

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LISA PEARL MOTTON,

Defendant-Appellant.

UNPUBLISHED

December 11, 2003

No. 242714

Van Buren Circuit Court

LC No. 01-012432-FH

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Defendant was convicted by a jury of resisting arrest, MCL 750.479; operating a vehicle without a driver's license, MCL 257.311, and operating a vehicle with an expired license plate, MCL 257.255(1). She was sentenced to thirty days' incarceration for the resisting arrest conviction and was fined \$200 for the other two convictions. Defendant now appeals and we affirm.

Defendant's arrest came after defendant refused to produce her driver's license following a request to do so from Trooper Jim Lass. At the time, defendant was parked in the driveway of the Michigan State Police Post in Paw Paw. Instead of producing her driver's license, defendant got out of her car and went into the police post. When Lass followed her into the post and tried to arrest her, she physically resisted.

Defendant raises two related issues. First, she contends that the trial court abused its discretion when it denied her motion to quash the information. We review this issue for an abuse of discretion. *People v Hamblin*, 224 Mich App 87, 91; 568 NW2d 339 (1997). Second, she argues that the trial court erred in denying her motion for directed verdict. This issue is reviewed by viewing the evidence in the light most favorable to the prosecution to determine whether the evidence was sufficient to permit a rational jury to find that the prosecutor proved all the elements of the crime beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368, 377; 285 NW2d 284 (1979). Both arguments involve the same question: whether defendant was operating a motor vehicle at the time of her arrest.

One of the elements of obstructing and resisting a police officer is that the arrest being resisted was lawful. *People v MacLeod*, 254 Mich App 222, 226; 656 NW2d 844 (2002). A person may use reasonable force to resist an unlawful arrest. *Id.* The arrest which defendant resisted was the failure to display her operator's license to Trooper Lass upon request. If

defendant was not obligated to do so, then there was no lawful basis for an arrest and, therefore, she is not guilty of resisting arrest. There is no factual dispute that defendant refused to produce her driver's license when the trooper asked her for it. Thus, the question becomes one of statutory interpretation: is a person obligated to produce their operator's license when the person and the vehicle are in a parking lot?

MCL 257.311 governs when a licensee must possess and display his or her license to an officer:

The licensee shall have his or her operator's or chauffeur's license, or the receipt described in section 311a, in his or her immediate possession at all times when operating a motor vehicle, and shall display the same upon demand of any police officer who shall identify himself or herself as such.

Further, the Michigan Vehicle Code defines "operating" to mean "being in actual physical control of a vehicle regardless of whether or not the person is licensed under this act as an operator or chauffeur." MCL 257.35a.

Defendant argues that she was not an "operator" of the motor vehicle as that term is defined in MCL 257.36, which requires that the "operator" be "in actual physical control of a motor vehicle upon a highway," because the state police post parking lot does not constitute a highway. But that overlooks the fact that MCL 257.311 does not require an "operator" to display his license to the police upon request. Rather, the statute requires that a person "operating" a motor vehicle must have his operator's license in his possession and display it to a police officer upon demand. Therefore, the relevant definition is "operating" not "operator." As noted above, a person is "operating" a motor vehicle if they are in actual physical control of the motor vehicle without regard to whether it is on a highway or not.

In the case at bar, although the vehicle was turned off at the time Trooper Lass approached it, defendant was behind the wheel, defendant admitted that it was her car and that she had parked it in the driveway. The trier of fact could reasonably conclude from this evidence that defendant was, in fact, "operating" a motor vehicle (in actual physical control), thus obligating her to produce her license upon the demand of Trooper Lass. Therefore, the trial court properly denied defendant's motions to quash and for a directed verdict.

Affirmed.

/s/ Michael R. Smolenski

/s/ David H. Sawyer

/s/ Stephen L. Borrello