STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDI MARIE HULL,

Defendant-Appellant.
/

Supreme Court No. 164227

Court of Appeals No. 354667

Tuscola Circuit Court No. 19-015018-FH

SUPPLEMENTAL BRIEF OF APPELLEE PEOPLE OF THE STATE OF MICHIGAN

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STATEMENT OF JURISDICTION

This Court granted oral argument on Hull's application by order. The People do not dispute the Court's jurisdiction in this matter.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Does a person have a right to resist arrest where an arresting officer's actions cause the person to reasonably believe the arrest is unlawful when there was a valid arrest warrant for the person being arrested?

   Appellant's answer: Yes.

   Appellee's answer: No.

   Trial court's answer: Did not answer.

2. Has the prosecution presented sufficient evidence that defendant resisted, obstructed, or opposed a police officer?

   Appellant's answer: No.

   Appellee's answer: Yes.

   Trial court's answer: Did not answer.

3. Was counsel ineffective for failing to request that the jury be instructed that a person has a right to resist arrest where an arresting officer's actions cause the person to reasonably believe the arrest is unlawful when there was a valid arrest warrant for the person being arrested?

   Appellant's answer: Yes.

   Appellee's answer: No.

   Trial court's answer: Did not answer.

INTRODUCTION

While this Court has determined that there is a right to resist an unlawful arrest, there is no right to resist a *valid* arrest and such resistance is contrary to the statute's purpose of protecting officers from physical harm. Because the arrest warrant here was valid, Brandi Hull had no right to resist the arrest where she knew that it was a law enforcement officer who informed her that he had a warrant for her arrest, even if he misstated the basis for that warrant.

Brandi Hull didn't want Chief Albert Pearsall to arrest her. So Brandi questioned why she was being arrested, and Chief Pearsall, out of courtesy, told her what dispatch had told him about the valid warrant. Unfortunately, the information provided from dispatch did not reveal the actual basis for the warrant. In response, Brandi argued with Chief Pearsall, until her new husband – Anthony Hull – yelled at Chief Pearsall to leave, ushered Brandi into their home, and shoved the door shut on Chief Pearsall's foot.

In the end, several other law enforcement officers arrived, Brandi was arrested despite her continued objection, and Anthony was arrested without opposition. Both were charged with resisting and obstructing Chief Pearsall, being tried together. At trial, Brandi testified that if she had been told the actual basis for the arrest warrant, she still would have opposed the arrest – which was reinforced by her continued non-compliance even after being given a copy of the valid arrest warrant. Likewise, Anthony testified that if Chief Pearsall had informed him of the actual basis for Brandi's arrest, he still would have opposed it. While Chief Pearsall may have initially provided inaccurate information about

Brandi's arrest warrant, both Hulls intended to oppose her arrest regardless of Chief Pearsall's actions.

This Court has asked whether a person may resist an arrest if that person "reasonably believe[s] the arrest is invalid." The answer is no. Michigan law only requires an officer to inform the arrestee that there is a warrant for that person's arrest, and the officer did so here. While the officer misinformed her of the basis for that warrant, that statement did not affect the validity of the arrest under Michigan law. There is no right to resist an arrest for a valid warrant. Any contrary ruling would conflict with Michigan law and would also result in front porch litigation as officers attempting to effectuate a peaceful arrest might be met with violence rather than compliance where residents believe erroneously that there is some defect in the arrest warrant. It would also modify the legislative scheme to expand the knowing element of the offense to require prosecutors to prove beyond a reasonable doubt that the resister knew that the arrest warrant was valid – permitting a defendant's subjective view of the legitimacy of an arrest to excuse dangerous and violent behavior.

The Court has directed the parties to address whether a misstatement by a law enforcement officer excuses physical or passive resistance to a valid arrest. Since there is no right to resist or obstruct a valid arrest warrant, and such a requirement would fundamentally impact the purpose of the criminal statute, this Court must deny Hulls' applications for leave – affirming their convictions.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Chief Pearsall attempts to arrest Brandi Hull.

Kingston Police Chief Albert Pearsall contacted Brandi Hull, at her home, for the purpose of executing an arrest warrant. (Brandi's App'x p 339a.)[1][2] Prior to this contact, Chief Pearsall had verified the validity of the warrant through central dispatch who erroneously informed him that the reason for the warrant was excessive noise or loud exhaust. (*Id.*)

At the scene, when Chief Pearsall informed Brandi that he had an arrest warrant for her, she asked "for what?" Chief Pearsall informed her of the reason he was told by central dispatch— excessive noise or loud exhaust—which caused her to assert that she had never been stopped for such an offense. (*Id.*; Trial Exhibit 1, 00:52–01:25; Ex A.) Chief Pearsall was in full uniform, and Brandi acknowledged that she recognized him as being a law enforcement officer. (Brandi's App'x pp 9a–10a, 118a, 221a, 339a; Trial Exhibit 1, 00:48–0051; Ex A.)

At this point, Anthony Hall came outside and immediately told Brandi to go in the house and began arguing with Chief Pearsall, telling him that he was on private property and had not been invited. (Brandi's App'x p 339a; Trial Exhibit 1, 01:25–01:35; Ex A.) As Anthony continued to argue with Chief Pearsall, he guided Brandi back into the house. (Brandi's App'x p 339a; Trial Exhibit 1, 01:35–01:50;

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[1] The brief refers to the parties and their appendices by their first name to avoid confusion.

[2] Since most of the facts are not in dispute, the dissertation of facts found in the Court of Appeals opinion is referenced. MCR 7.215(C)(1).

Ex A.) Before ushering Brandi into the house, Anthony physically removed Chief Pearsall's hold of Brandi's arm. (Brandi's App's pp 22a–23a.) As Chief Pearsall began to follow Brandi and Anthony into the home, despite directing Anthony to stop interfering with the arrest, Anthony shoved the door shut on Chief Pearsall. (*Id*. at pp 22a, 339a–340a; Trial Exhibit 1, 01:50–2:00; Ex A.)

Brandi is arrested with backup assistance.

In response to Chief Pearsall's call for assistance, three Michigan State Troopers and a Tuscola County Sheriff Deputy arrived at the Hull's home. (Brandi's App'x p 340a.) After a short time, Brandi and Anthony came out of the house. (*Id*.) Brandi continued to argue and ignore the Troopers' orders. (*Id*.) Prior to this, Troopers had verified the validity of her arrest warrant and were informed that the remarks section of the warrant contained the correct reason for the arrest: failing to appear for a pending driving-while -license-suspended (DWLS) offense. (*Id*.)

Despite printing out the warrant and showing it to Brandi, Brandi continued to argue about the validity of the warrant and be defiant. (*Id*. at pp 117a–118a, 340a.) As a result of her defiance, the Troopers "almost had to pick her up and carry her." (*Id*., at pp 95a–96a, 340a.) Anthony was arrested with no further resistance. (*Id*., at p 229a.)

Brandi and Anthony testify at trial.

At a combined trial in which both Brandi and Anthony were charged each with a count of resisting and obstructing Chief Pearsall, Brandi alleged that if Chief Pearsall had indicated the warrant was for DWLS, she would have challenged the validity of the warrant by showing a receipt in which Anthony had paid the fines and costs triggering the suspension. (*Id*. at pp 301a–303a, 340a; People's App'x pp 1–7.) MCL 750.81d(1). While acknowledging that she had received a citation for DWLS, she conceded that she had never appeared in court on it. (Brandi's App'x pp 186a, 340a.)

Although Chief Pearsall was in full uniform, Anthony testified at trial that he did not know Chief Pearsall was a law enforcement officer. (*Id*. at pp 215a, 221a, 341a.) Anthony also testified that if he had been informed the warrant was for a DWLS, then he still would have challenged the warrant by showing the officer the receipt. (*Id*. at p 217a.) And he would have asked *another* officer to show up because he did not personally know Chief Pearsall. (*Id*. at p 218a.)

The Hulls are found guilty.

During jury deliberations, the jury made several inquiries, including three related to the issue before this Court, including (1) "If being arrested, do you have to be told what the warrant is for at the time of the arrest[;]" (2) "Are there reasonable exceptions for resisting under duress[;]" and (3) "Is there a legal definition of opposed similar to how obstruct is defined in our instructions[.]" (*Id*., at p 341a.) By agreement, the trial court gave a standard answer directing the jury to base

their decision on the law and definitions included in the jury instructions. (*Id.*) The jury found both Brandi and Anthony guilty of the resisting and obstructing charges. (*Id.*)

The Court of Appeals affirms the convictions.

Following their convictions, both Hulls filed identical motions for a new trial based on a claim that the prosecutor had failed to provide them a copy of Brandi's warrant. (*Id.*) The trial court denied the motions. (*Id.*)

In the Court of Appeals, both Hulls claimed there was insufficient evidence to support their convictions. (*Id.* at pp 342a–346a.) Brandi also claimed that her trial attorney was ineffective, and Anthony alleged that the trial court erred in admitting certain evidence and in permitting certain questions by trial counsel. (*Id.* at pp 346a–350a.) The Court of Appeals rejected these claims and affirmed both Hulls' convictions, with Judge Shapiro writing a separate concurrence to highlight his disagreement that Brandi committed any acts of resistance or obstruction during her initial contact with Chief Pearsall. (*Id.* at pp 351a–352a.)

The Supreme Court grants a MOAA.

Following an application for leave to appeal, this Court granted a MOAA and defined issues for argument, which are addressed in the People's supplemental briefs.

ARGUMENT

I. Since the right to resist an unlawful order does not create a right to resist the execution of a valid arrest warrant, any misstatements by the arresting officer during an arrest do not entitle resistance or obstruction of the arrest.

A. Issue Preservation

To preserve an issue for appellate review, "it must be raised, addressed, and decided by the lower court." *People v Anderson*, 341 Mich App 272, 279 (2022).

Since trial counsel did not raise this issue in the trial court, it is not preserved for appellate review.

B. Standard of Review

"Unpreserved claims of constitutional error are reviewed for plain error affecting substantial rights." *People v Jackson*, 292 Mich App 583, 594 (2011), citing *People v Pipes*, 475 Mich 267, 274 (2006). To prevail under plain error review, the defendant must demonstrate that a clear or obvious error occurred that affected his substantial rights. *People v Carines*, 460 Mich 750, 763 (1999). If such an error is shown to have caused prejudice, the reviewing court may overturn the conviction only if the defendant is actually innocent or the error "seriously affected the fairness, integrity or public reputation of judicial proceedings." *Id*. at 763–764.

A trial court's findings of fact are reviewed for clear error. *People v Leffew*, 508 Mich 625, 637 (2022). Clear error occurs "when the reviewing court is left with a definite and firm conviction that an error occurred." *People v Fawaz*, 299 Mich App 55, 60 (2012).

The interpretation and application of a statute and the underlying criminal law are questions of law reviewed de novo. *People v Coutu*, 459 Mich 348, 353 (1999). De novo review is a "review of the issues independently, with no required deference to the trial court." *People v Beck*, 504 Mich 605, 618 (2019).

C. Analysis

The Court's first question is "whether a person has a right to resist arrest where an arresting officer's actions cause the person to reasonably believe the arrest is unlawful." Since the right to resist an unlawful order does not include a right to resist the execution of a valid arrest warrant, any misstatements by the arresting officer during an arrest does not entitle an individual to resist or obstruct the arrest.

1. *Moreno* does not apply because Brandi's arrest was not unlawful.

While the Hulls have asserted that Brandi's arrest warrant was "defective," it is undisputed that her arrest warrant was valid. (Brandi's App'x p 339a.) And because Brandi's arrest warrant was valid when Brandi had contact with law enforcement, she was not entitled to resist and obstruct the arrest. (*Id.*)

While Anthony has claimed that he had a right to defend Brandi against the arrest, as determined by the trial court, Anthony's actions do not support a defense of others claim. (*Id.* at 345a.) This is particularly true since before a person may act in defense of another, that person must be assaulted. (*Id.*) *Detroit v Smith*, 235 Mich App 235, 238 (1999). Since Chief Pearsall's attempt to execute a legal arrest

is not an assault, Anthony did not have a right to act in defense – or opposition – of the arrest. (Brandi's App'x pp 345a–346a.) *Smith*, 235 Mich App at 238.

a. Brandi's arrest was lawful, in contrast to *Moreno*'s illegal search.

When Chief Pearsall had initial contact with Brandi, the arrest warrant was valid and had been confirmed through central dispatch. *Id*. When Anthony slammed the door on Chief Pearsall, the arrest warrant was valid. (Brandi's App'x pp 339a–340a.) And when Brandi refused to walk to the police car, after troopers had again verified the validity of the warrant and communicated the reason for the arrest to Brandi, the arrest warrant was valid. (*Id*. at p 340a.)

In *People v Moreno*, 491 Mich 38 (2012), this Court ruled that the common law right to resist an unlawful arrest was not abrogated by the Legislature and remained in force. *Id*. at 58. That decision was in response to officers who illegally forced entry into a person's home without a warrant or a valid exception to the warrant requirement. *Id*. at 41–43. In contrast, the Hulls interfered and used force to oppose a lawful arrest. (Brandi's App'x pp 339a–340a.)

Since *Moreno* does not give a person the right to resist or interfere with a lawful arrest, the Hulls may not rely on that decision to excuse their conduct.

b. Since an arrest warrant is no longer required to be in the officer's possession, the issue whether the officer presented a facially valid warrant to the arrestee is not relevant to the validity of the arrest.

A further distinguishing factor is that the *Moreno* Court did not consider how changes in the warrant possession requirement impacts the application of common law.

Prior to the adoption of the Code of Criminal Procedure, a valid arrest could be accomplished only if the arresting officer had the arrest warrant in the officer's possession. *Drennan v People*, 10 Mich 169, 183 (1862) (Campbell, J., concurring). At that time, the person being arrested had a right to inspect the warrant. *Id.* at 184. And if the warrant appeared invalid on its face, the person being arrested was not "bound to submit to the arrest." *Id.* at 183.

But since that time, the Legislature has eliminated the requirement that the arresting officer have the arrest warrant in the officer's possession. MCL 764.18. Further, unlike under common law, the Legislature eliminated the requirement that the arrested person be informed of the reason for the arrest. *Id.* Today's statute requires only that the officer inform the person to be arrested that there is a warrant for that person's arrest—not the basis for the warrant. *Id.* Only after the person is arrested is the officer required to show the arrested person the warrant. *Id.* And not immediately, but instead only "as soon as practicable." *Id.*

This adoption of legislation was not a mere codification of the common law, but instead a real change. The rationale for the common law right to resist an arrest warrant that was invalid on its face was highlighted by the Court in 1862

when it opined what would occur if the physical arrest warrant was not present at the location of the arrest.

> If it is not necessary that an officer should have a warrant with him when an arrest is made, then it would necessarily follow that every one would be bound to submit, upon the mere claim that he had a warrant – a principle which is condemned in the strongest terms by Lord Kenyon. [*Drennan*, 10 Mich at 184 (citation omitted) (Campbell, J., concurring).]

Yet, the absence of a physical warrant at the time of the arrest — "condemned in the strongest terms" in 1862 — is exactly what the Legislature adopted and has been in place since 1927. Public Act 175 of 1927; MCL 764.18.

The goal under common law and the statute is for valid arrests to be executed in a peaceful manner. Under common law, because officers were often acting alone, this goal was accomplished by permitting the person being arrested to inspect the arrest warrant which was in the possession of the arresting officer. *Drennan*, 10 Mich at 183. But now that the arrest warrant is no longer in the possession of the arresting officer, law enforcement has the support of reliable information like the Law Enforcement Information Network, and additional officers are often present during the execution of an arrest warrant to increase safety; it is no longer reasonable or practical to require the officer to convince an offender of the validity of the arrest warrant prior to arrest. In particular, it is no longer the law. MCL 764.18. As a result, the statutory scheme rejected the concept that the validity of the warrant had to be established before an offender submitted to arrest.

Here, a uniformed officer informed the Hulls that he had an arrest warrant for Brandi. (Brandi's App'x p 339a.) When he did that, Brandi was "bound to

submit, upon the mere claim that he had a warrant." *Drennan*, 10 Mich at 184 (Campbell, J., concurring). To reiterate: the uniformed officer was not required to present the physical arrest warrant at the time of the arrest. And Brandi's subsequent assertion that she could simply provide a receipt to avoid arrest is without merit since the paying of fines does not excuse her failure to appear in court on the misdemeanor offense. (Brandi's App'x p 340a.)

Because there is no requirement that the physical arrest warrant be present at the location of the arrest, the focus of the analysis must be on *only the question of the true validity of the warrant*, and not on the facial validity of the arrest warrant presented at the time of arrest. See *Drennan*, 10 Mich at 183. Since the arrest warrant was valid here, the question becomes solely whether the arrested person knew or had reason to know that he or she was interacting with a law enforcement officer. MCL 750.81d(1).

c. *Moreno* does not apply where the arrest warrant is valid.

Since Brandi's arrest warrant was valid and there is no right to resist a lawful arrest, and the Legislature has abrogated the requirement that an arrested person may inspect the arrest warrant at the time of their arrest, the *Moreno* ruling does not apply here, and the question posed by the Court instead must be answered through an analysis of legislative intent and interpretation of statutory language.

2. The purpose of statute is to protect officers from harm.

The purpose of the resisting and obstructing statute "is to protect officers from physical harm." *People v Vasquez*, 465 Mich 83, 92–93 (2001); *People v Philabaun*, 461 Mich 255, 262 n 17 (1999), citing *People v Kretchmer*, 404 Mich 59, 64 (1978). This is supported by the fact that the statute punishes assaults on officers more severely than assaults on private citizens. *Vasquez*, 465 Mich at 93 n 4, citing *People v Tompkins*, 121 Mich 431, 432 (1899). And that is why physical interference with an officer's duties is punished more severely than non-physical efforts to impede investigations. *Vasquez*, 465 Mich at 93 n 4.

In this context, the knowledge necessary to establish guilt of this more stringent offense, is not the knowledge of the legality of the officer's actions – as alleged on appeal. (Def's Appeal Br, p 11.) But rather, the "knowing" element exists to ensure the offender is put on notice that the offender is assaulting an officer and will be at risk of a more serious punishment if found guilty. *Tompkins*, 121 Mich at 432.

3. The statute prohibits the interference of an arrest by a law enforcement officer.

MCL 750.81d punishes a person "who assaults, batters, wounds, resists, obstructs, opposes, or endangers" law enforcement and other emergency response personnel during the performance of their duties. MCL 750.81d(1), (7)(b).

An assault is "either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Nickens*, 470 Mich 622, 628 (2004). "A battery is the willful and harmful or

offensive touching of another person which results from an act intended to cause such a contact." (Brandi's App'x p 342a.) *Morris*, 314 Mich App at 410. The term "wound" is "to inflict a wound upon; injure; hurt." *Morris*, 314 Mich App at 408. "Resist is defined as to withstand, strive against, or oppose." (Brandi's App'x p 342a.) *Morris*, 314 Mich App at 408. "Obstruct" is statutorily-defined to include "the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." (Brandi's App'x p 342a.) MCL 750.81d(7)(a). "Oppose is defined as to act against or furnish resistance to; combat." *Morris*, 314 Mich App at 408. And "endanger" is defined as "to bring into danger or peril; to create a dangerous situation." Merriam-Webster's Collegiate Dictionary, Tenth Edition 1995, and Eleventh Edition 2006.

Those terms while varied, collectively "clearly impl[y] an element of threatened or actual physical interference." *Morris*, 314 Mich App at 408. In the case of the resistance of an arrest and considering that the purpose of the statute "is to protect officers from physical harm," a person violates the statute if the person interferes or attempts to interfere with an arrest by someone who is known to the offender as a law enforcement officer, or that the offender would reasonably know is an officer. *Vasquez*, 465 Mich at 92–93; MCL 750.81(d)(1).

4. The Hulls' reliance on *Drennan* is misplaced.

The Hulls rely on *Drennan* for the proposition that resistance is excusable if the officer's conduct caused the defendant to reasonably believe that an arrest is unlawful. (Def's Appeal Br, pp 13–14.) Citing *Drennan*, 10 Mich 169 (1862).

But *Drennan* was predicated on the duty to provide notice of the basis for the arrest warrant, a duty that has been superseded by statute here. See *Drennan*, 10 Mich at 177 (Christiancy, J., lead opinion) ("But though [the officer] had a right, as I think, to make the arrest in a proper manner, without having at the moment the warrant in his possession, yet, to place the defendant under any obligation to submit to the arrest, the officer should have informed him of the facts, or at least of the offense for which he arrested him."); *id.* at 184 (Campbell, J., concurring) ("The cases certainly mean that the party arrested shall have a right to see the warrant at the time [of the arrest].") In that way, the conduct and culpability of the arrestee is different in kind from the issue here, where the state of the law does not require the arresting officer to inform the arrestee of the basis of the arrest at the time of the arrest, other than to inform, the arrestee, if possible, of the fact that there is an arrest warrant. See MCL 764.18.

In particular, John Drennan was charged with assault with intent to murder John Gore. *Drennan*, 10 Mich at 169 (synopsis). And the issue on review was whether Gore could lawfully arrest Drennan for the theft of something with minimal value without adhering to the statutorily eliminated requirement that he physically possess the arrest warrant? *Id.* at 172 (Christiancy, J., lead opinion; 178 (Campbell, J., concurring); MCL 764.18 ("it shall not be necessary for the arresting officer personally to have the warrant in his possession but such officer must, if possible, inform the person arrested that there is a warrant for his arrest").

Thus, the issue of the legality of the arrest in *Drennan* was directly related to the arresting officer's duty to inform Drennan of the basis for the arrest, see *Drennan*, 10 Mich at 177,[3] a duty not at issue here. The *Drennan* opinion, while important, simply isn't apposite.

Moreover, even the reasoning itself does not assist Brandi Hull's argument here. The *Drennan* Court cites *Travers* to assert that if an arrest is unlawful, the highest level of intent could only support a verdict of guilt for manslaughter. *Id.* at 171–172 (Christiancy, J., lead opinion). But this assertion is not based on the defendant's knowledge of the legality of the arrest or the officer's representation at the time of arrest. Rather, it is based on the level of intent necessary to establish the different levels of homicide. The issue in *Travers* was not whether he had a right to resist detention based on the sergeants' representations, but whether his acts of killing the sergeants was murder, or a lesser offense. *Travers*, 28 FCas at 212. That determination was based on whether Travers had the necessary malice to elevate his killing from manslaughter to murder. *Id.* at 206–207.

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[3] Justice Christiancy explained why Drennan might reasonably believe that the arresting officer Gore was not acting in good faith because of this duty to have the warrant: "Gore simply told him he had a warrant for him. And when defendant asked to see it, Gore refused, saying he was not bound to show it, and at once seized him and jerked him to the door. This conduct of the officer was well calculated to excite the suspicion of the defendant, and to induce him to believe the officer was acting in bad faith, and thus naturally tended to provoke the violence which ensued. *The defendant, under such circumstances, might well believe he was resisting an illegal arrest, and lawfully defending his liberty*." (Emphasis added.)

The rationale of *Travers* clarifies that the rule from *Drennan* is based on Drennan's possible intent and not his knowledge of whether the arrest was lawful, even aside from the former police duty to possess the warrant. As a result, *Drennan* does not excuse the resistance or obstruction of an officer executing that officer's duties, even if the officer makes a misstatement about the purpose of the arrest.

5. A person does not have a right to resist a valid arrest based on that person's subjective opinion of the validity of the arrest warrant.

Considering that the purpose of the resisting and obstructing statute is to protect law enforcement officers from injuries associated with fighting and resistance of their order; the "knowing" component of the offense is limited to the individual knowing that the person the individual is interacting with is a law enforcement officer. And any expansion of the understanding of this element only encourages the public to meet law enforcement's efforts to effectuate a peaceful arrest with violence and active resistance.

This outcome was considered by the Court of Appeals during the oral argument in this matter when Brandi's counsel was asked,

> Do we really want to create a situation in which, when an officer makes a mistake, we get to litigate that on the front porch of the household? Is that something we – given the safety issues that might arise if that became the legal policy. If the officer tells you that the warrant is for something that you believe you haven't done, you get to resist? [Oral Argument Audio, Michigan Court of Appeals, 4:32–5:02.[4]]

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[4] <courts.michigan.gov/4ab09d/siteassets/case-documents/uploads/coa/public/audiofiles/audio_35466711042021100000.mp3> (reviewed July 6, 2023).

Indeed, if this Court expands the knowing element to include that the offender has to reasonably know that an arrest warrant is facially valid, the result will be front porch litigation—a result that undermines the intent of the statute: the peaceful arrest of people with active valid warrants.

Since Chief Pearsall was executing a valid arrest warrant, neither Brandi nor Anthony had the right to interfere with that arrest, and their subjective opinion about the facial validity of an absent warrant does not excuse their behavior.

II. Based on Brandi's knowing failure to comply with Chief Pearsall's efforts to execute a valid arrest warrant, the prosecution presented sufficient evidence that Brandi resisted, obstructed, or opposed a police officer.

A. Issue Preservation

"Criminal defendants do not need to take any special steps to preserve a challenge to the sufficiency of the evidence." *People v Cain*, 238 Mich App 95, 116–117 (1999).

B. Standard of Review

A challenge to the sufficiency of the evidence is reviewed on appeal to see if "there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *People v Oros*, 502 Mich 229, 239 (2018). When making this determination, the reviewing Court must consider the evidence "in the light most favorable to the prosecution." *Id.* A jury's decision must be given deference, and all reasonable inferences and credibility determinations must be

made in support of the verdict. *Id.* "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *Id.*

C. Analysis

Next, the Court directs the parties to determine if the evidence presented against Brandi was sufficient to support the conviction. Upon review of the record in the light most favorable to support the verdict, "there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *Id.*

1. Resisting arrest requires opposition and knowledge that the individual is an officer.

To establish that a defendant has resisted or obstructed an officer, the prosecutor must prove beyond a reasonable doubt that:

> (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 duties.
>
> [(Brandi's App'x pp 302a–304a, 342a.) Quoting *People v Morris*, 314 Mich App 399, 408 (2016); M Crim JI 13.1.]

Further, certain terms have been defined by statute or their common use. "Obstruct" is statutorily defined to include "the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." (Brandi's App'x p 342a.) MCL 750.81d(7)(a). "Resist is defined as to withstand,

strive against, or oppose." (Brandi's App'x p 342a.) *Morris*, 314 Mich App at 408. "Oppose is defined as to act against or furnish resistance to; combat." *Id.* "A battery is the willful and harmful or offensive touching of another person which results from an act intended to cause such a contact." (Brandi's App'x p 342a.) *Morris*, 314 Mich App at 410.

2. The prosecution presented sufficient evidence to support Brandi's conviction.

Brandi asserts that any hesitation she had in cooperating with law enforcement was caused by being told that the arrest was for a "noise violation." (Def's Appeal Br, pp 19–23; Brandi's App'x p 339a.) But her arguing and resistance continued even after Trooper's verified the warrant, informed her of its validity, and provided her with a copy of it. (Brandi's App'x p 340a.) Providing her with the warrant on scene was not required. MCL 764.18. Likewise, informing her of the reason for the warrant prior to arrest was not required. *Id.* And even when these courtesies were extended, Brandi continued to oppose and provide passive resistance to her arrest – continuing to delay it – regardless of the troopers' additional efforts. (Brandi's App'x p 340a.)

Considering the evidence in the light most favorable to support the jury's decision, Brandi opposed Chief Pearsall's efforts to execute a valid arrest warrant by arguing with the purpose of the arrest. *Oros*, 502 Mich at 239. She further cooperated with Anthony, who aided her in retreating into the house and then closed the door on Chief Pearsall. (Brandi's App'x p 339a.)

Brandi's continued resistance, even after having the reason for the warrant clarified, coupled with her testimony that had Chief Pearsall accurately stated the reason for the warrant she still would have argued over its validity, provides circumstantial evidence that her initial discussion with Chief Pearsall was actually an effort to delay and oppose the arrest. (*Id.* at pp 339a–340a.)

Brandi knew Chief Pearsall was a law enforcement officer, and she had been informed that the warrant was valid, so a rational trier of fact could determine beyond a reasonable doubt that her "knowing failure to comply" with Chief Pearsall's efforts to arrest her amounted to obstruction and guilt of resisting and obstructing. See *Oros*, 502 Mich at 239; MCL 750.81d(7)(a).

Based on the evidence admitted at trial, there was sufficient evidence for a rationale jury to find that the prosecutor had proven all the elements of the offense beyond a reasonable doubt.

III. Since a defendant does not have a right to resist a valid arrest warrant, trial counsel was not ineffective for not requesting an instruction that had never been given.

A. Issue Preservation

Hull's claim of ineffective assistance of counsel was not preserved with a motion and hearing before the trial court. While appellate counsel raised the issue before the Court of Appeals since a *Ginther* hearing was not held on this matter, review is limited to errors apparent on the record. *People v Spears*, __ Mich App __, slip op 3 (Docket No. 357848) (April 20, 2023), citing *People v Wilson*, 242 Mich App 350, 352 (2000); *People v Ginther*, 390 Mich 436 (1973).

B. Standard of Review

The determination whether someone has been deprived effective assistance of counsel presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579 (2002). The court "must first find the facts, and then decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel." *Id.* The trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.* A trial court's factual findings are clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made. *People v Mullen*, 282 Mich App 14, 22 (2008).

C. Analysis

Finally, the Court directs the parties to determine "whether counsel was ineffective for failing to request that the jury be instructed that a person has a right to resist arrest where an arresting officer's actions cause the person to reasonably believe the arrest if unlawful." As argued in Issue I, since a defendant does not have a right to resist a valid arrest warrant, trial counsel was not ineffective for not requesting such an instruction.

1. The defendant carries the burden to establish deficient representation and a reasonable probability of a different outcome but for that representation.

Effective assistance of counsel is presumed, and the party claiming ineffectiveness must overcome a strong presumption that counsel's assistance was

sound trial strategy. *People v Horn*, 279 Mich App 31, 37–38 n 2 (2008). To establish ineffective assistance of counsel, the claimant must show (1) counsel's performance was below an objective standard of reasonableness under prevailing professional norms, and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Bell v Cone*, 535 US 685, 695 (2002), citing *Strickland v Washington*, 466 US 668, 688, 694 (1984); *People v Jordan*, 275 Mich App 659, 667 (2007). Such performance must be measured without the benefit of hindsight. *Bell,* 535 US at 698; *People v LaVearn*, 448 Mich 207, 216 (1995). "[T]his Court will not second-guess trial counsel's judgment on matters of trial strategy." *People v Rice (On Remand)*, 235 Mich App 429, 445 (1999), citing *People v Barnett*, 163 Mich App 331, 338 (1987).

In reaching its conclusion, the court should keep in the forefront the principle that "[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 US at 689–691. Moreover, as the *Strickland* Court repeatedly emphasized, review of ineffective assistance of counsel claims must avoid "intensive scrutiny of counsel," and to do so the Court must apply "a heavy measure of deference to counsel's judgments." *Id.*

2. Trial counsel was not ineffective for not making a meritless request.

A defendant is entitled to a properly instructed jury. *People v Dupree*, 486 Mich 693, 712 (2010). As argued in Issue I, Brandi is not entitled to an instruction that she was entitled to resist her arrest based on her *belief* that the warrant was defective. A request for such an instruction would have been without merit and "[t]rial counsel is not ineffective for failing to advocate a meritless position." *People v Payne*, 285 Mich App 181, 191 (2009).

Further, trial counsel is not ineffective for failing to make a novel argument and in this case request an instruction that has never been given in the state before. *People v Reed*, 453 Mich 685, 695 (1996); *People v Tadgerson*, unpublished opinion per curiam of the Court of Appeals, issued June 15, 2023 (Docket No. 360980), 6; Ex B. (resisting and obstructing an officer does not require the prosecutor to prove that defendant knew the officer's commands were lawful.)[5]

Based on the novel nature of Brandi's argument, and that she does not have the right to oppose or resist an arrest based on her subjective belief of the validity of the warrant, Brandi has not established that trial counsel provided her with ineffective assistance of counsel.

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[5] *Tadgerson* is offered as a recent case supporting the position that the extension of the knowledge element proposed by the Hulls' is novel and not supported by existing law. While unpublished, this decision carries persuasive authority. *People v Daniels*, 311 Mich App 257, 268 n 4 (2015); MCR 7.215(C)(1).

CONCLUSION AND RELIEF REQUESTED

For the reasons argued above, this Court should affirm her conviction by denying Brandi Hull's application for leave to appeal.

Respectfully submitted,

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