UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2703

September Term, 2015

WILLIAM GRAFTON COGGINS

v.

STATE OF MARYLAND

Krauser, C.J.
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 5, 2017

Convicted by a jury, in the Circuit Court for Harford County, of second degree assault, resisting arrest, failure to obey a reasonable and lawful order, and disorderly conduct, William Grafton Coggins, appellant, claims that the trial court erred in sustaining two objections to defense counsel's closing argument and in giving a curative instruction to the jury following each objection. Because we conclude that Coggins's claims are not preserved for appellate review, we affirm.

The charges against Coggins stemmed from an encounter with the police on March 3, 2014. At trial, Deputy Amrein[1] of the Harford County Sheriff's Department testified he drove to the 600 block of Leight Road at approximately 10 p.m., in response to a call of a "possible domestic involving a firearm where possibly six shots were fired," and where a "pickup truck [was] involved." The deputy explained that "due to the seriousness of the call[,]" he had activated the emergency lights and sirens on his marked patrol car. At the bottom of a "steep" driveway at 625 Leight Road, the deputy observed a pickup truck with its interior lights on. Then, seeing "some individuals standing outside[,]" he was "pretty sure" that it was "the house in question[.]" The deputy then exited his patrol car and approached the truck. He stated that "the conditions were pretty hazardous because the road was extremely slippery[,]" and there was a "sheet of ice" on the driveway.

Because a firearm was reported to have been involved, the deputy "wanted to make sure that . . . [he] could see everyone's hands and [that] everyone was safe." He shined his flashlight on an individual standing outside the truck (later identified as Denny Tingler),

[1] Deputy Amrein's first name is not contained in the record.

identified himself as a police officer, and ordered Tingler to show his hands. Tingler did not comply, but turned away and put his hands in his pockets, prompting the deputy to repeat his order.

At that point, Coggins, who was in the driver's seat of the truck, started "cursing and screaming" in an "angry rant." Coggins was then repeatedly ordered to show his hands. He did not comply, but, instead, "started making furtive movements below[,]" "underneath the seat." Unsure whether Coggins had a gun, the deputy drew his service weapon, pointed it at Coggins, and repeated the order to show his hands. Coggins did not do so, choosing, instead, to "yell and scream" and move his hands around, where the deputy could not see them. The deputy stated at trial that, because Coggins was "screaming so loud and jumbled, it was hard to make out exactly what he was saying[,]" but he did not hear Coggins say anything to suggest that his truck was stuck or that the truck would roll, if he left the truck as ordered.

As the deputy approached the vehicle carefully, repeatedly shouting, "show me your hands[,]" Coggins refused to do so. The deputy then opened the door of the truck, and, with another deputy, "tried to pull [Coggins] out, to make sure he wasn't armed." Coggins "immediately began to fight" with the officers and "tried to pull himself back into the truck." While pulling Coggins out of the truck, Deputy Amrein slipped on the icy driveway, and Coggins fell down to the ground along with him. As they slid down the hill, the deputy, who had landed so that he was "sort of laying on [Coggins's] feet" "reached up to try to catch his feet." Coggins "started kicking [the deputy,] trying to get [him] off."

At that point, the officers attempted to take Coggins into custody, but Coggins was "violently resisting" by "screaming, yelling and kicking." After the officers "wrestled" with Coggins for "45 seconds to a minute," they were able to get handcuffs on him. According to Deputy Amrein, Coggins was under arrest at that point for "the assault."[2] Coggins then continued to resist when Deputy Amrein attempted to search him, by kicking the deputy again and pulling at his gun belt - at one point taking hold of the deputy's "ASP baton" and, then, his radio.[3] The deputy attempted to subdue Coggins using "pressure points" and "wrist locks," but these techniques were "not working." Deputy Amrein then punched Coggins in the side of the head, and Coggins lost his grasp on the radio.

I.

The defense theory of the case was that Coggins's arrest was unlawful. As defense counsel told the jury in opening statement, "[Coggins] and his friends were trying to get the pickup truck up this very steep hill, and it gets stuck, and it's sliding." Defense counsel further suggested that, because of icy road conditions, Coggins could not obey the order to put his hands up because if he did, "the truck is going to come down the driveway, go across the road, go down another hill, and go into somebody's house[.]" The defense called three witnesses who were at the scene, who testified that Coggins told police that he could

[2] Deputy Andrew Stolarz testified that Coggins was told that "he was going to be under arrest for resisting and failure to obey a lawful order." As Coggins points out, however, the court only instructed the jury on assault as grounds for the arrest.

[3] The deputy explained that the "ASP baton" is a "striking instrument."

not comply with their orders because he was concerned that he would lose control of the truck.

Coggins contends that the court twice prevented him from arguing, during closing argument, that he "did not engage in behavior that justified his arrest." In the first instance, the court sustained the State's objection to defense counsel's suggestion that the actions of the police amounted to "disturbing the peace in anybody's stretch of the imagination[.]" Coggins asserts that the "underlying argument . . . was that it was the police who committed wrongdoing and that, as a result, the jury could not convict [him]" of resisting arrest because the "arrest was unlawful." Coggins further asserts that the court erred in giving the following instruction:

> The jury is to disregard counsel's argument that the deputy committed a crime. There is no evidence to suggest that any deputy in the performance of their responsibility committed a crime or was accused of a crime.

Defense counsel did not object to the court's ruling, did not object when the court stated its intention to give a curative instruction that "there is no evidence to suggest the officer is committing a crime[,]" and did not object after the curative instruction was given, or request any further action from the court.

Maryland Rule 4-325(e) specifically provides:

> No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.

The rule reflects the principle that "appellate review of jury instructions [will not] ordinarily be permitted under our rules unless the complaining party has objected

seasonably so as to allow the trial judge an opportunity to correct the deficiency before the jury retires to deliberate." *Grandison v. State*, 425 Md. 34, 69 (2012) (citation omitted), *cert. denied*, 133 S. Ct. 844 (2013). *See also Molter v. State*, 201 Md. App. 155, 178 (2011) (holding that objections to the contents of a curative instruction are waived if no party objected to the curative instruction after it was given to the jury.) (citation omitted). Accordingly, because defense counsel presented no objection for the court to consider, Coggins's first claim of error is unpreserved for appellate review.

Coggins's second claim of error during closing argument is similarly unpreserved. The prosecutor had objected again when defense counsel told the jury, "[r]esisting arrest only occurs when there's a lawful arrest, and, in this instance, I propose to you, it's not a lawful arrest." At the bench conference that followed, the prosecutor stated that "the defendant is not allowed to resist a lawful arrest in Maryland," and then added "[s]tarting to make an issue in front of the jury that it was an unlawful arrest is spurious and misstates the law." When the court asked if defense counsel had any response, defense counsel answered, "No. I submit, Your Honor." The court then told defense counsel:

> You can't misstate the law. If you want to make your argument about how the facts in this case - - you believe the facts apply to the law as I have given it, that's one thing, but you can't say that it's a defense to resisting arrest if you believe that the officer is wrong. That's not the law in Maryland.

Defense counsel responded, "I understand" and the court then instructed the jury as follows:

> In the State of Maryland, the law is not that you resist arrest simply because you believe it's unlawful to police to do so. There is no defense of resisting an unlawful arrest. That does not exist in the State of Maryland.

Defense counsel then continued with his closing argument without requesting anything further from the court.

Coggins claims that the court's ruling, and the instruction that followed this second objection was erroneous because it prevented him from "pursuing a defense that he had a right to resist an unlawful arrest."[4] But, because defense counsel did not object to the ruling or to the instruction, appellate review of the issue is waived.[5]

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] The State concedes, as a general proposition that, in Maryland, a person has a right to resist an unlawful arrest. *See Rich v. State*, 205 Md. App 227, 255 (2012) (observing that "the Court of Appeals has repeatedly declined to abrogate the common-law rule in Maryland that one may use reasonable force to resist an unlawful arrest[.]" (citation omitted)).

[5] See *Grandison* and *Molter*, *supra*.