

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
Sawyer, P.J., M.J. Kelly and Shapiro, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellant,

v.

Supreme Court No. 152534
Court of Appeals No. 325802

RYAN SCOTT FEELEY,

Defendant/Appellee.

_____/
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PLAINTIFF/APPELLANT'S
SUPPLEMENTAL BRIEF

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SUPPLEMENTAL ARGUMENT

A “police officer” under the resisting and obstructing statute, MCL 750.81d, includes a reserve police officer because reserve officers have been authorized to perform law enforcement duties.

The Court requested supplemental briefs “addressing whether the term ‘police officer’ in MCL 750.81d(7)(b)(i) encompasses reserve police officers.”¹ The People’s application thoroughly sets forth the error in the Court of Appeals’ analysis of that term and the People will, as directed by the Court, not restate those arguments here. A plain, common-sense reading of the term “police officer” clearly includes a police officer who is a reserve.

The resisting and obstructing statute, MCL 750.81d, prohibits resistance to a “person,” which is defined by the statute:²

“Person” means any of the following:

- (i) *A police officer of this state or of a political subdivision of this state including, but not limited to, a motor carrier officer or capitol security officer of the department of state police.*
- (ii) A police officer of a junior college, college, or university who is authorized by the governing board of that junior college, college, or university to enforce state law and the rules and ordinances of that junior college, college, or university.
- (iii) A conservation officer of the department of natural resources or the department of environmental quality.
- (iv) A conservation officer of the United States department of the interior.
- (v) A sheriff or deputy sheriff.
- (vi) A constable.
- (vii) A peace officer of a duly authorized police agency of the United States, including, but not limited to, an agent of the secret service or

¹*People v Feeley*, 498 Mich 969; 873 NW2d 305 (2016).

²MCL 750.81d(7)(b)(emphasis added).

department of justice.

(viii) A firefighter.

(ix) Any emergency medical service personnel described in section 20950 of the public health code, 1978 PA 368, MCL 333.20950.

(x) An individual engaged in a search and rescue operation as that term is defined in section 50c.

It is critical to note that while “person” is defined, “police officer” is not. Because “[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language,”³ who is a police officer must be defined in light of the common usage of that term. To the extent that Defendant seeks to import definitions from other statutes, such as the Commission on Law Enforcement Standards Act (MCOLES), those definitions are specifically limited to that Act.⁴ To import into the Penal Code a statutory definition from the MCOLES statute - a definition that is limited by its specific language to only the MCOLES statute - not only contradicts an explicitly stated legislative intent, it judicially amends the Penal Code to add something the Legislature did not include.⁵ Had the Legislature intended to define a

³MCL 8.3a. See MCL 8.3 (“In the construction of the statutes of this state, the rules stated in sections 3a to 3w shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature.”)

⁴The definitions contained in MCL 28.602, including the definition of “police officer” contained in subsection (l) on which Defendant relies, are prefaced with the phrase: “As used in *this* act...” (emphasis added).

⁵To the extent Defendant relies on a *proposed* bill amending the MCOLES statute, a bill is no authority whatsoever. And while a legislative response to the Court of Appeal’s opinion is pending in the Legislature, to paraphrase Chief Justice Young’s observation, it is a “particularly unfortunate development when the Legislature must act to countermand” an appellate decision when the judiciary has been presented with unambiguous language. See *Brown v Blouir*, 489 Mich 959; 798 NW2d 754, 755 (2011)(concurring opinion). Moreover, because the flaw in the Court of Appeals’

police officer in MCL 750.81d as being MCOLES certified, they certainly knew how to do it. For example, as they provided in MCL 763.7(c)(i),⁶ the Legislature could have easily said: “A police officer of this state or a political subdivision of this state as defined in section 2 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.602.”⁷ Defendant’s invitation to judicially amend MCL 750.81d to add that language should be rejected.

Most people know a police officer when they see one. The most critical factor in determining who is a police officer is whether the person possesses actual state authority. Albeit in a different context, this Court has already answered the question of whether a reserve police officer possesses actual state authority.

In *People v McRae*,⁸ a reserve police officer, who happened to be a friend of the defendant, interviewed the defendant. At the time, the defendant was in custody in the county jail after being arrested for murder. After being arrested, the defendant invoked his right to silence and his right to counsel. After his arraignment, the defendant asked to speak to an old neighbor, Dean Heintzelman, unaware that his old friend was a

analysis of “including, but not limited to” could, if left uncorrected by this Court, corrupt statutory construction of that phrase in other statutes, it must be corrected here.

⁶This act, 2012 PA 479, requires the videotaping of certain custodial interrogations. See MCL 763.7-763.11.

⁷Again, this definition was specifically limited to “[a]s used in this section and sections 8 to 10 of this chapter.” MCL 763.7.

⁸*People v McRae*, 469 Mich 704; 678 NW2d 425 (2004).

reserve police officer. Heintzelman - in uniform and wearing a badge - then visited the defendant in the jail and questioned him about the murder.⁹

The critical question in that case was whether the reserve officer visited defendant as “a state actor ... in an official police capacity.”¹⁰ To answer that question, this Court applied the two-part test established by the United States Supreme Court: did the individual possess state authority and did he purport to act under that authority.¹¹ This Court quickly answered the first inquiry: “It is clear from the record that Heintzelman possessed *actual* state authority - he was deputized as a Clare County sheriff’s reserve deputy.”¹² And this Court even referred to the reserve deputy as “a police officer.”¹³

Analyzing the second prong, this Court in *McRae* held that because the reserve officer visited the defendant in full uniform, he was “creating the appearance that he was a state actor” and thus purporting to act under his actual police authority.¹⁴

The *Feeley* Court of Appeals majority, however, distinguished *McRae* with the causal observation that whether a reserve police officer was a state actor was

⁹*Id.* at 707-710.

¹⁰*Id.* at 710.

¹¹*Id.* at 710, citing *Griffin v Illinois*, 378 US 130, 135; 84 S Ct 1770; 12 L Ed 2d 754 (1964).

¹²*Id.* at 711-712 (emphasis in original).

¹³*Id.* at 711 n 8.

¹⁴*Id.* at 712.

irrelevant to whether he is a police officer.¹⁵ But in *McRae* it was critical whether the reserve officer was acting as a *police officer*, not as a city sanitation worker, a county clerk, a public school teacher, or any other person with some authority derived from the state. It was his authority as a *police officer* that triggered the defendant's protections under the Fifth Amendment and the Sixth Amendment.

Applying the standards that this Court used in *McRae* to determine whether a reserve officer is a police officer, there is little question that Officer Roberts was a police officer. He was authorized by the City of Brighton to enforce the law and to exercise the authority of a peace officer. Roberts was in full uniform. He wore a badge. He carried a gun. Roberts was indistinguishable from the full-time police officers with whom he was working.

In employing the term "police officer," the Legislature intended to give it a very broad construction to include *more* than those persons exercising general law enforcement authority. The Legislature specifically expanded the definition of person with the phrase "including, but not limited to, a motor carrier officer or capitol security officer of the department of state police."¹⁶ Neither of those class of officers possess general law enforcement authority,¹⁷ yet they are both included as police officers in MCL 750.81d(7)(b)(i). This supports the concept that "police officer" also includes those

¹⁵*People v Feeley*, ___ Mich App ___; ___ NW2d ___ (2015), *slip op* at 3.

¹⁶MCL 750.81d(7)(b)(i).

¹⁷MCL 28.6d (limited authority of motor carrier officers); MCL 28.6c (limited authority of certain security personnel at state facilities).

persons with limited authority. Defendant, however, argues that the word “includes” in a statute can be either “a term of enlargement or limitation,” citing this Court’s 1996 opinion in *Frame v Nehls*.¹⁸ But *Frame* dealt with a statute that simply said “includes.”¹⁹ Defendant ignores the clear language in *this* statute. Here, the Legislature did not simply say “includes” - it said “includes, but not limited to” - a phrase that unequivocally establishes that the Legislature intended a broad construction, not the limited one urged by Defendant. As this Court noted in *In re Forfeiture of \$5,264*, the phrase “including but not limited to” is *not* one of limitation.²⁰ Contrary to Defendant’s argument here, this Court held that “the phrase connotes an illustrative listing, one purposefully capable of enlargement.”²¹ That is precisely the case here.

The purpose of the resisting and obstruction statute is to protect police officers from physical violence and harm.²² A common sense reading of the term “police officers” that includes full-time police officers, part-time police officers, paid or volunteer reserve police officers, serves this purpose. An unnecessarily restrictive construction, especially one unsupported by the broad definitions used in the statute, would not only undercut this purpose but contradict it. As police officers deal with violent situations, their

¹⁸*Frame v Nehls*, 452 Mich 171; 550 NW2d 739 (1996).

¹⁹*Id.* at 178 (analyzing MCL 722.27b(2), which provides: “As used in this section, ‘child custody dispute’ includes a proceeding in which any of the following occurs...”).

²⁰*In re Forfeiture of \$5,264*, 432 Mich 242, 255; 439 NW2d 246 (1989).

²¹*Id.*

²²*People v Vasquez*, 465 Mich 83, 92-93; 631 NW2d 711 (2001).

safety is jeopardized by persons who might think that maybe the police officer they are confronting is “just” a reserve that they can lawfully resist. To the extent there is doubt, the risk to every police officer is escalated.

A police officer who is a reserve is still a police officer. The opinion of the Court of Appeals and district court should be reversed and the case remanded to district court with instructions to bind Defendant over to circuit court as charged.

RELIEF REQUESTED

FOR THE FOREGOING REASONS, the People request that the Court reverse the judgment of the Court of Appeals for the reasons contained in the dissenting opinion in the Court of Appeals by Judge Sawyer.

Respectfully submitted,

/s/ William J. Vaillencourt, Jr.

William J. Vaillencourt, Jr. (P39115)
Prosecuting Attorney

Dated: March 11, 2016

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.81d Assaulting, battering, resisting, obstructing, opposing person performing duty; felony; penalty; other violations; consecutive terms; definitions.

Sec. 81d. (1) Except as provided in subsections (2), (3), and (4), 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 is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(2) 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 causing a bodily injury requiring medical attention or medical care to that person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(3) 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 causing a serious impairment of a body function of that person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(4) 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 causing the death of that person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

(5) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

(6) A term of imprisonment imposed for a violation of this section may run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

(7) As used in this section:

(a) "Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

(b) "Person" means any of the following:

(i) A police officer of this state or of a political subdivision of this state including, but not limited to, a motor carrier officer or capitol security officer of the department of state police.

(ii) A police officer of a junior college, college, or university who is authorized by the governing board of that junior college, college, or university to enforce state law and the rules and ordinances of that junior college, college, or university.

(iii) A conservation officer of the department of natural resources or the department of environmental quality.

(iv) A conservation officer of the United States department of the interior.

(v) A sheriff or deputy sheriff.

(vi) A constable.

(vii) A peace officer of a duly authorized police agency of the United States, including, but not limited to, an agent of the secret service or department of justice.

(viii) A firefighter.

(ix) Any emergency medical service personnel described in section 20950 of the public health code, 1978 PA 368, MCL 333.20950.

(x) An individual engaged in a search and rescue operation as that term is defined in section 50c.

(c) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

History: Add. 2002, Act 266, Eff. July 15, 2002;—Am. 2006, Act 517, Imd. Eff. Dec. 29, 2006.