

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KASH MILLER WHORTON,

Defendant-Appellant.

UNPUBLISHED
February 25, 2003

No. 238561
Osceola Circuit Court
LC No. 01-003262-FH

Before: Kelly, P.J., and White and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for resisting and obstructing a police officer, MCL 750.479. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court gave an improper jury instruction on resisting and obstructing. “This Court reviews jury instructions in their entirety to determine whether the trial court committed error requiring reversal.” *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). Jury instructions must include all elements of the crime charged and must not exclude consideration of material issues, defenses, and theories for which there is evidence in support. *Id.*

The trial court instructed the jury that the defendant must have resisted by what he said or did, but physical violence is not necessary. CJI2d 13.1. Physical resistance, threats, and abusive speech can be relevant facts in a prosecution under the resisting and obstructing statute, but none is a necessary element. *People v Philabaun*, 461 Mich 255, 262; 602 NW2d 371 (1999). Where prearrest flight actively impedes an officer’s investigation, the conduct supports a resisting and obstructing conviction. *People v Pohl*, 207 Mich App 332, 333; 523 NW2d 634 (1994).

Defendant argues that *People v Vasquez*, 465 Mich 83; 631 NW2d 711 (2001), imposed a requirement of actual or threatened physical interference or harm to an officer engaged in his or her duties. *Vasquez* approved the holding in *Philabaun*, *supra*, finding that passive conduct may be sufficient to support a resisting and obstructing conviction. *Vasquez*, *supra*, 97. Flight remains sufficiently active physical resistance to an officer’s performance of his duty to support defendant’s conviction.

The trial court did not abuse its discretion in precluding defendant from introducing evidence that he was acquitted on the domestic assault charge related to this incident. The trial court noted the difference between the reasonable doubt standard for conviction and the reasonable cause standard for an arrest. The fact that defendant was acquitted on the domestic assault charge does not show that his arrest was unlawful. The court acted within its discretion in determining that the probative value of the evidence was substantially outweighed by unfair prejudice. MRE 403; *People v Sabin (After Remand)*, 463 Mich 43, 58, 72-73; 614 NW2d 888 (2000).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Joel P. Hoekstra