

**STATE OF MICHIGAN  
IN THE THIRD CIRCUIT COURT OF MICHIGAN  
FOR THE COUNTY OF WAYNE**

**PEOPLE OF THE STATE OF MICHIGAN  
Plaintiff-Appellant,**

**vs.**

**Hon. Edward Ewell, Jr.  
Case No. 11-004005-01-AR  
LC No. 11-057748-01**

**MARYANNE GODBOLDO  
Defendant-Appellee,**

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**OPINION ON APPEAL**

**Procedural History**

On March 27, 2011, Defendant, Maryanne Godboldo, was arraigned on three counts of assault with a dangerous weapon (felonious assault); MCL 750.82; three counts of resisting an arrest and obstructing a police officer; MCL 780.81; one count of discharge of a firearm in or at a building, MCL 750.234b; and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On April 4, 2011, following a hearing on Defendant's Motion for Stay of Proceedings, 36<sup>th</sup> District Court Judge Paula G. Humphries granted Defendant's motion pursuant to MCR 7.305, until Michigan's Supreme Court rendered its decision in *People v Moreno*, unpublished per curiam opinion of the Court of Appeals, issued June 10, 2010 (Docket No. 294840). According to the hearing transcript, the District Court granted Defendant's motion because Michigan's Supreme Court's decision was likely to affect the law to be applied in Defendant's case. On April 25, 2011, the prosecution filed an application for leave to appeal the District Court's order granting Defendant's motion to stay the

preliminary examination, pursuant to MCL 600.8342(1) and (2) and MCR 7.103(A)(1) and (B)(1).

### **Standard of Review**

The adjournment of a preliminary examination is reviewed for an abuse of discretion. *People v Williams*, 51 Mich App 758, 760; 216 NW2d 499 (1974).

### **Analysis**

The prosecution contends that the District Court abused its discretion in granting a stay of the preliminary examination pending Michigan's Supreme Court's review of *Moreno*, *supra*. The prosecution maintains that the issues in *Moreno* are distinct from Defendant's case. This Court agrees.

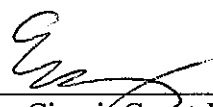
In consideration of *Moreno*'s issues on appeal, Michigan's Supreme Court will address the following: "(1) whether a person present in his or her own home can lawfully resist a police officer who unlawfully and forcibly enters the home, without violating MCL 750.81d; (2) if not, whether, so interpreted, MCL 750.81d is unconstitutional; and (3) whether a defendant prosecuted under MCL 750.81d for resisting a police officer who unlawfully and forcibly enters the defendant's home may claim self-defense." *People v Moreno*, unpublished order of the Supreme Court, issued December 29, 2010, (Docket No. 141837).

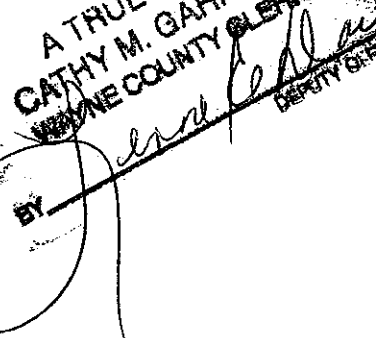
Pursuant to MCR 6.110(A), Defendant and the prosecution are both entitled to a prompt preliminary examination. In this instance, the District Court adjourned the preliminary examination, but, due to the prosecution's objection to the adjournment, the Court was required to make a finding on the record of "good cause" for the adjournment. MCR 6.110(B).

In contrast, Defendant maintains that Michigan's Supreme Court's decision in *Moreno*, *supra*, is likely to be dispositive of the issues in Defendant's case. This Court disagrees

Although both cases purportedly relate to MCL 750.81, Moreno involved a warrantless search of Defendant's residence, whereas Defendant's case involves the execution of a court order to remove Defendant's child from her residence. Moreover, in her reply brief, Defendant cites MCR 7.305 for the proposition that her case involves a "question of such public moment" that "[f]urther proceedings relative to the case are stayed . . . pending receipt of an answer from the Supreme Court." Nevertheless, Defendant's case has not been certified to Michigan's Supreme Court. Consequently, the District Court's stay of the preliminary examination is **VACATED**, and **REMANDED** to the 36<sup>th</sup> District Court for a timely preliminary examination. This Court does not retain jurisdiction.

Dated: 6-16-11

  
\_\_\_\_\_  
Circuit Court Judge

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CATHY M. GARRETT  
WISSE COUNTY CLERK  
BY  DEPUTY CLERK

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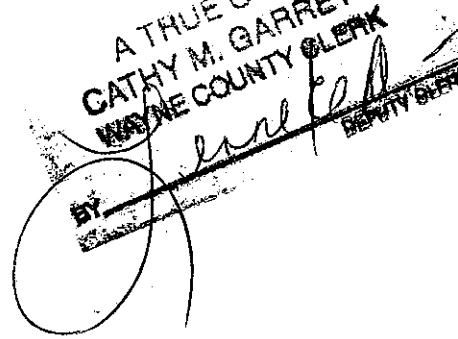
**ORDER ON APPEAL**

At a session of said Court held in the Frank  
Murphy Hall of Justice on 6-16-11

PRESENT: HON. Hon. Edward Ewell, JR.  
Circuit Court Judge

In the above-entitled cause, for the reasons set forth in the foregoing Opinion, IT IS  
**HEREBY ORDERED** that the District Court's stay of the preliminary examination is  
**VACATED** and **REMANDED**.

  
Circuit Court Judge

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CATHY M. GARRETT  
WAYNE COUNTY CLERK  
BY  DEPUTY CLERK