

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARYANNE GODBOLDO,

Defendant-Appellee.

UNPUBLISHED

May 28, 2013

No. 308459

Wayne Circuit Court

LC No. 11-009184-AR

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

FORT HOOD, J. (*concurring*.)

In light of the briefing of the issues by the defense and the holdings rendered by the lower courts, I join in the majority's decision to remand for a determination regarding bindover.

In *People v Moreno*, 491 Mich 38, 42; 814 NW2d 624 (2012), the police were searching for an individual wanted for outstanding warrants. The individual's vehicle was parked in the vicinity of the defendant's residence. The officers knocked on defendant's door and inquired about the individual's whereabouts. When the door was opened fifteen minutes later, the police smelled intoxicants and burnt marijuana. The officers told the female who answered the door that they were not interested in writing tickets, but sought the individual wanted on an outstanding warrant. The female told the officers that the individual they sought was not at the home. The officers advised the female that they were going to enter the home to "secure it" until a warrant was prepared. Then, the defendant came to the front door and insisted that officers could not enter his home until they had a warrant. The defendant attempted to close the door, but an officer put his shoulder against it to prevent it from closing. The defendant struggled with the officers. The defendant was pulled from the doorway, physically subdued, and arrested. An officer was injured in the struggle. *Id.* at 42-43.

The defendant was charged with assaulting, resisting and obstructing a police officer, MCL 750.81d(1), and assaulting, resisting, or obstructing a police officer causing injury, MCL 750.81d(2). Although the lower courts determined that the entry into the defendant's home was unlawful, the courts nonetheless held that lawfulness of a police officer's conduct was not an element of MCL 750.81d. *Id.* at 43. On appeal, our Supreme Court examined "whether a person present in his or her own home can resist a police officer who unlawfully and forcibly enters the home or whether MCL 750.81d prohibits resisting unlawful actions by a police officer." *Id.* at 44. The Court examined whether the Legislature intended to abrogate the common-law right to

resist an unlawful arrest. *Id.* After examining the plain language of MCL 750.81d and the legislative history of the former versions of MCL 750.81d, our Supreme Court held that the Legislature did not abrogate the traditional common-law rule that a person may resist an unlawful arrest. *Id.* at 57-58. On remand, the Court instructed the trial court to grant the defendant's motion to quash the charges in light of its ruling that the officers' conduct was unlawful. *Id.* at 58. With regard to the charges of resisting and obstructing, the district court should examine the *Moreno* holding.¹ Additionally, defendant mentioned, in passing, the castle doctrine, see *People v Riddle*, 467 Mich 116, 134-135; 649 NW2d 30 (2002) and constitutional challenges. These issues are not preserved for appellate review because they did not serve as the basis of the decisions rendered by the lower courts, *People v Metamora Water Serv, Inc*, 276 Mich App 376, 383; 741 NW2d 61 (2007), and defendant did not adequately prime the pump, *People v Wacławski*, 286 Mich App 634, 679; 780 NW2d 321 (2009). Accordingly, these challenges should be briefed and addressed on remand.

/s/ Karen M. Fort Hood

¹ An acceptable degree of force to resist an unlawful arrest was not addressed in the *Moreno* decision.