STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 18, 2003
v	No. 241087 Tuscola Circuit Court
MARCUS GENE LEWIS, Defendant-Appellant.	LC No. 01-008092-FH

Before: Schuette, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of malicious destruction of police property, MCL 750.377b. We affirm.

During the execution of three outstanding bench warrants, defendant resisted arrest which resulted in damage to the police vehicle when defendant, who was seated in the back seat, kicked the front passenger seat causing damage to its frame and track, requiring repair. A jury trial on two counts of resisting an officer serving process, MCL 750.479, and one count of malicious destruction of police property, MCL 750.377b, resulted in defendant being found guilty of all three counts.

Thereafter, defendant moved for judgment notwithstanding the verdict, arguing that the officers who executed the bench warrants, Michigan State Police Troopers, did not have the legal authority under MCL 28.6 to execute civil process and, since the bench warrants at issue were civil process arising from civil contempt proceedings, defendant had the right to resist arrest and make every attempt to escape. The trial court agreed and granted defendant's motion with regard to the resisting charges, holding that the State Troopers "had no authority to arrest this defendant on civil process." However, the trial court denied the motion with regard to the malicious destruction charge holding that, although defendant might have had the right to resist and escape arrest, he did not have the right to willfully destroy police property. The only issue on appeal is whether the trial court should have granted the motion with regard to the malicious destruction charge.

Defendant argues that he was denied due process with regard to the malicious destruction of police property charge because the jury was not instructed that defendant had the right to resist arrest. We disagree. Claims of instructional error are reviewed de novo. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). In reviewing claims of error in

jury instructions, we examine the instructions in their entirety. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). "Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them." *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). Even if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Aldrich*, *supra*.

To establish the malicious destruction of police property charge, the prosecutor was required to prove that defendant (1) willfully and maliciously destroyed or injured, (2) personal property belonging to the police department. *People v Richardson*, 118 Mich App 492, 494; 325 NW2d 419 (1982). The jury was instructed, pursuant to CJI2d 32.2, that the prosecutor must prove that (1) the property belonged to the police, (2) defendant destroyed or damaged that property, and (3) that defendant "did this knowing that it was wrong, without just cause or excuse, and with the intent to damage or destroy the property." Here, defendant claims that "the jury needed to know that [defendant's] resistance was justified to decide accurately whether his actions were malicious." But, defendant did not kick the seat in an effort to resist arrest, he kicked it to express his anger after he was placed in the back seat of the police vehicle, in handcuffs, and sprayed in the face with pepper spray. Therefore, defendant's argument is without merit. Viewed as a whole, the court's instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. See *People v Gaydosh*, 203 Mich App 235, 237; 512 NW2d 65 (1994).

Defendant also argues that irrelevant and prejudicial evidence was improperly admitted. We disagree. Evidentiary rulings are reviewed for an abuse of discretion. *People v Smith*, 456 Mich 543, 549-550; 581 NW2d 654 (1998). During the prosecution's direct examination of one of the arresting State Police Troopers, James Horn, the prosecutor asked Horn if defendant had been advised as to why they were at his house. Horn replied that they had advised defendant that the reason they were at his house was because of a complaint they received that he had threatened his landlady's son and defendant's response was that "he was going to kill that son of bitch." Defense counsel did not object to this answer, therefore, our review is for plain error that affected the outcome of the trial. See MRE 103(a)(1); *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Generally, all relevant evidence is admissible. MRE 402. Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). Here, defendant was being tried on two counts of resisting arrest, the elements of which are that (1) the defendant resisted arrest, (2) the arrest was lawful, (3) the person arresting the defendant was an officer of the law at the time, (4) the defendant knew the person was an officer, (5) the defendant knew the person was making an arrest, and (6) the defendant intended to resist arrest. *People v MacLeod*, 254 Mich App 222, 226; 656 NW2d 844 (2002). Consequently, it was relevant and necessary for the prosecution to establish that defendant knew that the Troopers were officers of the law and that defendant knew why the officers were present. Although Horn responded to the question with more information than had been requested, defendant failed to object, failed to request that the answer be stricken from the record, and failed to request a curative instruction. See *People v Burch*, 170 Mich App 772, 776; 428 NW2d 772 (1988). In any event, we cannot conclude that this unresponsive and

brief remark deprived defendant of a fair trial; therefore, plain error has not been shown. See *People v Measles*, 59 Mich App 641, 643; 230 NW2d 10 (1975)

Affirmed.

/s/ Bill Schuette
/s/ Mark J. Cavanagh
/s/ Helene N. White