

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 23, 2014

v

JOHN THURMAN CALHOUN,
Defendant-Appellant.

No. 317064
Wayne Circuit Court
LC No. 12-007536-FH

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

The court convicted defendant of resisting and obstructing a police officer, MCL 750.81d(1), and sentenced defendant to time served. Defendant appeals as of right. We affirm.

This case arises from defendant’s arrest at Sinai-Grace Hospital on July 23, 2013, where he was recovering from injuries sustained in a police-chase related car accident the night of July 22, 2013. Michigan State Police Trooper John Ferguson, who pursued defendant’s vehicle during the chase, went to the hospital with five other troopers to check on the people involved in the accident and to identify and interview defendant.

Before entering defendant’s hospital room, Ferguson overheard “quite a disturbance and yelling,” and a voice stating, “State Police are here.” Defendant’s mother, sister, and sister’s fiancé were also in the room. Ferguson observed defendant up and walking around. Hospital staff informed Ferguson that they were in the process of discharging defendant. After confirming that the discharge was complete, the troopers returned to defendant’s room and Ferguson explained to defendant that he was being arrested and the reasons for the arrest. Ferguson testified that defendant then “actively resisted” arrest. Defendant pulled himself away from Ferguson, laid on the bed, and told Ferguson that he could not move and would stay in the hospital. Defendant also kicked another trooper who was assisting Ferguson with the arrest. Ultimately, Ferguson and a second trooper “physically lift[ed]” defendant from the hospital bed and double handcuffed him at a nurse’s station outside the hospital room.

Defendant argues that the prosecution presented insufficient evidence to support his conviction. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). This Court reviews the evidence in a light most favorable to the prosecution and determines whether the trial

court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*, citing *People v Ortiz-Kehoe*, 237 Mich App 508, 520; 603 NW2d 802 (1999).

The elements of resisting and obstructing a police officer under MCL 750.81d(1) are (1) that the defendant assaulted, battered, wounded, resisted, obstructed, opposed or endangered a police officer, and (2) that the defendant knew, or had reason to know, that the person the defendant harmed was a police officer performing his or her duties. *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010); MCL 750.81d(1); MCL 750.81d(7)(b)(i). “Obstruct[ion] includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” MCL 750.81d(7)(a). Wrestling, kicking, or pushing a police officer during an attempted arrest constitutes resistance and obstruction within the meaning of the statute. See *Corr*, 287 Mich App at 503-505; *People v Nichols*, 262 Mich App 408, 411-413; 686 NW2d 502 (2004).

The knowledge element “requires the fact-finder to engage in an analysis to determine whether the facts and circumstances of the case indicate that when resisting, defendant had ‘reasonable cause to believe’ that the person he was assaulting was performing his or her duties.” *Nichols*, 262 Mich App at 414. The prosecution was not required to show that defendant actually knew the arresting troopers were police officers; rather, it can “sustain its burden by proving defendant had constructive, implied, or imputed knowledge, or by using the record evidence to show that [] defendant should have had knowledge on the basis of the facts and the circumstances of the case.” *Id.*

The evidence was sufficient for the trial court to find beyond a reasonable doubt that defendant knowingly resisted and obstructed a police officer in the performance of his duties. A group of six troopers went to defendant’s hospital room. Ferguson testified that he heard someone in the room yelling that the state police had arrived.¹ Ferguson told defendant that he and the other troopers were going to arrest him. Ferguson stated that defendant “actively resisted” arrest, pulling himself away from Ferguson and lying on the bed, stating that he would stay in the hospital even though Ferguson had witnessed him walking around moments earlier. In addition, Ferguson testified that defendant kicked another trooper and had to be forcibly removed from his bed and double-handcuffed outside of the hospital room. Under these circumstances, the evidence was sufficient for the trial court to find beyond a reasonable doubt that defendant knowingly resisted and obstructed a police officer.

Finally, to the extent that defendant argues that the trial court should have considered the lesser charge of simple assault, the evidence did not support defendant’s present contention on appeal that a lesser charge was appropriate because he had no reason to know the troopers were police officers. Moreover, defendant waived the argument by failing to request consideration of

¹ A factfinder could reasonably infer that defendant knew or had reason to know the state troopers were police officers even if his understanding was impacted by the accident or by medication. See *Nichols*, 262 Mich App at 412-414 (holding that the defendant, who claimed to be “out of it,” due to intoxication at the time of his arrest, had reason to believe that the persons he resisted were law enforcement officers).

a lesser charge below. *People v Paquette*, 214 Mich App 336, 339; 543 NW2d 342 (1995). Additionally, whether the trial court should have considered a lesser charge is unrelated to the question of sufficiency of the evidence and should have been stated as a separate issue in defendant's brief on appeal. See MCR 7.212(C)(5) and (C)(7).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder

/s/ Donald S. Owens