

# Order

Michigan Supreme Court  
Lansing, Michigan

July 19, 2024

Elizabeth T. Clement,  
Chief Justice

166092

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 166092  
COA: 361280  
Monroe CC: 2020-245897-FH

TINA MARIE CARROLL,  
Defendant-Appellant.

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By order of January 19, 2024, the plaintiff-appellee was directed to answer the application for leave to appeal the July 13, 2023 judgment of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE Part III(B)<sup>1</sup> and VACATE Part III(D) of the judgment of the Court of Appeals as it relates to the jury instruction for resisting and obstructing a police officer. The Court of Appeals erred by holding that the jury instruction on resisting and obstructing “fairly presented the issues to be tried and adequately protected the defendant’s rights.” *People v Kowalski*, 489 Mich 488, 501-502 (2011). As recognized by the Model Criminal Jury Instructions,<sup>2</sup> a jury cannot meaningfully assess whether an officer acted lawfully without “detailed legal instructions regarding the applicable law governing the officer’s legal authority to act.” M Crim JI 13.1, Use Note 4; see also M Crim JI 13.5. The instructions in this case correctly advised the jury that the prosecution must show that the police were acting lawfully, then stated “[i]t is up to you to determine whether the officers’ actions were legal according to the law as I have just described it to you,” without describing the legal standard applicable to these facts. Leaving the jury without a legal framework for assessing whether the officers’ actions were lawful does not “fairly present[] the issues to be tried and adequately protect[] the defendant’s rights.” *Kowalski*, 489 Mich at 501-502.

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<sup>1</sup> The Court of Appeals unpublished opinion identifies two sections as “II.” We are using “III” to identify the second section labeled as such.

<sup>2</sup> While the model instructions are not binding, we find these particular instructions persuasive and conclude that they “accurately state the applicable law[.]” MCR 2.512(D)(2)(b).

We REMAND this case to the Court of Appeals for consideration of whether trial counsel's failure to request such an instruction was "representation [that] fell below an objective standard of reasonableness," see *Strickland v Washington*, 466 US 668, 688 (1984), that prejudiced the defendant, see *id.* at 687, 694. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

ZAHRA, J. (*dissenting*).

I disagree with the Court's decision to reverse Part III(B) and vacate Part III(D) of the Court of Appeals opinion.

A jury convicted defendant of two counts of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1), and one count of disturbing the peace, MCL 750.170.

Defendant and the prosecution submitted to the trial court stipulated jury instructions signed by the respective attorneys. Defendant argues that the trial court erred by providing the following instruction and that defense counsel provided ineffective assistance by failing to object:

The Defendant is charged with two separate crimes of assaulting, battering, wounding, resisting, obstructing, opposing or endangering Police Officers Corporal Flora and Officer Lamour who were performing these duties. I'm only reciting this to you once, but you have to consider these two crimes with respect to Officer Flora and then Officer Lamour because they're two separate crimes.

Now to prove these charges, the Prosecutor must prove each of the following elements beyond a reasonable doubt: First, that the Defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered Corporal Flora and/or Officer Lamour who were police officers. Obstructing includes the use of threatened—includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command. The Defendant must have actually resisted by what she said or did, but physical violence is not necessary. Second, that the Defendant knew or had reason to know that Corporal Flora and/or Officer Lamour were police officers performing their duties at the time.

Third, that Corporal Flora and/or Officer Lamour gave the Defendant a lawful command, was making a lawful arrest, or was otherwise performing

a lawful act. A person may resist an unlawful arrest or police conduct. The Prosecutor must prove beyond a reasonable doubt that the arrest was legal, that the officers were acting within their legal authority. *It is up to you to determine whether the officers' actions were legal according to law as I have just described it to you.* [Emphasis added.]

Defendant's argument is essentially that the jury could not have decided whether she resisted unlawful arrest or police conduct because the jury was not given any instruction regarding unlawful arrest or police misconduct.

While defendant has a colorable argument that the quoted jury instruction was flawed, defendant fails to consider that she was also arrested for disturbing the peace. The jury was instructed on this offense as follows:

To prove this charge, the Prosecutor must prove each of the following elements beyond a reasonable doubt: First, that the Defendant was at a street, lane, alley, highway, public grounds, or park at Greenwood Apartments. Second, that the Defendant intentionally engaged in conduct that threatened public safety or disrupted the peace and quiet of other persons present or interfered with the ability of other persons to perform legal actions or duties. The Defendant must have intentionally engaged in conduct that went beyond stating her position or opinion or the mere expression of ideas.

Because these actions are not associated with defendant's ensuing arrest, and the jury convicted defendant of this offense, the jury must likewise have concluded that the police had probable cause to lawfully arrest defendant for disturbing the peace. Accordingly, defendant's arrest was lawful on this basis, and her application should be denied.

VIVIANO, J., joins the statement of ZAHRA, J.



s0716

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 19, 2024

Clerk