

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
November 21, 2013

v

ERIKA-NICOLE BELLAMY,  
  
Defendant-Appellant.

No. 306263  
Wayne Circuit Court  
LC No. 11-004004-FH

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Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1).<sup>1</sup> She was sentenced to eighteen months' probation. Defendant appeals by right, and we affirm.

Detroit police officers received a bulletin of shots fired. When they arrived at the location of the purported shooting, the officers found defendant in a minivan stopped in the middle of the street. Defendant appeared to be sleeping in the driver's seat of the vehicle. She was asked to step out of the minivan and perform field sobriety tests. After one test, defendant refused any additional tests and re-entered her vehicle. A police officer attempted to remove defendant from her minivan, but she struck him in the throat. Ultimately, pepper spray was used to remove defendant and arrest her. On the contrary, defendant testified that she was in the passenger seat of her vehicle which was parked near the grass, not in the middle of the street. She was charging her cell phone when approached by police officers who asked if she was okay. Defendant agreed to a sobriety test, however, the female officer advised that she was not blowing into the device correctly. The officer told defendant that she again did not complete the test correctly, and therefore, she was under arrest. Defendant walked to her vehicle to get her purse. Her hands were at her side when she was sprayed with mace by an officer. Despite her testimony, defendant was convicted of assaulting, resisting, or obstructing a police officer.

On appeal, defendant alleges that the trial court abused its discretion by failing to remove a juror who did not disclose during voir dire that he had intentionally taken part in law

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<sup>1</sup> Defendant was acquitted of the charge of operating while intoxicated, MCL 257.625(1).

enforcement activities similar to the circumstances of defendant's arrest. We disagree. "We review for an abuse of discretion the trial court's decision whether to remove a juror." *People v Unger*, 278 Mich App 210, 259; 749 NW2d 272 (2008). The court abuses its discretion when it chooses an outcome falling outside the range of reasonable and principled outcomes. *Id.* The trial court's factual findings regarding juror misconduct or a juror's qualifications to serve are reviewed for clear error. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008). Clear error occurs when the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.*

A defendant has a constitutional right to a fair and impartial jury. US Const, Am VI; Const 1963, art 1, § 20; *People v Drohan*, 475 Mich 140, 146; 715 NW2d 778 (2006). The purpose of voir dire is to elicit information from the jurors to develop a rational basis for excluding jurors for cause or by peremptory challenge. *People v Furman*, 158 Mich App 302, 322; 404 NW2d 246 (1987). However, a defendant does not have the right to have his counsel control the voir dire; the trial court has the discretion to address the scope and the conduct of voir dire. *People v Washington*, 468 Mich 667, 674; 664 NW2d 203 (2003). A defendant has no constitutional right to exercise peremptory challenges because the right, in Michigan, is granted by statute and court rule. *People v Daoust*, 228 Mich App 1, 7; 577 NW2d 179 (1998), overruled in part on other grounds by *Miller*, 482 Mich at 561. The right to exercise a peremptory challenge exists only until the jury is sworn. *Daoust*, 228 Mich App at 7. "A juror's failure to disclose information that the juror should have disclosed is only prejudicial if it denied the defendant an impartial jury." *Miller*, 482 Mich at 548. Accordingly, a defendant is not entitled to a new trial premised on juror misconduct unless the failure to disclose information reasonably indicates that he was deprived of a fair and impartial trial. *Id.* at 548-549. Stated otherwise, the defendant must demonstrate "actual prejudice to his cause." MCL 600.1354(1); *Miller*, 482 Mich at 548 n 8.

In the present case, juror number ten disclosed during voir dire that he was related to a police officer, but he would consider the testimony of a police officer as having the same weight and credibility of other witnesses. Later, during voir dire, another juror indicated that she had a personal experience similar to the facts of this case. However, upon further questioning, she acknowledged that, other than being read the information, she was unfamiliar with the facts of the case and was not even charged with the same offenses as defendant. Later, after opening arguments were presented by the parties, juror number ten<sup>2</sup> voluntarily disclosed that he had attended "ride-alongs" with the police involving drunk driving offenses and pepper spray, similar to the facts of defendant's case. However, despite learning of the facts of the case, juror number ten affirmed that he could put his experience aside. At that time, defense counsel did not object to the juror's continuation on the panel. After the lunch break, defense counsel indicated that he would have exercised a peremptory challenge of juror number ten if the information had been presented during voir dire. Ultimately, the trial court denied the request to allow the untimely exercise of a peremptory challenge or the dismissal of juror number ten as an alternate, noting

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<sup>2</sup> Although the transcript indicates that juror number eleven raised this issue, the parties do not dispute that the statements should be attributed to juror number ten.

that the juror indicated his experiences with the police would not be considered when rendering a verdict.

As an initial matter, we note that there is no evidence that juror number ten failed to disclose that he had intentionally participated in police activities similar to the facts of this case. At the time of voir dire, the jurors had only been read the information, and the exact circumstances surrounding the arrest had not been disclosed. The jurors were not asked about their own experience with law enforcement activities during voir dire. Because the jury had been sworn, the trial court properly denied defense counsel's request to exercise a peremptory challenge. *Daoust*, 228 Mich App at 7. Moreover, the trial court appropriately denied defendant's request to remove the juror as an alternate. There is no evidence to reasonably indicate that the failure to disclose the juror's police experience deprived defendant of a fair and impartial trial. *Miller*, 482 Mich at 548-549. Upon learning of the facts of the case, juror number ten voluntarily disclosed his experience, but reaffirmed that his relationship with police would be put aside. The trial court found that the juror's past experience would not impact the trial, and we cannot conclude that this factual finding is clearly erroneous. *Miller*, 482 Mich at 544. Accordingly, defendant failed to demonstrate actual prejudice to her cause. MCL 600.1354(1); *Miller*, 482 Mich at 548 n 8. Similarly, we cannot conclude that the trial court's denial of the dismissal of this juror during trial violated MCL 768.18(1) in light of the factual findings. *Miller*, 482 Mich at 544.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Henry William Saad  
/s/ Stephen L. Borrello