

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FAISAL BADER ABDEL-NABI,

Defendant-Appellant.

UNPUBLISHED

July 8, 2004

No. 246096

Wayne Circuit Court

LC No. 02-009588

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Defendant was charged with felonious assault, MCL 750.82, and resisting and obstructing a police officer, MCL 750.479. Following a jury trial, he was acquitted of felonious assault and convicted of resisting and obstructing, for which he was sentenced to two years' probation. Defendant appeals his conviction 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 prosecutor failed to present sufficient evidence to sustain the resisting and obstructing conviction because he failed to prove that defendant's arrest was lawful. We disagree.

Contrary to defendant's assertion, the prosecution did not have to offer proof that defendant's arrest was lawful because defendant was not charged with resisting arrest. Defendant was charged with interfering with the officer in his official duty of investigating a complaint. *People v Green*, __ Mich App __; __ NW2d __ (2004), slip op at 5. While an element of resisting arrest is that the arrest must have been lawful, *People v MacLeod*, 254 Mich App 222, 226; 656 NW2d 844 (2002), defendant was not charged with resisting arrest. Rather the information charged defendant with resisting and obstructing Officer Schrecengost while he was lawfully performing an official duty, i.e., investigating a citizen's complaint that defendant had violated the bottle return law, MCL 445.572. The crime as charged requires that the defendant oppose a police officer engaged in the execution of any lawfully assigned duty by actual physical interference or by expressed or implied threats of physical interference. *Vasquez*, *supra*, 465 Mich at 99-100, 114-115. The elements of the crime as charged are "(1) the conduct alleged, whether active or passive, obstructed, resisted, or opposed (2) any of the listed officials (3) in their described duties and (4) the alleged conduct was done knowingly and wilfully." *People v Vasquez*, 240 Mich App 239, 244; 612 NW2d 162 (2000), rev'd on other grounds 465 Mich 83 (2001). Knowingly and wilfully means that the defendant intended to do a proscribed

act and did the act to a police officer, knowing him to be an officer. *People v Gleisner*, 115 Mich App 196, 198-199; 320 NW2d 340 (1982), lv den 417 Mich 1095 (1983).

The evidence showed that Schrecengost lawfully detained defendant in a public place while investigating a citizen's complaint that he had violated the bottle return law. *People v Custer*, 465 Mich 319, 327; 630 NW2d 870 (2001). While Schrecengost was attempting to obtain information from defendant, defendant threatened to stab Schrecengost, whom he knew to be a police officer, with a screwdriver. Such evidence was sufficient to prove the elements of the crime charged beyond a reasonable doubt. Because interfering with an officer who is performing an official duty is a wholly separate crime from resisting arrest, and lawfulness of an arrest is not an element of that offense, *People v Weiss*, 235 Mich App 241, 244; 597 NW2d 215 (1999), the evidence was sufficient to sustain the conviction.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter