is the fear that a jury will convict the defendant inferentially on the basis of his bad character rather than because he is guilty beyond a reasonable doubt of the crime charged." *Thurmond*, ___ Mich App at___; slip op at 5 (quotation marks and citation omitted). Where evidence of other acts is offered for another purpose, such as to prove motive, opportunity, intent, preparation, scheme, plan, or system, absence of mistake or accident, or some purpose other than character, it is admissible if the purpose for which it is offered is material to the case. MRE 404(b)(1).[3]

In the present case, defendant's right to a fair trial was not violated because defendant has not demonstrated bad faith on the part of the prosecutor or demonstrated that he was prejudiced when the prosecutor attempted to question the trooper about the methamphetamine found in defendant's car. Defendant asserts that "[t]he stigma of being regarded as 'meth heads[]' is about the person rather than the case," and therefore, with this testimony, the prosecutor prejudiced the jury against him by attempting to admit impermissible character evidence. However, defendant fails to demonstrate how the prosecutor's questioning about this issue was an impermissible attempt to prove that defendant acted in conformity with his bad character on this occasion. MRE 404(b)(1). Indeed, when the trial court inquired about the prosecutor's purpose, the prosecutor explained that he was attempting to show defendant's state of mind while driving and offer an alternative explanation about why defendant refused to stop in contrast to defendant's proffered explanation that there was a medical emergency involving his pregnant girlfriend. The prosecutor's explanation implicated a permissible use of other-acts evidence under MRE 404(b)(1). See e.g., *People v Gimotty*, 216 Mich App 254, 259; 549 NW2d 39 (1996), overruled in part on another ground *People v Reichard*, 505 Mich 81, 96; 949 NW2d 64 (2020) (The trial court did not abuse its discretion or violate MRE 404(b) when it allowed the prosecutor to ask "whether [the defendant] wanted to flee from the police because he was on probation rather than" the reason proffered by the defendant, i.e., the defendant was being threatened by another person. This is so because "the prosecutor's question was clearly intended to delve into [the] defendant's motive for fleeing from the police, and not call his character into question."). Accordingly, defendant has not shown that the prosecutor acted in bad faith when he attempted to admit the evidence.[4] *Noble*, 238 Mich App at 660.

Defendant also argues that the prosecutor's attempt to introduce evidence of the methamphetamine in defendant's vehicle was prejudicial, because methamphetamine "strikes fear into the heart of every parent, grandparent, aunt, uncle, brother and sister." However, beyond these broad statements, defendant does not allege how this attempt to submit evidence specifically prejudiced defendant during trial.

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[3] In the amended rules, effective January 1, 2024, this rule has been renumbered as MRE 404(b)(2), which provides: "If it is material, the evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident."

[4] We recognize that the prosecutor did not provide timely notice of his intention to admit this evidence under MRE 404(b); however, defendant's objection at trial and on appeal is premised on irrelevancy and prejudice from the admission of the evidence.

Finally, regardless of whether the trooper's testimony could be properly admitted under MRE 404(b)(1), the trial court ruled that it was inadmissible and promptly instructed the jury to disregard it. At the end of trial, the trial court repeated that the jury could only consider properly admitted evidence in reaching its decision and had to disregard any stricken testimony. The record does not suggest that the curative instruction provided by the trial court was insufficient to cure any alleged error from this line of questioning. See *People v Mahone*, 294 Mich App 208, 212; 816 NW2d 436 (2011) ("Jurors are presumed to follow their instructions, and it is presumed that instructions cure most errors."). Defendant is not entitled to relief on this claim.

C. THE TROOPER'S TESTIMONY

Finally, defendant argues that the prosecutor erred when he elicited an impermissible legal conclusion from Trooper Wansten. We disagree.

Defendant takes issue with this exchange between the prosecutor and Trooper Wansten after the dashcam video was played:

> *Q.* And the video was pretty much of the tail end of the chase, if you will?
>
> *A.* Yes.
>
> *Q.* And at the tail end when your voice is up and you're telling him to put his hands on the wheel, that's when the resisting and obstructing took place, correct?
>
> *A.* Correct.
>
> *Q.* Okay. And you said he refused to obey at least several commands?
>
> *A.* Correct. He refused to turn the vehicle off, refused to open the door when instructed to do so, and refused to get out of the vehicle when instructed to do so.

Defendant did not object to this testimony in the trial court; therefore, this claim of prosecutorial error is not preserved. See *Thurmond*, ___ Mich App at ___; slip op at 9. "On plain-error review, the burden is on the defendant to establish (1) error; (2) that was plain, meaning clear or obvious; and (3) that the plain error caused prejudice, meaning that the error affected the outcome of the lower court proceedings." *People v Jones*, 317 Mich App 416, 420; 894 NW2d 723 (2016) (quotation marks and citation omitted). If the defendant "satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse, but [r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id.* (quotation marks and citation omitted; alterations in original).

At trial, the trooper testified about his personal observations during the incident, making him a lay witness. See MRE 602; see also MRE 702. MRE 701[5] governs the admissibility of lay witness opinion testimony and provides:

> 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.

Although "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact," MRE 704,[6] "a witness cannot express an opinion on the defendant's guilt or innocence of the charged offense," *People v Fomby*, 300 Mich App 46, 53; 831 NW2d 887 (2013) (quotation marks and citation omitted). Further, a witness may not "testify about the requirements of law which apply to the particular facts in the case or to phrase his opinion in terms of a legal conclusion." *People v Zitka*, 335 Mich App 324, 346; 966 NW2d 786 (2020) (quotation marks and citation omitted).

Defendant asserts that the prosecutor elicited a legal conclusion from the trooper regarding defendant's guilt when he asked whether this was the point on the video when the resisting and obstruction occurred. In context, the trooper was recounting the events depicted on the dashcam video. The prosecutor did not ask the trooper whether defendant was guilty of resisting and obstructing; rather, the prosecutor asked a factual question about when defendant "resisted and obstructed." To the extent that the trooper's testimony was an opinion, it permissibly encompassed an ultimate issue to be decided by the trier of fact—whether defendant physically completed the action of resisting or obstructing the trooper—and was not a legal opinion that defendant was guilty of the offense. See MRE 704. Finally, even if defendant had established a plain error occurred, he would not be entitled to relief. *Jones*, 317 Mich App at 420.

Affirmed.

/s/ Kristina Robinson Garrett
/s/ Michael J. Riordan
/s/ Anica Letica

[5] After defendant's trial, MRE 701 was amended.

[6] MRE 704 was also amended after defendant's trial.