

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY MICHAEL LOZOWSKY,

Defendant-Appellant.

UNPUBLISHED

October 19, 2004

No. 247984

Jackson Circuit Court

LC No. 02-003887-FH

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

MEMORANDUM.

A jury convicted defendant Jeffrey Michael Lozowsky of two counts of resisting and obstructing a police officer.¹ The trial court sentenced defendant to three years' probation and two concurrent terms of thirty days each in jail.² Defendant appeals his convictions and sentences, and we affirm.³

We review challenges to the sufficiency of the evidence in a criminal trial de novo, viewing the evidence in the 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 police officer are: (1) the conduct alleged obstructed, resisted, or opposed (2) a police officer (3) in his prescribed duties, and (4) the conduct was done knowingly and willfully. MCL 750.479(1). To do an act knowingly and

¹ MCL 750.479(1).

² The jury was unable to reach a verdict on the charge of operating a vehicle under the influence of intoxicating liquor, MCL 257.625, and the trial court declared a mistrial with respect to that charge.

³ This appeal is being decided without oral argument pursuant to MCR 7.214(E).

willfully means that the defendant intended to do the act to a police officer and did so knowing the person was a police officer. *People v Gleisner*, 115 Mich App 196, 198-199; 320 NW2d 340 (1982). The offense requires that a defendant oppose a police officer 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).

Defendant argues that the evidence was insufficient to support his convictions because the prosecution did not prove that his arrest was lawful or that he intended to resist arrest. Resisting arrest and resisting and obstructing a police officer are different crimes. *People v Rice*, 192 Mich App 240, 243; 481 NW2d 10 (1991). The lawfulness of an arrest is an element of the former offense, but is not an element of the latter offense. *People v Green*, 260 Mich App 392, 401-402; 677 NW2d 363 (2004); see also *People v Ventura*, 262 Mich App 370, 375-377; ___ NW2d ___ (2004) (Legality of arrest irrelevant for the purposes of MCL 750.81d). A conviction of resisting and obstructing a police officer may be sustained if the evidence showed that the defendant obstructed an officer in the discharge of his duties. *Id.* at 401. The jury was entitled to accept the officers' testimony that defendant physically resisted being taken into the hospital, thus resisting their attempts to execute a valid search warrant for a blood draw, and required restraints because he was combative and kicked one of the officers. The jury was entitled to infer from this evidence that defendant acted intentionally and with knowledge that the officers were police officers. *Milstead, supra; Gleisner, supra; Vaughn, supra*. The evidence presented here, viewed in the light most favorable to the prosecution, was sufficient to support defendant's convictions of resisting and obstructing a police officer. *Wolfe, supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell