

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARY ANN LAMKIN,

Defendant-Appellant.

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UNPUBLISHED

July 25, 2013

No. 308695

Livingston Circuit Court

LC No. 08-017621-FH

Before: BORRELLO, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals by right her conviction following a jury trial of resisting and obstructing a police officer, MCL 750.81d(1). Defendant's first trial ended in a hung jury. The trial court sentenced defendant as a habitual offender-second offense, MCL 769.10, to two days in jail, \$1,998 in fines and costs, and three years probation. For the reasons set forth in this opinion, we affirm.

This case arises from an altercation that occurred on Island Shore Drive in Livingston County. On July 8, 2008, defendant drove her car out of her driveway while her neighbor, Gloria McComb, was driving down Island Shore Drive. McComb believed that defendant's car blocked her safe passage down the road, which McComb said narrowed at that point in the roadway. When defendant wouldn't move her vehicle to allow passage, McComb eventually called the police. Two officers arrived, including the chief of police. After assessing the situation, the chief of police asked defendant to move her vehicle. Defendant responded with anger and profanity and repeatedly refused to move her vehicle. The chief of police then arrested defendant and charged her with resisting and obstructing a police officer.

Defendant moved to dismiss the charges, arguing that the chief of police did not have the authority to order her to move her car and therefore his order was unlawful. Thus, defendant argued, she had the right to disobey the order and no crime was committed. The trial court denied defendant's motion, stating:

This is an interesting case and the law is what—Ventura<sup>[1]</sup> and Sullivan<sup>[2]</sup> are the law at the moment. I’ve got to follow . . . the Court of Appeals. Even though privately I have my own thoughts on it, the law is what the law is and I’m going to follow it at this point. . . . [F]or the record, I was a lawyer on Ventura, that’s how I know it, but . . . I don’t think it’s right. But it is the law of Michigan and I’ve got to follow it. That being the case, the Court denies the Defendant’s motion to dismiss for lack of jurisdiction.

The Defendant’s motion concerns whether the Hamburg Township Police Department’s alleged lack of jurisdiction, I use jurisdiction in quotes, on her property undermines her charge of resisting and obstructing. However, the Court of Appeals held in People v Ventura that a person may not use force to resist and [sic] arrest made by one he, or in this case she, knows or has reason to know he’s performing his duties regardless of whether the arrest is illegal under the circumstances of the occasion. That’s Ventura at 377. Similarly, in People v Sullivan, the Court of Appeals held that an illegal arrest that is made outside the officer’s jurisdiction does not confer on the Defendant a right to resist. Accordingly, the issue of whether the police had jurisdiction over the property is immaterial to her case, and based on that, the motion must be denied.

This Court denied defendant’s application for leave to appeal the trial court’s ruling.<sup>3</sup> Defendant’s case proceeded to trial, where a jury found her guilty of resisting and obstructing a police officer.

Defendant first argues that the trial court abused its discretion by denying her motion to dismiss the charges. We “review a trial court’s decision on a motion of dismiss charges against a defendant for an abuse of discretion.” *People v Nicholson*, 297 Mich App 191, 198; 822 NW2d 284 (2012). “A trial court may be said to have abused its discretion only when its decision falls outside the range of principled outcomes.” *Id.* The elements of the crime under MCL 750.81d(1) are:

(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her

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<sup>1</sup> *People v Ventura*, 262 Mich App 370; 686 NW2d 748 (2004), overruled by *People v Moreno*, 491 Mich 38, 46-47; 814 NW2d 624 (2012). “*Moreno* should only apply in cases where the defendant has preserved the issue in the trial court and raised before our Court.” *City of Westland v Kodlowski*, 298 Mich App 647, 672; 828 NW2d 67 (2012).

<sup>2</sup> *People v Sullivan*, unpublished opinion per curiam of the Court of Appeals, issued June 18, 2009 (Docket No. 283593).

<sup>3</sup> *People v Lamkin*, unpublished order of the Court of Appeals, issued October 5, 2010 (Docket No. 299372).

duties. MCL 750.81d(1); MCL 750.81d(7)(b)(i); *People v Ventura*, 262 Mich App 370, 374-375; 686 NW2d 748 (2004). “‘Obstruct’ 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). [*People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010).]

Defendant’s appeal relies on the interpretation on the resisting and obstructing statute, MCL 780.51d, which provides, in relevant part:

(1) [A]n *individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties* is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000, or both.

\* \* \*

(7) As used in this section:

(a) “Obstruct” includes the use or threatened use of physical interference of force or a *knowing failure to comply with a lawful command*. [Emphasis added.]

Defendant argues that the police chief’s command to move her car was unlawful because he did not have the authority to give this order under the Michigan Vehicle Code (MVC). MCL 257.1 *et seq.* Defendant argues that Island Shore Drive is either a “private road,” MCL 257.44(2), or a “private driveway,” MCL 257.44(1), and thus the MVC does not apply. Absent evidence (not present here) that anyone had contracted with the township to allow enforcement of the MVC on a private road, MCL 257.601a, the MVC applies only to public roads, MCL 257.601. We cannot find from the record any evidence that any statutory exceptions are at issue in this case.

However, defendant’s argument relies in part on a narrow interpretation of the police chief’s authority. In *Corr*, 287 Mich App at 501, the defendant was a passenger in a vehicle that was stopped on the suspicion that it was being operated by an intoxicated driver. The defendant, herself intoxicated, exited the vehicle during the traffic stop “and disobeyed the officers’ instructions to return to the vehicle.” *Id.* The defendant “kicked, shoved, and elbowed the officers.” *Id.* The defendant was charged with resisting and obstructing a police officer, but the “district court found no probable cause to bind over defendant . . . because the police unlawfully detained defendant.” *Id.* at 501-502. “The district court concluded that defendant did not ‘obstruct’ as defined in the statute because she did not refuse to obey a lawful command to return to the truck.” *Id.* at 502. The circuit court affirmed, albeit on different grounds. *Id.* In reversing, this Court rejected the district court’s rationale, writing:

We do not agree with the district court’s reasoning that defendant’s assaultive conduct could not be used to establish liability under MCL 750.81d(1) because the officers no longer possessed the lawful authority to command her to stay in the vehicle after they completed the criminal investigation. The statutory language of MCL 750.81d(1) is not so limiting. To the contrary, the

unambiguous language, “an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties” (emphasis added), shows that the Legislature intended that the statute encompass all the duties of a police officer as long as the officer is acting in the performance of those duties. See *Ventura*, 262 Mich App at 375–376; 686 NW2d 748. Here, even though it was evident that the criminal investigation had likely been completed by the time defendant got out of the vehicle and assaulted the officers, the officers were still performing duties at the scene, including maintaining the peace and controlling the scene, locating a sober driver to move the vehicle from the roadway, and protecting the safety of defendant, especially considering her intoxicated state and the inclement weather conditions. Such noninvestigatory duties have been recognized by our courts as official duties of the police. See *People v Davis*, 442 Mich 1, 20; 497 NW2d 910 (1993) (“The police perform a variety of functions that are separate from their duties to investigate and solve crimes,” which are “sometimes categorized . . . [as] ‘community caretaking’ or ‘police caretaking’ functions,” including, but not limited to, the impoundment of vehicles, inventory searches, and rendering aid or assistance to persons in distress); *People v Vasquez*, 465 Mich 83, 88; 631 NW2d 711 (2001), quoting *People v Little*, 434 Mich 752, 759; 456 NW2d 237 (1990) (“[A]n officer’s efforts to “keep the peace” include ordinary police functions that do not directly involve placing a person under arrest.”)

Accordingly, under the circumstances of this case, defendant had “reasonable cause to believe” that the officers’ conduct in maintaining the peace at the scene, attempting to move the vehicle from the roadway, and protecting defendant’s safety, constituted the performance of their duties in their official capacity when she failed to comply with their commands to stay in the vehicle and physically assaulted them. *Nichols*, 262 Mich App at 414; 686 NW2d 502. The district court abused its discretion by refusing to bind defendant over for trial on the assaulting, resisting, and/or obstructing charges. *Orzame*, 224 Mich App at 557; 570 NW2d 118. [*Corr*, 287 Mich App at 505-506.]

In this case, the police chief responded to the situation on Island Shore Drive. He took steps to resolve the dispute by ordering defendant to move her car. The police chief’s role in attempting to defuse the situation falls within his community caretaking function as a police officer, a function designed to maintain the public peace. Therefore, his command for defendant to move her car was lawful, and the trial court did not abuse its discretion by denying defendant’s motion to dismiss, albeit for the wrong reason. See *People v Brake*, 208 Mich App 233, 242 n 2; 527 NW2d 56 (1994) (providing that the Court will not reverse when a trial court reached the right result for the wrong reason).

Defendant also argues that no reasonable jury could have found that the police chief’s command was “lawful,” and therefore the elements of the offense were not proven beyond a reasonable doubt. We review a challenge to the sufficiency of evidence de novo. *People v Osby*, 291 Mich App 412, 415; 804 NW2d 903 (2011).

In ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. A reviewing court is required to draw all reasonable inferences and make credibility choices in support of the trier of fact's verdict. [*People v Strickland*, 293 Mich App 393, 399; 810 NW2d 660 (2011) (quotation marks and brackets omitted).]

As discussed above, the police chief was within his authority as a community caretaker and peacekeeper to order defendant to move her car. Further, ample evidence was presented that supported the jury's finding that defendant knew the police chief was a police officer and obstructed the performance of his duties by virtue of her knowing failure to obey his lawful command to move her vehicle. MCL 750.81d(1); MCL 750.81d(7)(a). Viewing the evidence in the light most favorable to the prosecution, a rational jury could have found the essential elements of the crime proven beyond a reasonable doubt, and therefore, defendant's conviction was supported by sufficient evidence. *Strickland*, 293 Mich App at 399.

Finally, defendant argues that the trial court deprived her of her constitutional right to present a defense. "This Court reviews de novo whether [a] defendant suffered a deprivation of his constitutional right to present a defense." *People v Steele*, 283 Mich App 472, 480; 769 NW2d 256 (2009).

Prior to trial, plaintiff sought an order excluding defendant from presenting evidence and arguing on the issue of whether Island Shore Drive was a private road. Citing to *Ventura*, the court granted the motion on the ground "that it is not a defense to resisting an arrest that the police issued an invalid order or lacked such authority to make such an order." Further, defendant sought an instruction on the issue of police jurisdiction over Island Shore Drive that said, in part:

[P]ursuant to the opinion of the Attorney General regarding the enforcement of the motor vehicle code on private roads Hamburg Township police had no authority or jurisdiction to control ordinary traffic flow on her private driveway, known as Island Shore Drive. If you find that the police had no authority on private property to order [defendant] to move her vehicle, then she could not have violated a valid police order and you must find her not guilty of the charged crime of resisting and obstructing.

Defendant argues on appeal that she should have been allowed to present evidence that the police chief's order was unlawful because he did not possess legal authority under the MVC to order her to move her vehicle on private property.

Although the court cannot be faulted for ruling consistent with binding caselaw from this Court, the ruling predicated on *Ventura* was erroneous given that the Court's reading of MCL 750.81d was rejected in *Moreno*. *Ventura* addressed whether the language of MCL 750.81d requires a finding that an officer's arrest or detaining of a defendant was lawful. *Ventura*, 262 Mich App at 375-376. In the case at hand, the lawfulness of the police's command that

defendant back up her car is in issue. There could be no confusion that this needed to be established given the statutory definition of “obstruct.”

However, because the officer possessed broad authority under his community caretaking and peacekeeping duties, any evidence regarding the MVC or the legal status of Island Shore Drive would have resulted in a confusion of the issues to be tried, and could mislead the jury (particularly if the proposed instruction had been given). MRE 403. Furthermore, any such evidence was irrelevant because such an argument wrongfully presumes that a police officer’s authority ends at the entrance of a private road.

Additionally we note that defendant’s argument, when taken to its logical conclusion, would deprive law enforcement from keeping the peace. Defendant contends, and we reject, that the issue of whether a command is lawful is directly related to the place where the command is given. In this case, defendant asks this Court to void a police officer’s authority because, in the parlance of the defendant, the officer did not have “jurisdiction” over a private road. Such a result is in stark contrast to the statutory authority given to police officers to maintain the public peace, and that authority is not mitigated by the nature of the property on which the command is given. Further, as applied here, defendant would have us rule that police officers had no authority to diffuse the situation which had arisen because it occurred on a private road. Such a result is abhorrent not only to the statutory authority given to police officers as outlined by this Court in *Corr*, but also common sense.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Michael J. Kelly