

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL WALTER PAYETTE,

Defendant-Appellant.

UNPUBLISHED

September 14, 2004

No. 247652

Oakland Circuit Court

LC No. 02-187312-FH

Before: Donofrio, P.J., and White and Talbot, JJ.

MEMORANDUM.

Defendant was charged with two counts of resisting and obstructing a police officer, MCL 750.81d, and two counts of malicious destruction of police property, MCL 750.377b. Following a jury trial, he was convicted of the two counts of malicious destruction of property, for which he was sentenced as an habitual offender, third offense, MCL 769.11, to concurrent terms of two to fifteen years in prison. Defendant appeals his convictions as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the evidence was insufficient to sustain the verdict. However, defendant does not dispute that the prosecutor presented evidence to establish each element of malicious destruction of police property. Rather, he contends that the initial stop which led to his arrest was unlawful and thus he had a right to use reasonable force to resist by breaking the windows of the police cars. We disagree.

The officer's testimony established a proper *Terry*¹ stop and protective frisk, and a subsequent arrest for assaulting a police officer. Further, the jury was required to find that defendant's intent was malicious in order to convict.

¹ *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot