

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAZMINE SARDE WHITAKER,

Defendant-Appellee.

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UNPUBLISHED

April 18, 2019

No. 343988

Wayne Circuit Court

LC No. 18-001222-01-FH

Before: JANSEN, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

The prosecutor appeals as of right an order dismissing the charge against defendant of false report of a felony, MCL 750.411a(1)(b), on a renewed defense motion for a directed verdict after the jury had returned a verdict finding defendant guilty of that crime. We reverse the orders granting a directed verdict and dismissing the case, and remand for sentencing.

On appeal, the prosecutor argues that the trial court erred by granting defendant’s renewed motion for a directed verdict, made after the jury had returned its guilty verdict, in accordance with MCR 6.419(C). The prosecutor contends that there was sufficient evidence that defendant falsely reported a felony even without testimony that the conduct falsely reported was a felony under the Michigan Penal Code. We agree.

“When reviewing a trial court’s decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt.” *People v Quinn*, 305 Mich App 484, 491; 853 NW2d 383 (2014) (quotation marks and citation omitted). Statutory interpretation presents a question of law that is reviewed de novo. *People v Pace*, 311 Mich App 1, 4; 874 NW2d 164 (2015). Unambiguous statutory language is applied as written. *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). “Determining the elements of a crime is also a question of law that we review de novo.” *Pace*, 311 Mich App at 4.

MCL 750.411a(1) provides, in relevant part:

(1) Except as otherwise provided in subsections (2) and (3), a person who intentionally makes a false report of the commission of a crime, or intentionally causes a false report of the commission of a crime to be made, to a peace officer, police agency of this state or of a local unit of government, 9-1-1 operator, or any other governmental employee or contractor or employee of a contractor who is authorized to receive reports of a crime, knowing the report is false, is guilty of a crime as follows:

(a) Except as provided in subdivisions (b) through (e), if the report is a false report of a misdemeanor, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(b) Except as provided in subdivisions (c) through (e), if the report is a false report of a felony, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

It is evident from the unambiguous statutory text that the elements of the crime of false report of a felony are that the defendant (1) made a false report of a felony and (2) intended to do so. A defendant's false report of a felony to a police officer while knowing that the report is false is sufficient to violate the statute. See *People v Lay*, 336 Mich 77, 82; 57 NW2d 453 (1953).

The trial court in this case instructed the jury on the elements of this offense that are listed in M Crim JI 13.19, which states:

(1) The defendant is charged with making a false report in connection with a felony to the police. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, the defendant reported to a [state trooper / deputy sheriff / police officer / (*state other peace officer*)] that a crime had been committed.

(3) Second, that this report was false as to either the fact or the detail[s] of the crime.

(4) Third, that when the defendant made the report, the defendant knew it was false.

(5) Fourth, that the defendant intended to make a false report concerning a crime.

(6) Fifth, that the crime reported was a felony, i.e., an offense [punishable by more than one year incarceration / declared by statute to be a felony].

Both parties stated there were no objections to the trial court's jury instructions.<sup>1</sup>

The trial court concluded that the prosecutor failed to present sufficient evidence that the crime falsely reported was a felony. The trial court's analysis was flawed. The prosecutor presented evidence that defendant falsely reported that a police officer reached into the back seat of the police car in which defendant was detained and digitally penetrated defendant's vagina. The conduct that was falsely reported would constitute third-degree criminal sexual conduct, see MCL 750.520d(1)(b),<sup>2</sup> which is, *by law*, a felony, see MCL 750.520d(2).<sup>3</sup> The prosecutor thus presented sufficient evidence that defendant falsely accused the police officer of conduct that legally constitutes a felony. Contrary to the trial court's apparent view, there is no requirement that the prosecutor introduce a section of the Michigan Penal Code into evidence. Juries find facts; they do not make legal determinations. See *Apprendi v New Jersey*, 530 US 466, 490; 120 S Ct 2348; 147 L Ed 2d 435 (2000) ("Other than the fact of a prior conviction, *any fact* that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.") (emphasis added). The prosecutor presented evidence that defendant made a false accusation that the police officer engaged in certain conduct, and that conduct is *legally* characterized as felonious. It is not the role of the jury to make a *legal* determination that third-degree criminal sexual conduct is a felony because this

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<sup>1</sup> We also note that MCR 2.512(D)(2) provides:

Pertinent portions of the instructions approved by the Committee on Model Civil Jury Instructions or the Committee on Model Criminal Jury Instructions or a predecessor committee must be given in each action in which jury instructions are given if

- (a) they are applicable,
- (b) they accurately state the applicable law, and
- (c) they are requested by a party.

In other words, the Model Criminal Jury Instructions are mandatory when they are applicable, accurate, and requested.

<sup>2</sup> MCL 750.520d(1) provides, in relevant part:

(1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

\* \* \*

- (b) Force or coercion is used to accomplish the sexual penetration. . . .

<sup>3</sup> MCL 750.520d(2) states, "Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years."

would be inconsistent with the *fact-finding* function of a jury. We therefore conclude that the prosecutor presented sufficient evidence that defendant falsely accused the police officer of a felony.

It is true that the fifth element listed in M Crim JI 13.19 provides that the crime reported must be a felony. However, this Court is not bound by the Model Criminal Jury Instructions. See *People v Petrella*, 424 Mich 221, 277; 380 NW2d 11 (1985). Nothing in the text of MCL 750.411a(1) supports a conclusion that a section of the Michigan Penal Code must be admitted into evidence and that the jury must then make the legal determination whether the conduct that is the subject of the false accusation is characterized by law as a felony. In any event, the accuracy of M Crim JI 13.19 is beyond the scope of this appeal. The sole issue in the present appeal is whether the trial court erred in granting defendant's renewed motion for a directed verdict, i.e., whether there was sufficient evidence to support defendant's conviction. There is no issue concerning instructional error before this Court in this appeal.<sup>4</sup> The prosecution's appellate brief suggests two possible amendments of M Crim JI 13.19 to remove the fifth element and to clarify that the trial court is to make the legal determination whether the conduct that was falsely reported is a felony. The prosecution is free to submit its proposal to the Committee on Model Criminal Jury Instructions.

We reverse the trial court's orders granting a directed verdict and dismissing the case, and we remand for sentencing on defendant's conviction of false report of a felony. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Patrick M. Meter  
/s/ Elizabeth L. Gleicher

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<sup>4</sup> The prosecutor thus did not waive the issue raised on appeal by stating at trial that there were no objections to the trial court's jury instructions, which included instructions on the elements as listed in M Crim JI 13.19. See *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004) (an attorney's affirmative statement that there were no objections to the jury instructions constituted an express approval of the instructions that waived appellate review of a claim of instructional error). The issue raised on appeal is *not* whether the trial court made an instructional error but whether there was sufficient evidence to support defendant's conviction.