STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 22, 2002
v	No. 234427 Oakland Circuit Court
ROBERT KENNETH SCHWARTZ, Defendant-Appellant.	LC No. 00-173099-FH

Before: Murphy, P.J., and Markey and R. S. Gribbs[*], JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for resisting and obstructing a police officer. MCL 750.479. Defendant was sentenced to one year probation and thirty days in county jail. We affirm.

Defendant's first issue on appeal is that he was not given adequate notice of the charges against him because the prosecution moved to amend the information on the day of trial, although the prosecutor notified defense counsel of the sought amendment a week earlier. We disagree. We review this constitutional issue de novo. *People v Van Tubbergen*, 249 Mich App 354, 372; 642 NW2d 368 (2002). We also review the trial court's ruling to allow the amendment of the information for an abuse of discretion, and will not reverse unless we find that the defendant was prejudiced in his defense or that a failure of justice resulted. *People v Prather*, 121 Mich App 324, 333-334; 328 NW2d 556 (1982).

In determining the adequacy of the notice given, the question is whether defendant knew what conduct he was being charged with so that he could prepare an adequate defense. *People v Traughber*, 432 Mich 208; 215; 439 NW2d 231 (1989). We find that the original information, which was prepared with reference to the facts presented at defendant's preliminary examination, informed defendant well in advance of trial of the nature of the charges against him and gave him ample opportunity to prepare an adequate defense. Since there was no increase or change in the number of counts brought against defendant, the prosecution's amendment of the language in the information from "and" to "and/or" did not unfairly surprise or prejudice defendant. MCR 6.112(H). The law only requires that defendant assaulted or resisted and obstructed any one of

[*] Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

the three officers in order to convict him of the specific charges in this case. MCL 750.479; MCL 750.82. Further, there is no indication in the record that defendant's strategy would have changed in light of his theory that he had not assaulted any of the officers and that his arrest was illegal. The trial court did not abuse its discretion in allowing the prosecution to amend the information on the day of trial.

Defendant also argues that there was insufficient evidence to support his conviction because the lack of foundation for felonious assault rendered the arrest illegal and there was no proof that he knew he was interfering with an authorized police officer in the exercise of his official duty. There is no merit to this claim. An arrest is legal if an officer has reasonable cause to believe that a crime was committed by the defendant. *People v Freeman,* 240 Mich App 235, 236; 612 NW2d 824 (2000). Here, the officers had to quickly move to avoid being hit by defendant's truck which was coming in their direction. Further, defendant's intent to place the officers in fear of an immediate battery could be properly inferred from the circumstances. A rational trier of fact could find that there had been a felonious assault because (1) an assault occurred because the officers were put in reasonable apprehension of an immediate battery and (2) a deadly weapon was used. Cf. *People v Lawton,* 196 Mich App 341, 349; 492 NW2d 810 (1992).

Defendant also claims that there was insufficient evidence to establish knowledge. While it is unclear whether defendant is challenging the sufficiency of the evidence as to his knowledge that the person he was resisting was an officer or his knowledge that the officer was making an arrest, we find that there was sufficient evidence to establish both elements. There was ample evidence that defendant knew that the three individuals attempting to handcuff him were in fact police officers. Indeed, defendant is the one who requested the officers' presence at his ex-girlfriend's house.

In addition, the officers told defendant to get out of the truck, told him to put his hands on the truck, asked him if he had anything in his pockets, and placed a handcuff on one of his arms. Although defendant disputed the officers' testimony that they told him he was under arrest, he acknowledged that he assumed, when the officers handcuffed him, that they were trying to arrest him. Although the officers did not immediately inform defendant of the reason for his arrest, this fact is irrelevant to the question whether defendant knew he was being arrested. Therefore, viewed in a light most favorable to the prosecution, a rational trier of fact could conclude beyond a reasonable doubt that defendant knew at the time of his arrest that he was in fact being arrested. There was sufficient evidence to sustain defendant's conviction for resisting and obstructing a police officer.

Affirmed.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Roman S. Gribbs