

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE CALVIN ANDERSON,

Defendant-Appellant.

UNPUBLISHED

September 23, 2004

No. 247393

Cass Circuit Court

LC No. 02-010263-FH

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of four counts of resisting and obstructing a police officer, MCL 750.479(1), entered after a jury trial. We affirm.¹

Defendant first argues that the evidence was insufficient to support his convictions of resisting and obstructing a police officer. In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of resisting and obstructing a police officer are: (1) the conduct alleged obstructed, resisted, or opposed (2) a police officer (3) in his prescribed duties, and (4) the conduct was done knowingly and willfully. MCL 750.479(1). To do an act knowingly and willfully means that the defendant intended to do the act to a police officer and did so, knowing the person to be a police officer. *People v Gleisner*, 115 Mich App 196, 198-199; 320 NW2d 340 (1982). The offense requires that a defendant oppose a police officer by actual physical interference or by expressed or implied threats of physical interference. *People v Vasquez*, 465

¹ Defendant was also convicted of one count of receiving or concealing stolen property, MCL 750.535. He does not directly challenge that conviction on appeal.

Mich 83, 99-100, 114-115; 631 NW2d 711 (2001). The lawfulness of any arrest is not an element of the offense. *People v Wess*, 235 Mich App 241, 244; 597 NW2d 215 (1999).

MCL 750.479 does not require that a defendant resist an actual arrest or that he know he is being arrested. A conviction of resisting and obstructing a police officer may be sustained if the evidence showed that the defendant obstructed an officer in the discharge of his duties. *People v Green*, 260 Mich App 392, 401; 677 NW2d 363 (2004). The jury was entitled to accept the officers' testimony that defendant physically resisted the effort to place him in handcuffs, and, in light of the evidence that defendant initially complied with the instruction to exit the vehicle and place his hands on the hood and began resisting only when an officer attempted to handcuff him, was entitled to infer that defendant did so intentionally, knowing that the officers were police officers. *Milstead, supra; Vaughn, supra; Gleisner, supra*. The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's convictions of resisting and obstructing a police officer. *Wolfe, supra*.

Defendant also argues that the trial court erred by failing to sua sponte instruct the jury on self-defense. We review jury instructions in their entirety to determine whether the trial court committed error requiring reversal. Instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them. Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights. Error does not result from the omission of an instruction if the charge as a whole covered the substance of the omitted instruction. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

Defendant's failure to request the instruction on self-defense or to object to the trial court's failure to read the instruction precludes appellate relief. MCL 768.29. The testimony given by the officers supported a finding that defendant resisted the officers' attempt to restrain him, that the officers did not launch an unprovoked attack upon defendant, and that the officers used no more force than was necessary to subdue defendant. The jury was entitled to accept the officers' testimony. *Milstead, supra*. The evidence did not support the giving of an instruction on self-defense. The instructions fairly presented defendant's theory of the case, and sufficiently protected his rights. *Canales, supra*. No plain error affected defendant's substantial rights. *People v Gonzalez*, 468 Mich 636, 643-644; 664 NW2d 159 (2003); *People v Grant*, 445 Mich 535, 552-553; 520 NW2d 123 (1994).

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood