STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLARENCE STACEY BARNES,

Defendant-Appellant.

UNPUBLISHED
May 26, 1998

No. 199555
St. Joseph Circuit Court
LC No. 94-007658 FH

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction and 120-day jail sentence for resisting and obstructing a police officer, MCL 750.479; MSA 28.747. We affirm.

The charges arose in connection with an altercation in a hospital emergency room to which defendant had been brought after suffering a series of epileptic seizures. Defendant apparently refused medical treatment and became violent when he misinterpreted the emergency medical technician's motion to keep him from falling off the bed as an attempt to restrain him. A police officer, who was summoned to the scene by the medical personnel through the use of a "panic button," was assaulted by defendant as the officer entered the room.

I

Defendant claims that there was insufficient evidence at trial to support his conviction. In particular, defendant contends that the prosecutor failed to establish the following elements of the crime of resisting and obstructing a police officer in his lawful efforts to maintain and preserve the peace: the officer was engaged in the performance of his duties at the time of the altercation, he intended to obstruct the officer in the performance of those duties, and the defendant knew that the officer was in the course of performing his duties when he engaged in the conduct that gave rise to the charges. See MCL 750.479; MSA 28.747; *People v Julkowski*, 124 Mich App 379, 383; 335 NW2d 47 (1983).

Defendant's arguments rest entirely on error alleged to have occurred with regard to the factual findings of the jury. However, our Supreme Court has stated that an appellate court

> must remember that the jury is the sole judge of the facts. It is the function of the jury alone to listen to testimony, weigh the evidence and decide questions of fact. . . . Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony. [*People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974).]

Thus, this Court may not reweigh the evidence, but must consider the evidence presented that was most favorable to the prosecutor to determine whether that evidence would enable a jury to find that the elements of the offense had been established beyond a reasonable doubt. *Id*. at 515.

Defendant first argues that there was insufficient evidence presented to establish that he intended to resist or obstruct the officer in the execution of his duties. However, resisting and obstructing a police officer is not a specific intent crime. *People v Gleisner*, 115 Mich App 196, 200; 320 NW2d 340 (1982). The only intent required is the intent to do the physical act. *Id*. at 198-199.

In this case, there was no dispute that the complainant was in full uniform and that defendant recognized him as a member of the Three Rivers Police Department. Although defendant claimed that he did not intend to assault the complainant and was only trying to get out the door, the jury apparently did not find credible defendant's assertion that the complainant was blocking a four-foot doorway. The testimony of other witnesses, including the emergency room physician, indicated that defendant engaged in an unprovoked assault on the complainant. Moreover, although defendant claimed that his conduct was attributable to an epileptic seizure, the emergency room physician testified that defendant's conduct was inconsistent with someone who was experiencing such a seizure. Thus, there was sufficient evidence from which the jury could have found that the prosecution established beyond a reasonable doubt that defendant intended to obstruct an officer in the performance of his duties.

Defendant next contends that his arrest was unlawful because the complainant was attempting to assist the emergency room personnel in administering unwanted medical treatment when he ordered defendant to sit down on the hospital bed. While it has been established that a competent adult has the right to refuse unwanted medical treatment, *In re Rosebush*, 195 Mich App 675, 680-681; 491 NW2d 633 (1992), and that a person may use such reasonable force as is necessary to resist an illegal arrest, *People v Landrie*, 124 Mich App 480, 481-482; 335 NW2d 11 (1983), in this case the uncontroverted testimony of the complainant indicated that he did not intend to arrest defendant when he entered the room, but planned only to investigate the reason for the panic button call. There was no evidence whatsoever to support defendant's allegation that the complainant's purpose in entering the room or telling defendant to sit on the bed was to enforce the administration of unwanted medical treatment. A rational factfinder could conclude that the officer's order to defendant to sit down on the bed constituted only an attempt to restore order so that the officer could conduct his investigation. It is well established that the investigation of requests for assistance and the suppression of disturbances constitute ordinary police functions. See, e.g., *People v Little*, 434 Mich 752, 759; 456 NW2d 237 (1990); *People v Weatherspoon*, 6 Mich App 229, 232; 148 NW2d 889 (1967). Therefore, we find defendant's arguments with regard to the lack of proof of this element to be without merit.

Finally, defendant claims that there was insufficient evidence to establish beyond a reasonable doubt that he knew the complainant was engaged in the performance of his duties when defendant assaulted him. Essentially, defendant argues that he thought the complainant was there to force him to undergo medical treatment. However, knowledge can be inferred from circumstantial evidence. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994). In this case, there was no dispute that defendant recognized that the complainant was a police officer. Although defendant claimed that he became aggressive only after the officer ordered him to sit on the hospital bed, evidence was presented that defendant was already heading toward the complainant when he was told to sit back down on the bed. There was nothing in the complainant's conduct upon entering the room that would have supported defendant's belief that he was attempting to force medical treatment on defendant. Consequently, there was sufficient evidence presented at trial to justify the jury's conclusion that defendant knew that the officer was acting in the course of his lawful duties at the time.

II

Defendant also claims that his sentence is disproportionate. However, this Court has held that where a defendant has already served his minimum sentence, rendering it impossible for this Court to fashion a remedy, a claim that a defendant's sentence is disproportionate is moot. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). Because defendant has already served his minimum sentence, we find this issue to be moot and decline to address it.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh