

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARRY HENRY DUCHESNE,

Defendant-Appellant.

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UNPUBLISHED

October 19, 2004

No. 247947

Jackson Circuit Court

LC No. 02-002964-FH

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of resisting and obstructing a process server, MCL 750.479(1), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with resisting and obstructing a process server and felonious assault, MCL 750.82, in connection with an incident that occurred when Jeff Kirkpatrick came to his residence to seize property to satisfy a debt. Kirkpatrick testified that he introduced himself, displayed his badge, and gave defendant a copy of the court order that authorized the seizure of property. At one point, defendant displayed a rifle. Defendant testified that Kirkpatrick did not display a badge or other identification and did not show him a court order. He indicated that he displayed a rifle, but denied that he pointed it at anyone. The jury acquitted defendant of felonious assault, but convicted him of resisting and obstructing a process server.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of resisting and obstructing a duly authorized person serving or attempting to serve a lawful order are: (1) the conduct alleged obstructed, resisted, or opposed (2) a duly authorized person (3) in his prescribed duties, and (4) the conduct was done knowingly and willfully. MCL 750.479(1). To do an act knowingly and willfully means that the defendant

intended to do the act to a duly authorized person, knowing the person to be so authorized. *People v Gleisner*, 115 Mich App 196, 198-199; 320 NW2d 340 (1982). The offense requires that a defendant oppose a duly authorized person by actual physical interference or by expressed or implied threats of physical interference. *People v Vasquez*, 465 Mich 83, 99-100, 114-115; 631 NW2d 711 (2001). Minimal circumstantial evidence is sufficient to prove state of mind. *People v Acosta*, 153 Mich App 504, 512-513; 396 NW2d 463 (1986).

Defendant argues that the evidence was insufficient to support his conviction of resisting and obstructing a process server. We disagree and affirm. Kirkpatrick stated that he identified himself, displayed a badge, and gave defendant a copy of the court order. The jury was entitled to accept this evidence and to reject defendant's contradictory testimony, *Milstead, supra*, and to infer from that evidence that defendant knew that Kirkpatrick was a duly authorized process server who was attempting to execute a valid court order. *Vaughn, supra*. Moreover, the jury was entitled to reject defendant's assertion that he displayed a rifle in order to protect his property and to infer that this act constituted an implied threat to physically interfere with Kirkpatrick's execution of the order. *Id.*; *Acosta, supra*. The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction. *Wolfe, supra*.

We review a trial court's decision on an evidentiary issue and its decision on a request for an adjournment for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995); *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003).

Defendant argues that the trial court abused its discretion by denying his pretrial motion to adjourn the proceedings so that audio recordings made by Kirkpatrick could be tested to determine if any portion thereof had been altered or deleted. We disagree. Defendant's assertion that the recordings might have been deleted or altered was unsubstantiated. The trial court did not abuse its discretion by denying defendant's request for an adjournment under the circumstances. *Id.* Moreover, defendant affirmatively waived any error when he indicated to the trial court that he had no objection to the introduction of the recordings. *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001). No miscarriage of justice occurred. *People v Lukity*, 460 Mich 484, 493-496; 596 NW2d 607 (1999).

Affirmed.

/s/ Richard Allen Griffin  
/s/ Henry William Saad  
/s/ Peter D. O'Connell