No. 25-

IN THE

Supreme Court of the United States

MATTHEW JOSEPH CONNOLLY,

Petitioner,

v.

PEOPLE OF THE CITY OF SOUTHFIELD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

PETITION FOR A WRIT OF CERTIORARI

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July 28, 2025

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QUESTIONS PRESENTED

1. Whether the Due Process Clause protects defendants from being prosecuted under an ordinance that prohibits expression and conduct in public forums, such as "public buildings," "street[s]," "or park[s]" and criminalizes "any act causing annoyance, disquiet, agitation, or derangement" in said various public places.

2. Whether the First Amendment allows a court to prohibit, as a term of a defendant's probation, peaceful and otherwise lawful free speech within 500 feet of all medical facilities that provide abortion throughout the entirety of the nation, including free speech that would take place on the public sidewalk.

STATEMENT OF RELATED PROCEEDINGS

This case is related to the following proceedings in the State of Michigan 46th Judicial District Court in Southfield, Michigan: *People of the City of Southfield v. Laura Francis Gies*, Case No. 22-S-00354-OM (Mar. 30, 2023); *People of the City of Southfield v. Jacob Alexander Gregor*, Case No. 22-S-00351-OM (Mar. 30, 2023); *People of the City of Southfield v. Monica Marie Miller*, Case No. 22-S-00353-OM (Mar. 30, 2023); *People of the City of Southfield v. Christopher Luke Moscinski*, Case No. 22-S-00352-OM (Mar. 30, 2023); and *People of the City of Southfield v. Elizabeth Jane Wagi*, Case No. 22-S-00350-OM (Mar. 30, 2023).

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

Table of Appendices

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Cited Authorities

Cited Authorities

Page

Constitutional Provisions

Statutes, Rules and Regulations

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Matthew Connolly, a homeless monk, defendant, and appellant in the courts below, respectfully petitions this Court for a writ of certiorari to review the order of the Michigan Supreme Court and judgment of the lower courts.

OPINIONS BELOW

The Michigan Supreme Court's Order is published on the court's website at https://www.courts.michigan.gov/c/courts/coa/case/369497 and is reproduced at Pet. App. 1a. The Michigan Court of Appeals' Order is also published at https://www.courts.michigan.gov/c/courts/coa/case/369497and is reproduced at Pet. App. 2a. The Oakland County Circuit Court's Opinion and Order is unpublished and provided at Pet. App. 3a-27a.

JURISDICTION

The Michigan Supreme Court issued its Order on April 28, 2025. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I.

"No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, sec. 1.

City of Southfield Ordinance § 9.132, Interference with a Business: "(1) It shall be unlawful for any person to make or excite any disturbance in any tavern, store or grocery, manufacturing establishment or any other business place or in any street, alley, highway, public building, grounds or park, or at any election or other public meeting where citizens are peaceably and lawfully assembled. (2) For purposes of this section, a disturbance shall be any act causing annoyance, disquiet, agitation or derangement to another, or interrupting his peace, or interfering with him in the pursuit of a lawful and appropriate occupation or contrary to the usages of a sort of meeting and class of persons assembled that interferes with its due progress or irritates the assembly in whole or in part." Pet. App. 107a; Pet. App. 4a.

STATEMENT OF THE CASE

A. Factual History

Petitioner Matthew Connolly is a homeless monk and pro-life activist. Pet. App. 18a, 78a, 91a. On April 23, 2022, Matthew accompanied five individuals, who also participate in pro-life protests, to the common area of a shared office building located at 24450 Evergreen Road in the City of Southfield, Michigan. Pet. App. 4a. Northland Family Planning Center (Northland), an abortion clinic, rents Suite 220 of that building. Pet. App. 4-5a. Matthew, however, never entered Suite 220. Pet. App. 5a, 56a, 58a.

Matthew kept a distance from Northland's suite, quietly staying in a common area of the building that was "down the hall" from Northland near the building's shared elevators. Pet. App. 5a. Security footage shows Matthew kneeling in the common area of the building, peacefully praying. Pet. App. 108a. Officers described Matthew's actions on April 23rd as "peaceful." Pet. App. 59a-62a. Matthew never acted with violence, and the only "weapon" he carried was a "Rosary." *Id.*

Nevertheless, Matthew's presence in the office building led to his arrest. Pet. App. 5a. Upon being arrested, matters escalated, and Matthew was ultimately charged with three counts of criminal misdemeanors, including a count for violating the City of Southfield's Ordinance § 9.132, Interference with a Business.

B. Relevant Procedural History

Before the trial court, Matthew brought a facial challenge to § 9.132 Interference with a Business and motioned to dismiss the claim. Pet. App. 8a-9a, 30a-42a. Matthew argued that § 9.132 violated the Due Process Clause because it fails to provide adequate notice of what kind of conduct is prohibited, it permits arbitrary and discriminatory enforcement, it is overbroad, it lacks any mens rea requirement, and it impinges on First Amendment freedoms. Pet. App. 10a-11a, 30a-42a. The trial court denied Matthew's motion. Pet. App. 42. Notably, neither Matthew nor any of the co-defendants were charged with conspiracy. Pet. App. 74a.

On February 21, 2023, the trial court impaneled a jury to hear the claims brought by the City of Southfield against

Matthew and the five other pro-life individuals who also went to 24450 Evergreen Road. Pet. App. 5a. Matthew reasserted his facial challenge to the constitutionality of § 9.132. Pet. App. 67a. And the trial court again denied the motion. Pet. App. 70a. On February 24, 2023, the jury found Matthew guilty of violating § 9.132. Pet. App. 7a, 67a.

The trial court held its sentencing hearing on March 30, 2023. Pet. App. 89a-106a. The trial court explained that being sentenced to probation would involve the defendants, including Matthew, agreeing "to not be within 500 feet of any clinic that provides abortion services." Pet. App. 89a. The trial court explained that each defendant would be asked whether he or she could comply with this term of probation on an individual basis. Pet. App. 90a ("will any Defendant comply with these terms and conditions of probation based on what is the stated mission statement of the Red Rose Rescue. So, that's an issue that I will address with each Defendant personally."). When the trial court individually addressed Matthew, he raised the argument that the probation restriction "covers traditional public forum such as public sidewalks" and therefore he would need to object based on First Amendment grounds. Pet. App. 90a. Matthew also raised the issue that many hospitals perform abortions, so he would not be able to obtain routine medical care. Pet. App. 94a. The trial court acknowledged both issues but did not alter her ruling. Pet. App. 94a-95a. Due to not being able to agree to these terms of probation, the trial court sentenced Matthew to serve 90 days in jail and to pay $630 in fines and costs. Pet. App. 8a.

Matthew appealed to the Oakland County Circuit Court, raising many issues, including whether § 9.132 was facially unconstitutional and whether the trial court's

probation requirement prohibiting—nationwide—lawful activity on the public sidewalks and within needed access to hospitals for his medical needs was unconstitutional. Pet. App. 3a-27a. The Circuit Court affirmed all the rulings of the trial court. *Id*. Matthew sought leave to appeal to the Michigan Court of Appeals; leave was denied. Pet. App. 2a. Judge M.J. Kelly dissented and would have granted leave to hear "the issue of the constitutionality of the condition of probation offered by the trial court." Pet. App. 2a. Matthew then sought leave to appeal in the Michigan Supreme Court; leave was again denied. Pet. App. 1. Matthew Connolly timely petitions this Court to review the important arguments presented in this petition.

REASONS FOR GRANTING THE PETITION

This case presents the perfect opportunity for this Court to resolve the two important and recurring questions of the lower courts: how should the lower courts handle facial challenges to state criminal laws under the void for vagueness doctrine, and how far does the trial court's authority go when restricting a defendants' First Amendment freedoms. Both questions involve matters that strike at the heart of fairness of process in our justice system and are worthy of this Court's review.

I. The Lower Court's Misapplication of the Void for Vagueness Doctrine Squarely Conflicts with this Court's Precedent and Demonstrates the Need for this Court to Clarify the Doctrine.

The City of Southfield's Code of Ordinances § 9.132. states as follows:

> (1) It shall be unlawful for any person to make or excite any disturbance in any tavern, store or grocery, manufacturing establishment or any other business place or in any street, alley, highway, public building, grounds or park, or at any election or other public meeting where citizens are peaceably and lawfully assembled.
>
> (2) For purposes of this section, a disturbance shall be any act causing annoyance, disquiet, agitation or derangement to another, or interrupting his peace, or interfering with him in the pursuit of a lawful and appropriate occupation or contrary to the usages of a sort of meeting and class of persons assembled that interferes with its due progress or irritates the assembly in whole or in part.

Matthew repeatedly argued in the lower courts that § 9.132 was unconstitutional on its face. Yet, the lower courts never seriously analyzed his arguments under the framework set forth by this Court. Instead, the lower courts misapprehended, and thus misapplied, the void for vagueness doctrine.

In *Cox v. Louisiana*, 379 U.S. 536 (1965), this Court held that a breach of the peace statute was unconstitutionally vague in its overly broad scope for it defined "breach of the peace" as "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." *Id* at 551-52. *Cox* is dispositive; however, the lower courts failed to address it.

Six years after *Cox* in 1971, this Court analyzed a law with language indistinguishable to the language in § 9.132. *Coates v. City of Cincinnati*, 402 U.S. 611, 616 (1971). In *Coates*, as here, the ordinance made it illegal to gather in a traditional public forum and behave in an "annoying" manner, a standard which would be determined by a third party not identified within the ordinance. *Id.* at 612-15.

This Court observed that "[c]onduct that annoys some people does not annoy others" leaving everyone to guess at the ordinance's meaning. *Id.* at 614. And while some illegal conduct would be encompassed by the ordinance without violating the Constitution, this Court held that the City of Cincinnati still could not "constitutionally do so through the enactment and enforcement of an ordinance whose violation may entirely depend upon whether or not a policeman is annoyed." *Id.* at 615.

A successful facial challenge has the effect of invalidating an unconstitutional law in all its applications because a facial challenge "seeks to vindicate not only [a defendant's] own rights, but those of others who may also be adversely impacted by the statute in question." *City of Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999); *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973) ("forbidd[ing]" the enforcement of a facially invalid law).

A year after *Coates*, however, this Court decided *Colten v. Kentucky*, which upheld a statute that criminalized assembly in a public place "to cause inconvenience and annoyance" via an as-applied challenge. 407 U.S. 104, 108 (1972). This Court did not cite to *Coates* in its opinion and seemed less concerned by the subjective nature of the word "annoyance." Instead, this Court seemed more focused on

a mens rea requirement—a requirement that both § 9.132 and the lower courts failed to address in Matthew's case.

Fast forward to twelve years after *Coates,* this Court echoed that "the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Indeed a criminal law is void for vagueness when, one, it fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; or, two when it may permit arbitrary and discriminatory enforcement. *See id.; Grayned v. City of Rockford*, 408 U.S. 104 (1972). In *Kolender*, this Court, in a facial challenge, held that the terms "credible and reliable" when describing identification were unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment. 461 U.S. at 361. And just nine years ago in *Johnson v. United States*, this Court held that when a criminal law includes "elements necessary to determine the imaginary ideal" the law is unconstitutionally vague, "both in nature and degree of effect." 576 U.S. 591 (2015).

But even when a general principle seems to provide some clarity into the doctrine, distinct differences exist not only from the holdings from case to case, but also in the opinions from Justice to Justice of the Court.[1] *Compare*

1. Scholars have characterized the void for vagueness doctrine as "quite murky" and "applied with little consistency by different courts." Robert Batey, *Vagueness and the Construction of Criminal Statutes—Balancing Acts*, 5 VA. J. SOC. POL'Y & L. 1, 3 (1997); *Indefinite Criteria of Definiteness in Statutes*, 45 HARV. L. REV. 160, 161 (1931).

Sessions v. Dimaya, 584 U.S. 148 (2018) (Gorsuch, J., concurring) *with* (Thomas, J., dissenting); *compare also City of Chicago v. Morales,* 527 U.S. 41, 71 (1999) (Breyer, J., concurring) *with Johnson*, 576 U.S. at 620 (Alito, J., dissenting) (opining that "vagueness challenges to statutes which do not involve First Amendment freedoms must be examined on an as-applied basis.") (quotations and citation omitted). The outcomes in this Court's void for vagueness doctrine cases are hard to predict, and unfortunately, the lower court's failure to conduct any proper analysis is not rare.[2]

And this leads to the third, related reason for vagueness—as directly addressed in *Coates*, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms. An ordinance is vague when it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. *Grayned,* 408 U.S. at 108-09; *Coates*, 402 U.S. at 614 ("In our opinion this ordinance is unconstitutionally vague because it subjects the exercise of the right of assembly to an

2. The lower court's decisions conflict with several state and federal court cases. *See, e.g., Tanner v. City of Virginia Beach*, 277 Va. 432 (2009), *cert. den.*, 130 S. Ct. 1137 (2010); *see also Jim Crockett Promotion, Inc. v. City of Charlotte*, 706 F.2d 486, 489 (4th Cir. 1983) (finding phrase "unnecessary noise" unconstitutionally vague); *Dupres v. City of Newport, RI*, 978 F. Supp. 429, 433–34 (D.R.I. 1997) (stating that "noise which . . . annoys, disturbs, injures, or endangers the comfort, repose, peace, or safety of any individual" is vague); *Dae Woo Kim v. City of NY*, 774 F. Supp. 164, 170 (S.D.N.Y. 1991) (same*); Norfolk 302, LLC v. Vassar*, 524 F. Supp. 2d 728, 740 (E.D. Va. 2007) (holding prohibition on "noisy conduct" impermissibly vague).

unascertainable standard, and unconstitutionally broad because it authorizes the punishment of constitutionally protected conduct."); *Dombrowski v. Pfister*, 380 U.S. 479 (1965) (striking down a provision of a state law defining subversive organizations because the language was unduly vague, uncertain, and broad); *see also Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

§ 9.132 criminalizes "annoying" speech, a subjective and undiscernible standard. And what is worse, whether the speech is an annoyance is subject to a third party's opinion. As stated by this Court, "listeners' reaction to speech is not a content-neutral basis for regulation." *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992). In other words, a heckler's veto operates as a content-based restriction. *See, e.g., Lewis v. Wilson*, 253 F.3d 1077, 1082 (8th Cir. 2001) ("The First Amendment knows no heckler's veto."); *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 248 (6th Cir. 2015) ("The heckler's veto is [a] type of odious viewpoint discrimination."). And "[c]ontent-based laws . . . are presumptively unconstitutional[.]" *Reed v. Town of Gilbert,* 576 U.S. 155, 163 (2015). On its face, § 9.132 creates an unlawful heckler's veto. As a result, it is unconstitutionally overbroad as it clearly prohibits constitutionally protected conduct. *See also Grayned*, 408 U.S. at 114-15; *Lewis v. New Orleans*, 415 U.S. 130, 134 (1974); *Bd of Airport Comm'rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987).

Rather than addressing these critical principles or addressing any of this Court's controlling cases, the lower court relied on *People v Purifoy*, 34 Mich. App. 318 (1971).

At issue in *Purifoy* was a Michigan state statute (Mich. Compl. Laws § 750.170) that made it a crime to "make or excite any disturbance or contention." The Michigan Appellate Court found that the phrase "exciting a contention" as used in the statute was unconstitutional, but it did not invalidate the statute on its face. Rather, the court excised the offending language. Based on *Purifoy*, the lower court concluded that the challenged City Ordinance "clearly defines 'disturbance' and leaves no questions what is prohibited conduct." Pet. App. 11a.

The problem with this method is two-fold: first, the City's ordinance is not like the state statute in *Purifoy*; it does not include "exciting a contention," and its very definition of "disturbance" (the conduct the ordinance proscribes) is unconstitutionally vague because it is subjective and infringes upon First Amendment rights. This is a facial challenge. The actual language of the ordinance matters. Consequently, unlike the state statute in *Purifoy*, there is no language to excise from the ordinance to save it here. And it is not the job of a court to rewrite a plainly unconstitutional law. *United States v. Stevens*, 559 U.S. 460, 481 (2010) ("We will not rewrite a law to conform it to constitutional requirements, for doing so would constitute a serious invasion of the legislative domain, and sharply diminish [the legislature's] incentive to draft a narrowly tailored law in the first place.") (internal citations and quotations omitted).

Second, the lower courts' rulings conflict with *Cox, Coates, Johnson*, and nearly every one of this Court's void for vagueness holdings.

§ 9.132 is unconstitutionally vague. The ordinance fails to provide adequate notice as to what conduct is proscribed, it permits arbitrary enforcement, it lacks a mens rea requirement, it chills free speech, and it authorizes an unlawful heckler's veto. This Court should review the lower courts' rulings that directly conflict with this Court's precedent and provide much needed guidance to the lower courts.

II. The Lower Court's Decision to Issue a Nationwide Prohibition on Otherwise Lawful Free Speech Activity within Traditional Public Forums Violates the First Amendment and Conflicts with the Rulings of this Court.

The trial court demanded that Matthew either agree to certain terms of probation, which included forfeiting his right to free speech on the public sidewalks within 500 feet of an abortion clinic anywhere in the nation or go to jail without hope of probation. Pet. App. 89a-106a. Matthew timely objected to this condition of probation on First Amendment grounds. Pet. App. 90a. The trial court's probationary condition violated Matthew's First Amendment right to engage in free speech and expressive activity on the public sidewalks within 500 feet of medical facilities that perform abortions. The trial court's condition, which is tantamount to a nationwide injunction, violates this Court's holdings in *Frisby v. Schultz*, 487 U.S. 474, 480-81 (1988); *McCullen v. Coakley*, 573 U.S. 464 (2014); *inter alia.*

The public streets and sidewalks outside of abortion centers throughout the United States are traditional public forums for free speech activity. *Frisby*, 487 U.S. at 480-81 ("No particularized inquiry into the precise

nature of a specific street is necessary; all public streets are held in the public trust and are properly considered traditional public fora."). Traditional public forums "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515 (1939). And there is no exception for public sidewalks adjacent to abortion centers. *McCullen v. Coakley*, 573 U.S. 464 (2014) (striking down a content neutral, 35-foot buffer zone restriction around abortion centers).

Defendant's pro-life activities, which include counseling, praying, handing out literature, and holding signs on public sidewalks outside of abortion centers, are fully protected by the Free Speech and Free Exercise Clauses of the First Amendment. *See Schenck v. Pro-Choice Network of W N.*, 519 U.S. 357, 377 (1997) ("Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum.") (emphasis added); *see also Bd of Educ v. Mergens,* 496 U.S. 226, 250 (1990) (O'Connor, J.) (observing that "private speech endorsing religion" is protected by "the Free Speech and Free Exercise Clauses"); *Bible Believers v. Wayne Cnty.*, 805 F.3d. 228, 255-56 (6th Cir. 2015) ("The right to free exercise of religion includes the right to engage in conduct that is motivated by the religious beliefs held by the individual asserting the claim. . . . Free exercise claims are often considered in tandem with free speech claims and may rely entirely on the same set of facts."). Thus, the speech and activities restricted by the trial court were fundamental

rights of the highest order. *Connick v. Myers*, 461 U.S. 138, 145 (1983) (stating that speech on public issues "occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection").

In sum, the lower court's nationwide probation condition forbids conduct that is fully protected by the First Amendment and conflicts with the holdings of this Court. While the trial court is within its authority to impose a condition on a defendant to do certain things, such as not enter the premises of the location that gave rise to a trespass conviction (a condition that bears a logical relationship to the underlying offense), the trial court is without authority to impose a nationwide condition that directly violates a defendant's lawful rights under the First Amendment. The lower court's probationary condition amounts to a nationwide injunction prohibiting Matthew from engaging in peaceful and otherwise lawful First Amendment activity on public sidewalks outside of every abortion center in the United States. This condition is extreme and not logically related to thwarting illegal activity. Instead, the condition unreasonably and unlawfully silences Matthew's pro-life message and prevents him from engaging in lawful, constitutionally protected activity, such as praying on the sidewalk. Such a condition cannot stand and merits review from this Court.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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July 28, 2025

APPENDIX

TABLE OF APPENDICES

Table of Appendices

APPENDIX A — ORDER OF THE MICHIGAN SUPREME COURT, LANSING, MICHIGAN, FILED APRIL 28, 2025

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

SC: 167481
COA: 369497
Oakland CC: 2023-199895-AR

PEOPLE OF THE CITY OF SOUTHFIELD,

Plaintiff-Appellee,

v.

MATTHEW JOSEPH CONNOLLY,

Defendant-Appellant.

Filed April 28, 2025

ORDER

On order of the Court, the application for leave to appeal the August 13, 2024 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX B — ORDER OF THE COURT OF APPEALS, STATE OF MICHIGAN, FILED AUGUST 13, 2024

COURT OF APPEALS, STATE OF MICHIGAN

Docket No. 369497
LC No. 2023-199895-AR

PEOPLE OF THE CITY OF SOUTHFIELD

v.

MATTHEW JOSEPH CONNOLLY

Michelle M. Rick
Presiding Judge

Michael J. Kelly

Philip P. Mariani
Judges

Filed August 13, 2024

ORDER

The application for leave to appeal is DENIED for lack of merit in the grounds presented.

/s/ Michelle Rick
Presiding Judge

M. J. Kelly, J., would GRANT leave solely on the issue of the constitutionality of the condition of probation offered by the trial court.

APPENDIX C — OPINION AND ORDER OF THE STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND, FILED JANUARY 15, 2024

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

Circuit Court No: 23-199895-AR
Hon. Daniel P. O'Brien
Lower Court No. 22-S-00322
Hon. Cynthia M Arvant

PEOPLE OF THE CITY OF SOUTHFIELD,

Plaintiff/Appellee,

v.

MICHAEL JOSEPH CONNOLLY,

Defendant/Appellant.

Filed January 15, 2024

OPINION AND ORDER

At a session of said Court held in the Courthouse in Pontiac, Oakland County, Michigan on 5 January 2024

PRESENT: *DANIEL P. O'BRIEN, Circuit Judge*

Appendix C

Appellant Matthew Joseph Connolly appeals by right his jury-trial[1] conviction of trespass (violation of § 9.127 of Ordinance 902) (Count 1); police officer-resisting and obstructing (violation of § 9.141 of Ordinance 902) (Count 2); and disorderly conduct-interference with business (violation of § 9.132 of Ordinance 902/PACC Code 750.170) (Count 3). The trial court sentenced appellant to serve 90 days in the Oakland County Jail on each conviction concurrently and ordered him to pay fines, costs and/or assessments in the amount of $630. For the reasons stated more fully below, this court affirms appellant's conviction and sentence.

I. Background

The charges against the appellant arise out of events that occurred on April 23, 2022. The events occurred on the second floor of an office building located at 24450 Evergreen Road in the City of Southfield, Michigan (Property). Two businesses have offices on the second floor: Northland Family Planning Center (Northland) located in Suite 220 and A&M Hair Recovery Center

1. As will be discussed later in this opinion, the events giving rise to appellant's conviction involved five co-defendants. All six cases proceeded to a trial with one jury based on an agreement between the trial court and the attorneys. On April 18, 2023, each defendant filed timely appeals to the circuit court. The trial court's certified record is incomplete unless considered as a whole. For example, there are instances where appellants certified record does not contain a motion, response, or order but it is filed in the certified record for one of his co-defendants. To eliminate any confusion in the opinion, this court will refer to Matthew Connolly as appellant, and the certified record.

(A&M) located in Suite 211. Northland is a family clinic that performs abortions.

Renee Chelian testified she owns the abortion clinic and hired Strategic to provide security services. Cornelius McNeil testified he worked for Strategic and was present to assist at the property on April 23, 2022.

On April 23, 2022, the appellant (and co-defendants) entered the property and went to the second floor to participate in a protest. Appellant stayed down the hall (common area) outside of the elevator. Mr. McNeil testified he told appellant and the other five individuals to leave the property because they were trespassing. Southfield Police officers responded to the scene.

The police arrested the appellant (and the co-defendants) for trespassing. Mr. McNeil testified that the individuals refused to walk out and had to be placed in wheelchairs and wheeled out, and the individual by the elevator (appellant) had to be taken out the same way.

A. Relevant Procedural History

On May 4, 2022, appellant was tried together with the other co-defendants. On May 13, 2022, the trial court held a pretrial, during which the attorneys advised the trial court that they had spoken and agreed to consolidate the companion cases and have one jury trial with one jury. On July 14, 2022, appellee amended the misdemeanor warrant and the complaint against appellant to add two charges: to wit, disorderly conduct-interference with business (violation of Ordinance § 9.132) and loitering in or about

a building (violation of Ordinance § 9.129). (Connolly CR at 51-54).

On December 1, 2022, the trial court held a final pretrial and heard oral argument on the following pretrial motions pertinent to this appeal:

- **Defendants' motion to dismiss the interference with a business § 9.132 and loitering § 9.129 charges.** (Wagi CR at 28-47 and Pretrial Motion Transcript (PMT) at 13-20 and 97-106). In response, appellee conceded and stipulated to dismiss the loitering in or about a building (violation of Ordinance § 9.129) charge against all Defendants. (Wagi CR at 41 and PMT at 13).

- **Defendants' motion in *limine* seeking to exclude the other acts set forth in the city's notice of intent to introduce other acts under MRE 404(b)**. (Miller CR at 28-59 and PMT at 40-57).

- **Defendants' motion for jury instruction on defense of others & necessity.** (Connolly CR at 24-78; Miller CR at 63-84 and 98-130 and PMT at 76-130).

The trial court denied these pretrial motions.

The jury trial commenced on February 21, 2023 and concluded on February 24th. After appellee rested its case, the appellant raised the following oral motions:

- **Motion to dismiss the trespassing charge.** (JTT Vol. III at 242-245).

- **Renewed motion to dismiss the interference with a business charge.** (JTT Vol. III at 245-249).

- Renewed request for the necessity and defense of others jury instruction. (JTT Vol. III at 249-250).

- **Renewed motion to dismiss the trespass charge.** (JTT Vol. IV at 6-9).

The trial court denied these motions. (JTT Vol. III at 245, 249, and 250 and JTT Vol. IV at 9). Appellant presented one witness: Defendant Moscinski. (JTT Vol. IV at 12). After appellant rested his case, he moved to dismiss the resisting and obstructing charge under free exercise and equal protection grounds, which the trial court denied. (JTT Vol. IV at 82-99). On February 24, 2023, the jury returned its verdict finding appellant guilty of trespass, resisting/obstructing a police officer, and interfering with a business.

On March 30, 2023, the trial court heard oral argument on appellant's motion for a new trial and a directed verdict of acquittal on certain charges. (Gregor CR at 28-87 and post-trial motion and sentencing transcript (PMST) at 6-48). The trial court denied the motion for directed verdict of acquittal and denied the motion for a new trial. (PMST at 48). The trial court sentenced appellant to serve

90 days in the Oakland County Jail on each conviction concurrently and ordered him to pay fines, costs and/or assessments in the amount of $630.

On April 18, 2023, appellant filed this appeal. Briefs were filed and oral arguments were heard on November 8, 2023.

II. Standard of Review

On appeal, appellant raises several claims of error, thereby implicating different standards of review. This court will set forth the appropriate standard of review as it analyzes each of the issues.

III. Analysis

A. Did the trial court err by failing to dismiss the interference with a business charge based on a constitutional challenge?

Appellant challenges the trial court's order denying appellant's motion to dismiss interference with a business charge and argues that section 9.132 of the City's Code of Ordinance is unconstitutional because it is facially invalid. This court disagrees.

This court reviews de novo the interpretation and application of a municipal ordinance. *Grand Rapids v Gasper,* 314 Mich App 528, 536 (2016). The rules governing statutory interpretation apply to municipal ordinances. *Id.* Unambiguous language of an ordinance must be applied as

written. *Brandon Charter Twp v Tippett,* 241 Mich App 417, 422 (2000). Municipal "[o]rdinances are presumed to be constitutional and will be so construed unless the party challenging the [ordinance] clearly establishes its unconstitutionality." *Gasper,* 314 Mich App at 536 (quotation marks and citation omitted). This court "may apply a narrowing construction to an ordinance if doing so would render it constitutional without harming the intent of the legislative body." *Id.* An enactment "will not be found vague if the meaning of the words in controversy can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises, or their generally accepted meaning." *People v Solloway,* 316 Mich App 174, 185 (2016) (quotation marks and citation omitted).

Appellant argues the interference with a business charge should be dismissed because section 9.132 is constitutionally vague (fails to provide adequate notice of what kind of conduct is prohibited and may permit arbitrary and discriminatory enforcement) and overbroad (prohibits anyone from engaging in "any act causing annoyance, disquiet, agitation, or derangement to another" at various public locations). The ordinance at issue here, section 9.132 (interference with business), states as follows:

> (1) It shall be unlawful for any person to make or excite any disturbance in any tavern, store or grocery, manufacturing establishment or any other business place or in any street, alley, highway, public building, grounds or park, or at any election or other

> public meeting where citizens are peaceably and lawfully assembled.
>
> (2) For purposes of this section, a disturbance shall be any act causing annoyance, disquiet, agitation or derangement to another, or interrupting his peace, or interfering with him in the pursuit of a lawful and appropriate occupation or contrary to the usages of a sort of meeting and class of persons assembled that interferes with its due progress or irritates the assembly in whole or in part.

Appellee disagrees with appellant and points to the constitutional reasoning in *People v Purifoy,* 34 Mich App 318 (1971), likening MCL 750.170 to this city ordinance. MCL 750.170 states as follows:

> Any person who shall make or excite any disturbance or contention in any tavern, store or grocery, manufacturing establishment or any other business place or in any street, lane, alley, highway, public building, grounds or park, or at any election or other public meeting where citizens are peaceably and lawfully assembled, shall be guilty of a misdemeanor.

The *Purifoy* Court held that a conviction under MCL 750.170 must be based on the "making or exciting any disturbance" and not the exciting "a contention" provision, which it determined was unconstitutional as overbroad.

In a reply brief, appellant disagrees that section 9.132 is like MCL 750.170 because it is not possible to excise any portion of section 9.132 to make it constitutional. Appellant reiterates that section 9.132 is unconstitutionally broad because it prohibits constitutionally protected conduct; it is constitutionally vague; and it lacks a *mens rea* requirement.

The court finds section 9.132 is clear; not unconstitutionally vague. A legislative enactment may be determined to be unconstitutionally vague when:

> (1) it does not provide fair notice of the conduct proscribed,
>
> (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed or
>
> (3) its coverage is overly broad and impinges on First Amendment [f]reedoms.

Solloway, 316 Mich App at 185 (quotation marks and citation omitted).

Appellant's argument fails to establish that Section 9.132 does not provide fair notice of the conduct proscribed. In fact, Section 9.132 clearly defines "disturbance" and leaves no questions what is prohibited conduct. Appellant's argument also fails to establish that section 9.132 is overbroad and impinges on First Amendment freedoms. The *Purifoy* Court evaluated nearly identical language

and this court finds its analysis and decision persuasive as applied to this ordinance.[2] Indeed, the only significant distinction between section 9.132(1) and MCL 750.170 is that section 9.132 excluded the very language (e.g., "excite . . . contention") that the *Purifoy* Court considered overbroad and unconstitutional.

The trial court did not err when it denied appellant's motion to dismiss the interference with a business charge based on a constitutional challenge.

B. Did the trial court err by failing to dismiss the resisting/obstructing charge?

Appellant challenges the trial court's decision to deny appellant's motion to dismiss resisting/obstructing charge and argues that section 9.141 of the City's Code of Ordinance is unconstitutional because the Ordinance "does not apply" and violates the free exercise clause of the First Amendment and equal protection clause of the Fourteenth Amendments even if it did apply. This court disagrees.

This court reviews de novo the interpretation and application of a municipal ordinance. *Gasper,* 314 Mich App at 536. The rules governing statutory interpretation apply to municipal ordinances. *Id.* Unambiguous language of an ordinance must be applied as written. *Brandon Charter*

2. Although cases decided before 1990 are not binding on this court, they may be considered for their persuasive value. See MCR 7.215(J)(1).

Twp, 241 Mich App at 422. A municipal "[o]rdinance[] is presumed to be constitutional and will be so construed unless the party challenging the [ordinance] clearly establishes its unconstitutionality." *Grand Rapids v Gasper,* 314 Mich App at 536 (quotation marks and citation omitted). This court "may apply a narrowing construction to an ordinance if doing so would render it constitutional without harming the intent of the legislative body." *Id.*

Appellant argues that the resisting/obstructing charge should be dismissed because section 9.141 "does not apply." It is unclear what appellant means by, " . . . Section 9.141 *does not apply.*" (emphasis added). If what appellant contends here is that he is not guilty of violating section 9.141 and the jury's contrary verdict is against the great weight of the evidence, this court disagrees.

Specifically, appellant argues that the evidence demonstrates he was deferential to the police officers; took no action to prevent the police officers from making the arrest; did not want to assist in his own arrest based on his moral convictions; and has no obligation to assist in his own arrest. Appellee disagrees and argues that appellant went limp and refused to walk out after being handcuffed, which meant the police officers had to pick up appellant, place him in a wheelchair, and wheel him from the premises before they could cure the trespass that obstructed Northland's operation.

The ordinance at issue here, section 9.141 (resisting or obstructing officer in discharge of his duty), states as follows:

Appendix C

> Any person who shall knowingly and willfully obstruct, resist or oppose any city policeman, constable or other officer or person duly authorized in serving or attempting to serve or execute any process, rule or order made or issued by lawful authority, or who shall resist any officer in the execution of any ordinance by law, or any rule, order to resolution made, issued or passed by the city council or who shall assault, beat or wound any city policeman, constable or other officer or person duly authorized, while serving or attempting to serve or execute any such process, rule of order, or for having served, or attempted to serve or execute the same, or who shall so obstruct, resist, oppose, assault, beat or wound any of the above-named officers or any other person or persons authorized by law to maintain and preserve the peace, in their lawful acts, attempts and efforts to maintain, preserve and keep the peace, shall be guilty of a misdemeanor.

Both parties rely on *People v Vasquez*, 465 Mich 83 (2001), which interpreted MCL 750.479 (a now repealed statute that corresponds to the current MCL 750.81d[3]). The *Vasquez* Court held that the statute "proscribes threatened, either

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3. MCL 750.81d(1) states as follows in its relevant portion:

> . . . 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 . . .

expressly or impliedly, physical interference and actual physical interference with a police officer" making it harder for the police officer to perform his or her duties. *Vasquez,* 465 Mich at 94 and 100. About a year later, the Legislature defined the term "obstruct" to mean "the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a); *see also People v Morris,* 314 Mich App 399, 408-409 (2016). The evidence presented at trial demonstrates appellant made it harder for the police officers to escort him from the premises; thereby, physically interfering or obstructing them from performing their duties.

Appellant also argues the resisting/obstructing charge should be dismissed because section 9.141 violates the free exercise clause of the First Amendment and equal protection clause of the Fourteenth Amendment. As to the free exercise clause, appellant argues that he was physically impaired by his religious beliefs thereby preventing him from leaving the building. Appellant likens it to a person impaired by intoxication or by a physical disability. Further, appellant concludes that the disparate enforcement in this case burdened his fundamental rights by punishing him for his religious beliefs. Appellee disagrees and argues that section 9.141 is both facially and operationally neutral. This court rejects appellant's arguments.

The notion that one is impaired by his or her religious beliefs or is compelled by them ignores the free will distinction between humans and beasts and also disgraces religion. The ordinance is indiscriminate and neutral; it comports with the First and Fourteenth Amendments.

C. Did the trial court commit reversible error by denying the appellant ·s requested jury instructions on the defense of others and necessity?

Appellant argues that the trial court committed reversible error when it declined appellant's request to instruct the jury on the defense of others and the necessity defense. This court disagrees.

Generally, this Court applies a de novo standard of review when it reviews jury instructions that involve questions of law and reviews a trial court's determination of whether an instruction is applicable to the facts of a case for an abuse of discretion. *People v Gillis,* 474 Mich 105, 113 (2006). Jury instructions should be read as a whole, rather than examined piecemeal, to determine if there is error. *People v Aldrich,* 246 Mich App 101, 124 (2001). Jury instructions must fairly present the issues to be tried and sufficiently protect a defendant's rights. *Id.* The instructions must include all elements of the charged offenses and must not exclude relevant issues, defenses, and theories if supported by the evidence. *People v McGhee,* 268 Mich App 600, 606 (2005). "If the jury instructions, taken as a whole, sufficiently protect a defendant's rights, reversal is not required." *People v Huffman,* 266 Mich App 354, 371-372 (2005). To preserve a claim of instructional error, a defendant must object or request the provision of a different instruction before the jury initiates deliberations. MCR 2.512(C); *People v Gonzalez,* 256 Mich App 212, 225 (2003).

Appendix C

In 1973, *Roe v Wade* held generally that abortions are constitutionally protected. 410 US 113 (1973). The present incident occurred on April 23, 2022. Two months later, in June of 2022, *Dobbs v Jackson Women's Health Org.*, held that abortion was never a constitutionally protected right. 597 US 215 (2022). In November of 2022, Michigan citizens voted to amend the state constitution generally sanctioning abortion. In February of 2023, appellant moved for and the trial court denied defense of others and necessity defense jury instructions.

Appellant contends that his protesting of abortions entitles him to a defense of others and/or necessity jury instruction, despite the fact he was protesting in a state whose citizens voted to allow such conduct. Appellant argues here the trial court abused her discretion in rejecting that contention. The trial court's decision was within the bounds of her discretion.

D. Did the trial court err by denying appellant's motion in limine to exclude prior acts evidence under MRE 404(b)?

Appellant argues that the trial court committed reversible error when it denied appellant's motion in *limine* to exclude prior acts evidence under MRE 404(b). This court disagrees.

Appellee filed a notice of intent to introduce other acts under MRE 404(b) (notice). (Miller CR at 28-59). Pursuant to the notice, appellee advised that it intended to introduce evidence at trial of appellant's other acts for purpose to

show that the acts constituted a common scheme or plan or to show the modus operandi of committing similar crimes. (Miller CR at 28-30). Specifically, appellee sought to admit the following other acts:

- That on or about September 15, 2017, appellant entered Northland Family Planning Center, a woman's health clinic, in Sterling Heights, Michigan. One of the services provided at the clinic is abortions. Appellant was a member of Red Rose Rescue; a pro-life group. The police arrived and the appellant was advised on trespass and refused to leave. When arrested for trespass he refused to stand up and walk out of the clinic. Responding Officers had to carry appellant to the waiting police vehicles for transport to the Police Department. Appellant was one of four individuals arrested and charged with trespass and resisting and obstructing. A jury trial was conducted and all four individuals were convicted of trespass and resisting and obstructing.

- That on or about December 2, 2017, appellant entered Western Women's Center, a woman's health clinic that performs abortions, in West Bloomfield, Michigan. Appellant was representing Red Rose Rescue and protesting abortions. Once again, he was advised on trespass and refused to leave,

> fell to the ground and had to be carried out to the police vehicles. Appellant was one of five individuals who were charged. A jury trial was held and all five individuals were found guilty of trespass and interfering with police/resisting and obstructing.

(Miller CR at 28-29). Appellant filed a motion in limine seeking to exclude the above other acts on the basis that they are not material, so it is being put forth for an improper purpose (e.g., propensity and any probative value outweighed by prejudice). (PMT at 40).

After hearing oral arguments, the trial court analyzed the other acts evidence pursuant to MRE 404(b) and concluded that the evidence was relevant under 401 because the proffered evidence of prior acts directly relates to this case; is based on conduct that is virtually identical; and it could make determinations of his motive and intent more or less probable. (PMT at 56). The trial court determined that any danger of undue prejudice did not substantially outweigh the probative value of the evidence. (PMT at 56). The trial court offered a limiting instruction.

This court reviews for an abuse of discretion preserved challenges to the trial court's evidentiary rulings. *People v Layher,* 464 Mich 756, 761 (2001). The trial court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes. *People v Orr,* 275 Mich App 587, 588-589 (2007). Preliminary questions of law surrounding the admission of evidence are reviewed de

novo. *Layher,* 464 Mich at 761. Even if properly preserved, an error in the admission of other acts evidence does not require reversal unless it is more probable than not that the error was outcome determinative. *People v Knapp,* 244 Mich App 361, 378 (2001).

Generally, MRE 404(b)(l) prohibits a party from introducing evidence of another party's other crimes, wrongs, or acts to prove that person's character or propensity to engage in that type of action. Such evidence

> may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material. . . .

MRE 404(b)(1). The trial court properly admits other acts evidence if the proponent establishes that (1) it is offering the evidence for a proper purpose, (2) the evidence is relevant to a fact of consequence at trial, and (3) the evidence is not substantially more prejudicial than probative. *People v Sabin (After Remand),* 463 Mich 43, 55-56 (2000).

Appellant's other acts were clearly admissible for non-propensity purposes such as motive, intent, as well as absence of accident or mistake. The trial court also correctly evaluated the other acts evidence under MRE 403 and also properly offered a limiting instruction.

E. Did appellee meet its burden to establish the required elements for trespass?

Appellant argues appellee failed to meet its burden to establish the required elements for trespass. Specifically, appellant argues that appellee failed to prove the charged offense against him because (1) he was never inside Suite 220 as alleged in the Amended Complaint and (2) the trespass notice was defective since Mr. McNeil did not have authority to order appellant to leave the common area. This court disagrees.

A claim that the evidence was insufficient to convict a defendant implicates his constitutional right to due process of law. *In re Winship,* 397 US 358,364; 90 S Ct 1068; 25 L Ed 2d 368 (1970); *People v Wolfe,* 440 Mich 508,514 (1992), amended 441 Mich 1201 (1992). This court reviews de nova a defendant's challenge to the sufficiency of the evidence supporting his or her conviction. *People v Miller,* 326 Mich App 719, 735 (2019). This court reviews the evidence "in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the prosecution proved the crime's elements beyond a reasonable doubt." *Id.*

This court agrees with the trial court's interpretation and decision. The ordinance at issue here, section 9.127 (trespass upon lands or premises of another), states as follows:

> It shall be unlawful for any person to willfully enter upon the lands or premises of another

> without lawful authority, after having been forbidden so to do by the owner or occupant, agent or servant of the owner or occupant, or for any person being upon the land of another, upon being notified to depart therefrom by the owner or occupant, the agent or servant of either, to without lawful authority neglect or refuse to depart therefrom.

Having reviewed the evidence presented through testimony of various witnesses, this court adopts the trial court's analysis and conclusion set forth as follows:

> It doesn't say inside of it, and there is plenty of video evidence and testimony that these individuals were directly outside the door at Suite 220. Some of the witnesses testified that they were in fact blocking the door, and that people trying to enter the clinic either would have had to step over them, or couldn't have, or would have had to squeeze through, per various testimony.
>
> So, there's evidence that as it to relates to – and again, the complaint says, "refused to leave the location after being advised to leave by security or the police." It can encompass the – it can – it doesn't have to – it doesn't say inside. It doesn't say the lobby of the waiting room. It doesn't say that. It says that location. There's plenty of testimony from which this jury could conclude that they were at that location sufficiently to

> establish the elements of trespass. So, I would deny the motion to dismiss.[4]

(JTT Vol. 3 at 242-245).

Appellant contends his location near the elevator distinguishes him from the other defendants and from the trial court's reasoning. Appellant mistakenly implies that he could not trespass in common areas or that common areas are not demised to a lessee. Appellant's contention and implication are incorrect and rejected.

As it relates to appellant's other argument that the trespass notice was deficient, Section 9.127 does not require that a licensed security guard provide the notice regarding trespass. Rather, notice may be provided by an owner, occupant, or agent. The evidence supports that Mr. McNeil had authority to order appellant to leave.

F. Did the trial court err by denying appellant's motion for a directed verdict on certain charges and I or new trial?

Appellant argues the trial court erred when it denied appellant's motion for a directed verdict and/or a new trial. This court disagrees.

The title to this section refers to the trial court's denial of directed verdict as to multiple charges, but appellant only discussed the single charge of trespass.

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4. This analysis by the trial court pertained to all of the defendants. This appellate opinion focuses on the trial court's oral ruling only with respect to this appellant.

Appendix C

This challenge to appellant's trespass conviction, as distinct from his last argument on this count, is brought under *Brady v Maryland,* 373 US 83 (1973). In general, "[t]his Court reviews due process claims, such as allegations of a *Brady* violation, de novo." *People v Dimambro,* 318 Mich App 204, 212 (2016) (quotation marks and citation omitted). To establish a *Brady* violation, a defendant must show that "(1) the prosecution has suppressed evidence; (2) that is favorable to the accused; and (3) that is material." *People v Chenault,* 495 Mich 142, 150 (2014). "In assessing the materiality of the evidence, courts are to consider the suppressed evidence collectively, rather than piecemeal." *Id.* at 151. "[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Chenault,* 495 Mich at 157 (quotation marks and citation omitted).

Appellant's entire *Brady* challenge is premised on the notion that one must be licensed as a security guard in order to have authority to tell another he is trespassing and to order him to leave. Appellant's notion is unfounded and unsupported. This alone defeats his *Brady* challenge. The court here also adopts appellee' s other arguments on this issue without repeating them here.

G. Is the trial court's condition of probation unlawful?

In his brief, appellant argues that the trial court offered him a Hobson's choice: to wit, either affirmatively agree to the conditions of probation or suffer imprisonment. This argument lacks merit.

MCL 769.5(3) establishes a rebuttable presumption for a non-jail, non-probationary sentence for a nonserious misdemeanor conviction. There is no dispute that the trial court discussed the rebuttable presumption and recognized that it could depart from the presumption if it found reasonable grounds to warrant a departure and discussed those reasons (if applicable) when sentencing appellant. (PMST at 78-79). The trial court further explained the balancing between probation and jail time as follows:

> And – and again, probation is available as an alternative sentence for a misdemeanor or ordinance violation if I can find that the defendant is unlikely to engage in an offensive or criminal course of conduct again, and the public good does not require that the defendant suffer the penalty imposed by law. And – so I have to find number one, that they're not going to do this again. And number two, that the public good doesn't think that they deserve this penalty. And that's an and, it's a conjunction that 771.1 sub 1.

(PMST 79). The trial court also recognized a concern whether appellant would comply with the terms and conditions of probation and addressed that concern when it sentenced appellant. Prior to sentencing appellant, the trial court considered appellee's position, appellant's silence, and information from pretrial services as follows:

> THE COURT: I would ask you, Mr. Connolly, would you intend to comply with any terms or conditions of probation if imposed them?
>
> * * *
>
> THE COURT: So, I can only assume by Mr. Connolly's silence that he does not intend to comply with the terms and conditions of probation, and this is not a dog and pony show. I am not going to put Mr. Connolly on probation to set him up to fail, because I don't do that. That – that's pointless and it's – it's it doesn't serve any – it doesn't serve anybody's purposes.

(PMST at 88). Based on the above information, the trial court concluded it had no basis to place him on probation and sentenced him to 90 days concurrent on each count. (PMST at 89). Specifically, the trial court justified its basis to deviate as follows:

> THE COURT: . . . this is the case where the Court has a significant basis, you know, for deviating from the presumption that fines and costs are an appropriate sentence in this case;

> because again, there is just a complete history of recidivist behavior and – and probation is not warranted where I can't find that the Defendant is unlikely to commit this conduct.
>
> . . . I'm not placing the Defendant on probation. . . . Mr. Connolly has credit for one day in jail that he was not bonded out at the time of the arrest. So, the sentence of the Court today is for 90 days in jail with credit one.

(PMST at 89).

IV. Conclusion

Accordingly, this Court affirms appellant's conviction and sentence.

This is a Final Opinion and closes the appeal.

This Court does not retain jurisdiction.

IT IS SO ORDERED.

/s/ Daniel Patrick O'Brien
Hon. Daniel P. O'Brien

APPENDIX D — EXCERPT FROM PRETRIAL MOTION TRANSCRIPT IN THE STATE OF MICHIGAN, 46TH JUDICIAL DISTRICT COURT (SOUTHFIELD, MICHIGAN), DATED DECEMBER 1, 2022

STATE OF MICHIGAN
46TH JUDICIAL DISTRICT COURT
(SOUTHFIELD, MICHIGAN)

File No. 22-S-00322-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

MATTHEW CONNOLLY,

Defendant.

File No. 22-S-00354-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

LAURA FRANCINE GIES,

Defendant.

File No. 22-S-00351-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

JACOB ALEXANDER GREGOR,

Defendant.

Appendix D

File No. 22-S-00353-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

MONICA MARIE MILLER,

Defendant.

File No. 22-S-00352-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

CHRISTOPHER LUKE MOSCINSKI,

Defendant.

File No. 22-S-00350-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

ELIZABETH JANE WAGI,

Defendant.

Appendix D

ARRAIGNMENT OF MONICA MILLER ON FIRST AMENDED COMPLAINT, DEFENDANT'S MOTION TO DISMISS COUNT THREE AND COUNT FOUR OF AMENDED COMPLAINT, PEOPLE'S MOTION FOR A PROTECTIVE ORDER, PEOPLE'S NOTICE OF INTENT TO INTRODUCE OTHER ACTS UNDER 404(B) MOTION IN LIMINE RELATIVE TO 404(B), PEOPLE'S MOTION IN LIMINE TO EXCLUDE OR RESTRICT TESTIMONY OF OPINIONS OR BELIEFS ABOUT ABORTION, DEFENDANT'S MOTION FOR JURY INSTRUCTIONS ON DEFENSE OF OTHERS AND NECESSITY

BEFORE THE HONORABLE
CYNTHIA M. ARVANT, DISTRICT JUDGE

Southfield, Michigan – Thursday, December 1, 2022

* * *

[13]certainly, I'm opened to anything. So – but let's take – because we've already really addressed the motion to dismiss. And having looked at this, I see that Defense was seeking to dismiss both the loitering and the interference with the business charge. The City has conceded and dismissed the loitering counts as to all six Defendants.

So, that leaves the interference with a business ordinance – alleged ordinance violation. And I think Defense's position is that – that the ordinance is vague and overbroad. And the City, of course, disputes that.

Appendix D

Mr. Muise, anything you would like to add by way of argument on your motion to dismiss?

MR. MUISE: Yes, your Honor. Obviously when you're challenging a statute facially on vagueness and overbreadth grounds, a – a party who's bringing that challenge seeks to vindicate not only their own rights but also the rights of others who may not be before this Court. So, there is – and particularly in the overbreadth, so when you – when you challenge the statute, even though the statute might have a legitimate application to particular facts in the case; if the statute is held to be facially vague or facially overbroad it cannot be enforced regardless. Now the – the vagueness and – and as I read their – their – their opposition to this challenge of the interference with business, their focus was on the – the vagueness and – vagueness and not so much [14]the overbreadth. But I want to address the vagueness and then I will address the overbreadth issue.

Now there's – there's kind of the twin evils with – with vagueness that is protected by the – the due process clause, and that is one if it fails to provide adequate notice as to what the crime is. And then the second is if it permits arbitrary enforcement. And – and quite frankly I think it's that second part of it that is the – is the gravamen of the challenge here on the vagueness perspective.

Now, bear in mind also, and this plays a part of it, this statute, like the loitering one as we pointed out, fails to have a mens rea requirement. And if you look at the statute language itself it makes it a crime to simply annoy

or agitate or interrupt the peace of someone in a tavern, a store, a business, and it lists some other locations. And quite frankly when you – when you look at what the case law is, particularly from the Supreme Court – and I know the courts have held that it was unconstitutionally vague to have the exciting a contention provisions, which has been excised out of this, but a contention is essentially argument. It really – there – the – the definition that's part of the statute that the city has, in fact, all it does is invite arbitrary enforcement, because you – the determination's required by this ordinance can only be made by police officers [15]and – and those who are prosecuting on a subjective basis.

And we cited Cox versus Louisiana, a Supreme Court case from 1965, which held the breach of the peace statute unconstitutionally vague when it defined breach of the peace as quote, "to agitate, to arouse from a state of repose, to molest, interrupt, to hinder, to disquiet". So here, the reach of the ordinance depends in each case on the subjective tolerances, perceptions, and sensibilities of the listener, which is plainly impermissible under the due process clause. And so, just on its face, the fact that they – they excised the excite contention does not remedy the statute of its constitutional defects, particularly in light of Supreme Court precedent.

And I can address – I'll next address the overbreadth issue, which I don't think they've adequately act – quite frankly, when I read what they wrote it was – it was mostly about on the vagueness. Overbreadth – and the problem with overbreadth is when a statute has – even though it

might have a legitimate reach within a particular case, if it extends its proscriptions to activity that's protected by the first amendment, the statutes are struck down as being overbroad and the – the simple reason is – is that we can't tolerate as a society, a statute that has the potential to have an impermissible – impermissible or susceptible sweep that's going to cover constitutionally protected activity. [16]This statue does it on its face. It prohibits anyone from engaging in any act causing annoyance, disquiet, agitation at various public locations, and includes in there streets and parks. Public street and park are quintessential public forums, the Supreme Court has said that time and again.

We cited to the cases listed in there, and under this statute it says any act and any means any – it could be speaking, it could be distributing literature, it could be holding signs out on a public sidewalk, or out on a public street, or in a public park that might annoy somebody. And the Supreme Court has said time and again that any statute that is based on a listener's reaction to speech, which this plainly is because if the speech annoys, if it agitates, if it, you know, causes disquiet in somebody else that is a content-based restriction on speech. And content-based restrictions are impermissible. So, regardless of whether or not it could be applied in this particular case the fact that it covers constitutionally protected activity makes the statute overbroad.

And here's what the Supreme Court said, a clear and precise enactment may nevertheless be overbroad – so even the clear precise enactment may nevertheless be

overbroad if it's – in its reach it prohibits constitutionally protected conduct. The crucial question then is whether the ordinance sweeps within its prohibitions what may not be punished under [17]the first and fourteenth amendments; plainly what this does. In Lewis verse New Orleans which we cited, another Supreme Court case, the – the hailed the challenge the – the statute unconstitutional because it was susceptible of application to protected speech.

This ordinance on its face is suspense – susceptible to application on protected speech and the reason for allowing a defendant to challenge a statute such as this on its face is even when the defendant's own conduct may be constitutionally prohibited, the potential chilling effect on overbroad statutes on the exercise of protected speech is the basis for striking these down. And, you know, it's interesting because even in the – the City's response they pointed out, well there were people on the public sidewalk that were protesting that were essentially doing similar things that the – the – the rescuers were doing, handing out literature, trying to just – dissuade the women to have – to have abortions who were going into the public sidewalk.

This statute on its face prescribes that conduct if the activity agitated or annoyed anybody who was – who received it. The statute is facially overbroad and it cannot be applied – and it – whether it can be applied to this specific facts of this case is irrelevant; the question is, is it face – is it facially overbroad in violation of the first amendment. This statute is.

Appendix D

[18]THE COURT: Okay. All right. Let me hear from Ms. Fitch and then I'll come back to you for any – any type of reply.

Go ahead, Ms. Fitch.

MS. FITCH: Your Honor, in the Michigan courts, particularly in People vers – v. Purifoy, it held that a conviction under the state statue – and the state statute is very similar to the city's ordinance, however the city's does not have contention; it's – it's out of – out of their ordinance. And further, we also have a definition for disturbance in paragraph two that talks about a noise, disquiet, agitation, derangement to another, or interrupting his peace or interfering with him in the pursuit of a lawful and appropriate occupation. So, it goes what – even further than what the state statute for disturbance is. And People versus Purif – Purifoy, in 1971, held that the identical language, which is paragraph one of the city ordinance minus the contention, would be – would be constitutional and the – and the only time it would be non-constitutional is if a jury were to read exciting a contention.

So, take that exciting contention, which the city did take out of their ordinance, it's not in there. And then further in People v. Mash, 1973, two years later, the statute would be valid to go before a jury if contention – if they were instructed on a definition of disturbance and not [19]contention, to arrive at their verdict. Further, in Vandenberg, the City reaffirmed the central holding in Purifoy, and basically said that the omission of the

unconstitutionally vague leg – vague lang – vag – I'm sorry, your Honor, my – it's one of those days – vague language exciting a contention in the statute is constitutional if you take that vague language out.

Now, the City is – is specifically saying that they interrupted or interfered with the lawful practice of an abortion clinic. That's in the ordinance and that's what we're saying they did. And then we're not saying that they were handing out pamphlets on a street corner or sidewalk, like which there were people doing in the – in the parking lot. None of those people were arrested. The people that were arrested is when they went into a privately owned building and they caused a disturbance such that they interfered with the practices of a lawful building. It's not overbroad, it's not vague, it's right there in the plain language of the ordinance. Therefore, this should not be dismissed.

THE COURT: Okay. All right, thanks. Anything by way of reply?

MR. MUISE: Just briefly, your Honor. The fact that they didn't arrest any of the protesters on side – on the sidewalk is – is not the point. The fact is under the plain [20]language of this statute they could have, and that makes the statute uncsont – unconstitutionally overbroad. And the – the City with the definition that they put as an element of the statute it – specifically what disturbance is – is – really it's no different practically as excited contention, the way they have annoy, irritate, and – and all those other vague and subjective terms. So, this – this ordinance is facially invalid, your Honor.

Appendix D

THE COURT: Okay. All right. Well, I looked at the same cases that – that both of you considered and I – I read the cases that were cited and I looked the Purifoy and the Vandenberg case. And the City having voluntarily dismissed all the charges for loitering, the only issue is Defendant's charge the vagueness and overbreadth of this interference with a business charge. And, you know, Section 9.132 interference with a business: it shall be unlawful for any person to make or excite any disturbance in any tavern, store or grocery, manufacturing establishment, or any other business, place, or in any street, ally, highway, public building, grounds, or park, or at any election or other public meeting where citizens are peaceably and lawfully assembled. And then the City's ordinance goes on to add – and again, they don't have that excite a contention language in section one that seems to cause so many problems. In subsection two, they go on to describe what is a disturbance; for purposes of this section a [21]disturbance shall be any act causing annoyance, disquiet, agitation, or derangement to another, or interrupting his peace, or interfering with him in the pursuit of a lawful and appropriate occupation, or contrary to the usages of a sort of meeting and class of persons assembled that interferes with it's due progress or irritates the assembly in whole or in part.

So, contrary to, you know, these other cases that challenge the interference with a business like – essentially section one and analyzing that, it doesn't appear that any of these other ordinances or statutes that they reference have this second definition section, or at least they don't refer to them in the opinions that address same.

Defendants allege that this fails to provide adequate notice of what kind of conduct is prohibited, that it's too broad, that it could pro – preclude constitutionally protected activity and speech within the sweep of the prohibited conduct, therefore Defendants allege that this is unconstitutional.

Statutes are presumed to be constitutional and must be so construed unless there unconstitutionally is readily apparent; People v. Hayes, 421 Mich. 271, from 1984. In determining whether a statute is unconstitutionally vague or overbroad a reviewing court should consider the entire text of the statute and any judicial constructions of that statue; [22]Kolender v. Lawson, 461 U.S. 352, from 1983. When a statute purporting to regulate both speech and conduct is challenged, the over breadth of a statue must not only be real, but substantial as well, judged in relation to the statutes plainly legitimate sweep. In Las Angeles City Counsel versus Taxpayers for Vincent, 466 U.S. 789, from 1984, the United States Supreme Court explained that the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge, rather there must be a realistic danger that the statute itself will significantly compromise recognized first amendment protections of parties not before the court for it to be facially challenged on overbreadth grounds.

Now, I am not aware – Ms. Fitch would probably know better than I, if city – if Southfield's municipal code has ever been challenged relative to this ordinance; I didn't find anything. I doubt very highly that there would be

any published authority had it ever been challenged, but you've got all of these cases that have construed the constitutionality of MCL 750.170, which is actually identical – the language is identical to the Southfield city ordinance; with the exception that the statute included that language, excite a contention. That language is in the statute but not in the city of Southfield ordinance. I don't know if it was at some point. I don't know if the city had it –

[23]MS. FITCH: I – I don't know either.

THE COURT: – and then excised it after all of this caselaw came along. I don't really know. But, suffice to say, the ordinance that these Defendants are charged under is specifically 9.132 sub one, which does not include that 'excite a contention' language. And again, it's virtually identical to MCL 750.170; which has been analyzed by courts in this state and ultimately provides guidance to this Court about construing ordinance 9.132 in light of this challenge to overbreadth and vagueness.

Again, courts reviewing this have found that state statute unconstitutional for being vague or overbroad because of this 'excite a contention' language. And the State Supreme – oh, I'm sorry, State Court of Appeals stated what a statute would say to pass constitutional muster, and this is in the Vandenberg case citing Purifoy; where the court – and this is from, I should say People versus Vandenberg, 307 Mich. App. from 2014. And this again involved a challenge to vagueness and overbreadth of the 'excite a contention' language of 750.170. And in reviewing this and in considering it, the Court of Appeals said,

"specifically at issue in this case is the constitutionality of 750.170"; which again is nearly identical to our city's ordinance with the exception to the addition of the 'excite a contention'. "The present case is not the first occasion on which this court has considered the [24]constitutionality of this statutory provision. Most notably, in Purifoy, 34 Mich. App. at 320, the defendant was arrested after throwing a rock at police officers at the scene of a public disorder and he was convicted of making or exciting a disturbance or contention under 170". It was appealed and a written opinion in reaching this conclusion Chief Judge Lesinski specifically recognized that the 'excite a contention' language must be read out of the statute; and in doing so, the court relied on the reasoning of a special three judge panel in a federal court, which had previously determined that the words 'excite a contention' must be read out of the statute to accord with the principal that public expression of ideas may not be prohibited merely because the ideas themselves are offensive to others.

And they go on to say – they address this on both vagueness and overbreadth. And then they add, so there is no possibility of our being misconstrued with the illation of the constitutionally offensively language, the Michigan statute would read as follows; and then they have the exact same statute removing excite – ex – excite – that language, I'm sorry – excite contention. Sorry, I lost my though there. And they go on to talk about all these other cases, and they say, in sum, for more than four decades this court and federal courts have acknowledged that the reference to 'exciting a contention' unconstitutionally infringes on protected speech [25]by criminalizing peaceable public

expression of ideas merely because those ideas might be offensive to others.

So, courts that have considered this said as long as you get rid of that language, this is going to pass constitutional much – muster, and it's not going to interfere with constitutionally protected activity. And I also just recently took a look at – there is a slip opinion from federal court, opinion and order granting defendants motion for summary disposition in Willy Burton versus City of Detroit. This was issued on February 16th of 2022, by Eastern District of Michigan, by sha – District Judge – District Court Judge Sean Cox, and in this case, there was a discussion about an arrest and the language under 750.170 and – and Sean – Judge Cox specifically said, "Therefore only the contention language is unconstitutional. A defendant may be convicted if his actions qualify under the disturbance language". So, even the disturbance language – I mean, specifically – Judge Cox in Federal Court has said that the disturbance language passes constitutional muster.

Having read all of this, having looked at the other cases, I am satisfied that the very language of the statute now challenged by Defendant has been found to be adequate, sufficiently clear by our state appellant courts, and by recent federal court decision, and – and meeting constitutional requirements, you know, as far as not [26] infringing upon protected speech. Courts have considered this; courts have consistently upheld this type of language. And I think there's – you know, additionally the city of Southfield ordinance goes further; it has additional assistance and understanding in its ordinance. Southfield

actually tells you what is a disturbance; they leave no question about what kind of constitute could – what could constitute prohibited conduct.

Based on the plain reading of the ordinance including the definitions section contained in subsection two as well as this long history of caselaw in Michigan, both state and federal courts construing nearly identical language, this Court finds this statute is not unconstitutional as being vague or overbroad. And therefore, the Court denies the motion to dismiss on this basis.

Okay. So, that one is done. Let's move on to – how about the People's motion for a protective order. It's kind of next in my stack. I have People's motion and I have Defendant's response.

Ms. Fitch, if you want to go ahead and tell me the basis for your motion for a protective order.

MS. FITCH: Your Honor, pursuant to MCR 6.201, the court can order a protective order upon a showing of good cause. And it's stated in the statute in considering good cause, the court shall consider the parties interest in a fair [27]trial, the risk of any person of harm, undue annoyance, intimidation, embarrassment, or threats.

In our motion we have attached several documents. One was the federal – the Department of Justice recent cases on violence against reproductive health care providers; there's an uptick. As well as the National Abortion Federation releases their 2021 violence and disruption

on abortion clinics, which again shows an uptick, and that was from 2021. And also, from Red Rose Rescue, which is the members – all the Defendants are members of the Red Rose Rescue, and they went into the abortion clinic as Red Rose Rescuers, from their own website what they talk about. And there was an interesting article from – lets see, it was from Mother Jones, entitled "The Militant Wing of the Anti-Abortion Movement is Back And It's Never Been Closer to Victory". And what's interesting is that one of the Defendants, Monica Miller, is – is quoted in here and interviewed in here regarding this. And in fact, she was at a protest which this magazine article author was at, where they were taking pictures of license plates in the abortion clinic parking lot and one of the women there said that – wasn't that a violation of somebody's privacy, and somebody within that anti-abortion crowd chirped up, no I already know where he lives.

So, this is – and – and they've – the – they've [28] already posted pictures of the security guards on their website. And they've already posted – they posted pictures of – or tapes of other trials they've been in; they've posted that on their website, of abortion workers that are – I'm assuming they got through discovery. So, there is a very legitimate concern about harassment and threats on people who work at an abortion clinic from anti-abortionists.

And I know this is, you know, this is both sides are – are – are you know, just as culpable in this, but we're not here on this side. We're here on the abortion is – the abortion clinics are running a lawful business. And for

them to ridicule – harass somebody. And this person who's the manager or supervisor who's going to be a witness here, who was there that day, she's legitimately afraid. So, I think that a protective order should be entered that does not provide her name, or where she lives, her phone number, or any type of identifiable factor that somebody could dox her. It's very legitimate concern. Or harass her. Therefore, we believe the protective order is in – should be in place for this particular witness.

THE COURT: So, when I looked at the City's witness list it – you identify I think the – the owner of the clinic and a staff member of the clinic by first name and last name on the witness list, and then this witness – or I think the one witness –

[29]MS. FITCH: Right.

THE COURT: – says – it just says first name, and then it says last name dep – or whatever, depending on outcome of motion for protective order.

MS. FITCH: Correct. Correct.

THE COURT: Okay. So, is this – this a concern relative to one perspective witness, or –

MS. FITCH: Yes, right now.

THE COURT: Okay.

MS. FITCH: I mean, at – there – there – being that the owner has already been through this before with the Sterling Heights case – was it West Bloomfield or Sterling Heights?

UNKNOWN SPEAKER: Sterling Heights.

MS. FITCH: Sterling Heights. It was the Sterling Heights case. So, her information unfortunately –

THE COURT: While, I think the owner's been in the

paper.

MS. FITCH: Right. And the owner's been in the paper.

THE COURT: Speaking out on this –

MS. FITCH: Exactly.

THE COURT: – so this – I mean–that cat's out of the bag.

MS. FITCH: So, I mean, the owners out there.

[30]THE COURT: Yeah.

MS. FITCH: They know who the owner is.

THE COURT: Yeah.

MS. FITCH: They're very familiar with the owner.

THE COURT: Sure.

MS. FITCH: And – and unfortunately in my conversations with the owner, she's been doxed. Not – not – I'm not saying it's by Red Rose Rescue. But it's the very reality of this type of case. And so, this individual who happens to be the supervisor, who's key in this case, who was there present when this happened, is afraid.

THE COURT: So, this is really, kind of one –

MS. FITCH: One – one individual.

THE COURT: – witness that you're concerned about.

MS. FITCH: One individual.

THE COURT: Okay. And this witness does not want their last name or –

MS. FITCH: Any type of identifiable information –

THE COURT: Okay.

MS. FITCH: – other than – her first names already out there.

THE COURT: Okay.

MS. FITCH: So –

Appendix D

THE COURT: Well, I'm thinking about – and again, I don't know – Mr. Muise, do you – let me hear from Mr. Muise [31]and ask him a couple questions and I'll come back. Go ahead.

MR. MUISE: Thank you, your Honor. Just to – to be clear, pro-lifers are doxed all the time. So, this idea that somehow there's this, you know, one way violence in this issue is just – it's absolutely absurd. In fact –

THE COURT: Well, I don't think Ms. Fitch said that that's the case, but –

MR. MUISE: Well –

THE COURT: And – let me – let me just say something right now.

MR. MUISE: Yes.

THE COURT: Law.

MR. MUISE: Yes.

THE COURT: I am a Court of law.

MR. MUISE: I understand.

THE COURT: We are dealing with a criminal charge here. That is what this is. I've read everything attached. I read all the Mother Jones articles, I read the Federal Core – Federal this, that, and the other thing. I read

all the biblical versus you wanted me to read. None of that is relevant. None. Zero-point-zero percent of that is relevant to me. And its quite not – it's not even really quite persuasive to me. I don't care about those things because that's not binding on me. This is a Court of law. I will hear the testimony, you know, the jury will hear the [32]testimony. I – I – this is a lot of hearsay stuff that's coming in. It's not binding on me. What I am concerned about – and I understand and I'm just going to say this, I understand this is a very hotly contested issue on both sides. But at the end of the day, this is a case alleging trespass, resisting and obstructing, and interference with a business. That's what it's about. So, I – I don't need to know what the Vatican says about this. I don't need to know what Mother Jones says about this. I'm – as a citizen, I'm exposed to all of this. As a Christian I am exposed to all of this. I do not need to know this. So, please, let's keep it to the law for purposes of this.

MR. MUISE: Okay.

THE COURT: So, go ahead – we're talking about a protective order here.

MR. MUISE: Right and –

THE COURT: And whether there's good cause to issue same. And so, I don't – I – I – I just want to lay those parameters down about what I expect this to be, how I expect this to go. So –

MR. MUISE: But – I mean the – you can't escape the reality, your Honor, that this occurred at an abortion center. And so –

THE COURT: Right. And we're going to talk about that but –

[33]MR. MUISE: – there's going to be huge biases that are going to –

THE COURT: But I don't need you to quote bible versus to me –

MR. MUISE: I –

THE COURT: – and I don't need to hear what Mother Jones says, because guess what, those are pretty opposite ends of the spectrum –

MR. MUISE: Yeah.

THE COURT: – if you got a court case either of you that tells me about this, I'm happy to read it.

MR. MUISE: Right. And – and –

THE COURT: But I'm not going to read things that are not binding and not particularly persuasive, so –

MR. MUISE: With regard to the protective order, I mean, we made multiple legal arguments as to why it should not be granted. First and foremost is they haven't

presented any evidence that this particular witness will be subject to any of those, you know, concerns that they have. And as you pointed out, all they presented was this overbroad hearsay from, quite frankly, very bias sources. So, they haven't written – even made the – the prima facia case of evidence to show that a protective order should be issued in this case. And that's playing against the Defendants right to a public trial; which they have a right to a public trial under the

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APPENDIX E — EXCERPTS FROM TRIAL TRANSCRIPT, 46TH JUDICIAL DISTRICT COURT (SOUTHFIELD, MICHIGAN), DATED FEBRUARY 21-24, 2023

STATE OF MICHIGAN

46TH JUDICIAL DISTRICT COURT
(SOUTHFIELD, MICHIGAN)

File No. 22-S-00322-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

MATTHEW CONNOLLY,

Defendant.
_____/

File No. 22-S-00354-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

LAURA FRANCINE GIES,

Defendant.
_____/

File No. 22-S-00351-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

JACOB ALEXANDER GREGOR,

Defendant.
_____/

Appendix E

File No. 22-S-00353-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

MONICA MARIE MILLER,

Defendant.

_____/

File No. 22-S-00352-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

CHRISTOPHER LUKE MOSCINSKI,

Defendant.

_____/

File No. 22-S-00350-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

ELIZABETH JANE WAGI,

Defendant.

_____/

Appendix E

JURY TRIAL – VOLUME I OF IV
BEFORE THE HONORABLE CYNTHIA M. ARVANT,
DISTRICT JUDGE

Southfield, Michigan – Tuesday, February 21, 2023

* * *

[255]microphone --

THE WITNESS: Do I have a permission -- can I have the permission of the Court to have some water?

THE COURT: Yes. Yes. Go ahead. Yes. Of course.

MR. MUISE: There's a microphone for the witness --

THE COURT: Um, yeah. You can try that.

THE WITNESS: Thank you. Thank you.

THE COURT: You can try that. He may not be able to -- let's see. Let me see what I can do.

MR. MUISE: Can he see me?

THE COURT: Yeah, he can see you if you're right there. I can -- yeah. That way he can still see the whole courtroom and you. Yep. Go ahead.

MR. MUISE: Are you all set, Mr. Chand?

THE COURT: Oh, sorry.

THE WITNESS: Yes, sir.

MR. MUISE: Thank you.

THE COURT: I don't even know what that is, I'm going to say yes. Okay.

CROSS-EXAMINATION

BY MR. MUISE:

Q. So, sir, you're the owner of the office building at 245 -- 24450 Evergreen, correct?

A. Yes, sir.

Q. And that includes Suite 220, where Northland Family Planning [256]Clinic is currently located, correct?

A. Very true, sir.

Q. Right. So, you own that suite as well?

A. Of course, sir.

Q. Okay. Now, you don't have any ownership interest in Northland Family Planning Clinic, do you?

A. I don't.

Q. And you had no role in hiring the security that Northland Family Planning Center hired, correct?

A. True.

Q. All right. So, the security was not under your direction and control at all on April 23rd of 2022, correct?

A. That is also true, sir. Yes.

Q. Now, you're a businessman, correct sir? You're a businessman?

A. I no -- I don't think so. I am a professor, I am a occupational therapist by profession.

Q. Did you say --

A. And --

Q. Okay. But you own -- you own the -- these -- this property, right ch -- right, you're -- you own a property called Chand Properties, is that correct?

A. Yes. Yes. Yes, sir.

Q. So, you're a businessman as far as that's concerned. You own real estate, correct?

A. Very small. You can say -- if you insist, yes.

* * * *

Appendix E

JURY TRIAL – VOLUME II OF IV
BEFORE THE HONORABLE CYNTHIA M. ARVANT,
DISTRICT JUDGE

Southfield, Michigan – Wednesday, February 22, 2023

* * *

[88]Q. And that's -- and that waiting room is Suite 220 in the office building, correct?

A. Yes.

Q. So, based on your identifications, the ones who did not ever go into Suite 220, was Dr. Monica Miller, Laura Gies, and Matthew Connolly, correct?

A. I don't know about Matthew, but I know about Monica and Laura.

Q. Well, did you ever see Matthew Connolly in the waiting room of --

A. Not in the waiting room.

Q. -- of Northland Family Planning Clinic? Excuse me.

A. No. He was not in the waiting room.

Q. Okay. Now, you said you are the center manager, correct?

A. Yes.

Q. So, do you run the day-to-day operations of the Northland Family Planning Clinic that's located in Southfield?

A. Yes.

Q. You're like the senior person there on -- on site?

A. I'm the manager.

Q. Now, the security services that work -- well that we saw on the video, they are a part of Strategic Protective Services LLC, correct?

A. Yes.

Q. And your -- you're familiar with that?

A. Yes.

* * * *

Appendix E

JURY TRIAL – VOLUME III OF IV
BEFORE THE HONORABLE CYNTHIA M. ARVANT,
DISTRICT JUDGE

Southfield, Michigan – Thursday, February 23, 2023

* * *

[143]Defendants, there were five in the hallway and one by the elevator, were outside of the Northland Family Planning Clinic, correct?

A. Outside. Physically outside or --

Q. Of the -- of the clinic.

A. No, they were inside.

Q. Do you know where the clinic was, sir? The actual clinic, not the building.

A. Oh.

Q. The clinic itself, sir.

A. So, you're making reference inside the actual clinic.

Q. Yes.

A. Okay. No, they were -- they were in the hallway --

Q. Okay.

A. -- outside of the clinic.

Q. At any time when you had contact with any of the Defendants, did you observe any of them engaging in any act of violence?

A. I did not.

Q. Did you observe them making any threats?

A. I did not.

Q. In fact, the Defendants were not violent, correct?

A. That is correct.

Q. They were peaceful, is that fair to say?

A. It's fair to say.

Q. They didn't possess any weapons?

* * *

[196]Q. Okay. Did you observe any Defendant engaging in any act of violence?

A. Not violence, no.

Q. Okay. Did you observe any Defendant making any threats of violence?

A. No.

Q. All right. Defendants were not violent, correct?

A. No. They weren't violent at all.

Q. They were peaceful?

A. Yeah.

Q. They didn't possess any weapons?

A. Not that we recovered.

Q. Okay. But you apparently did some thorough searching, correct?

A. Yeah.

Q. And there was no weapons found, correct?

A. Nope, none.

Q. Just a rosary at least, right?

A. Just a rosary.

Q. No Defendant assaulted any officer?

A. Nope.

Q. Didn't kick any officer?

A. No.

Q. Didn't strike any officer?

A. No.

[197]Q. Didn't batter any officer?

A. No, sir.

Q. Didn't wound any officer?

A. No, sir.

Q. And none of the Defendants even attempted to flee, correct?

A. No.

Q. Okay. Officer Higgins wrote in his report quote, "all subjects were passive", end quote. Would you agree with that?

A. Yes.

Q. Now, you transported Ms. Laura Gies back to the -- the booking -- the jail, correct?

A. Yes, I did.

Q. And you actually had a conversation with her, correct?

A. I did.

Q. And in fact --

MS. FITCH: Your Honor, objection --

MR. MUISE: I'm not going to go into detail.

MS. FITCH: -- can we approach? Can we approach?

THE COURT: Sure.

MR. MUISE: Wait, I know what she's going to say, but I'm not going to go there.

MS. FITCH: You're not going to go there?

MR. MUISE: No.

MS. FITCH: Okay. Okay.

THE COURT: Okay.

* * *

[242]MR. MUISE: Very good.

THE COURT: All right. Thanks folks.

MR. MUISE: Thank you.

(At 4:29 p.m., court recessed)

Appendix E

(At 4:43 p.m., court reconvenes, all parties present)

COURT OFFICER SKUBIC: All rise. Court's back in session.

THE COURT: All right, folks. We're back on the record --

COURT OFFICER SKUBIC: You may be seated.

THE COURT: -- in city of Southfield versus Connolly, et. al. Ms. Fitch, having rested the City's case.

Mr. Muise, what have we got?

MR. MUISE: Well, your Honor, the -- according to the complaint three of the Defendants -- Defendant's Connolly, Miller, and Gies, were charged with trespassing at Suite number 220 on 24450 Evergreen Road. The evidence clearly shows that none of those Defendants ever crossed the threshold of section -- of Suite 220 of 24450 Evergreen Road, and so we would ask that you would dismiss that charge as to those three Defendants.

THE COURT: Okay. Ms. Fitch.

MS. FITCH: I'm looking for the complaint.

Your Honor, the complaint says 2-2-0, but I think [243] there's enough evidence to show they were in violation of trespass in that building. It has the building address on it, 2440 -- and it says, "refused to leave the lobby of" --

wait, that's -- wait, let me see. Monica Miller, in -- in the -- I think it's a clerical error, but in the -- the -- the -- the to wit: "refusal to leave location after being advised to leave by security."

THE COURT: Okay, that's -- let me just take a look at --

MR. MUISE: The location is listed as Suite 2 -- well, number 2-2-0, 24450 Evergreen Road.

THE COURT: Well, I would suggest to you that there's plenty of evidence on the video that these folks were outside the door and immediately outside the door of Suite 2-2-0, at the location 24450 Evergreen Road, in the city of Southfield. The location is Suite 2-2-0. It doesn't say inside of Suite 2-2-0. It says Suite 2-2-0.

And it says -- the complaint specifically says, and I'm looking at the amended complaint, refused to leave the lobby of the family planning women' s --

MS. FITCH: No, that was -- that was -- that's to Jacob Gregor.

THE COURT: Okay. I'm sorry, let me find --

MS. FITCH: And Monica -- look at Monica Miller.

THE COURT: I'm looking at the -- let me look at all [244]-- I'm going to have to go through all of them. So, you -- it was as to -- your motion is as to Connolly, Miller, and Gies.

MR. MUISE: Yes.

THE COURT: Okay. So, I'm sorry, let me get the right --

MR. MUISE: And -- and the fact that as you just noticed there, that was specifically --

THE COURT: I'm sorry, I was looking at the wrong complaint --

MR. MUISE: No -- okay. Gotcha. Understood.

THE COURT: Yeah. As to Matthew Connolly, the location is 24450 Evergreen Road, Suite 2-2-0, and it says, "refused to leave the location after being advised to leave by security and the police". That's count one as to Matthew Connolly on the amended complaint.

As to -- I'm sorry, these are all out of order. As to Ms. Gies, on the amended complaint it says, "refused to leave the location after being advised to leave by security and the police". And as to the last one I haven't done is Ms. Miller --

MR. MUISE: And again, the location for that 245 --

THE COURT: Yes, correct.

MR. MUISE: -- 24450 Evergreen Road, number -- Suite 220.

Appendix E

[245]THE COURT: Okay. And as to -- I'm sorry, that's the wrong one. Shoot. Sorry. Now I want to just make sure we're all on the same page. As to Monica Miller, the amended complaint says, "refused to leave the location after being advised to leave by security and the police". And the location is 24450 Evergreen Road, Suite 220.

It doesn't say inside of it, and there is plenty of video evidence and testimony that these individuals were directly outside the door at Suite 220. Some of the witnesses testified that they were in fact blocking the door, and that people trying to enter the clinic either would have had to step over them, or couldn't have, or would have had to squeeze through, per various testimony.

So, there's evidence that as it to relates to -- and again, the complaint says, "refused to leave the location after being advised to leave by security or the police". It can encompass the -- it can -- it doesn't have to -- it doesn't say inside. It doesn't say the lobby of the waiting room. It doesn't say that. It says that location. There's plenty of testimony from which this jury could conclude that they were at that location sufficiently to establish the elements of trespass. So, I would deny the motion to dismiss.

MR. MUISE: And next, your Honor, I just -- I just want to renew our motion to dismiss the interference with a business, disturbance of the peace. We -- we made -- I know [246]the Court ruled, but I just want to --

THE COURT: Sure.

MR. MUISE: -- ensure that our -- we have pending -- these pending motions. Excuse me, these motions that you ruled on --

THE COURT: Sure.

MR. MUISE: -- on constitutional grounds, facially so I just want to --

THE COURT: Sure.

MR. MUISE: -- reassert those to ensure the -- ensure that there's no indication of waiver of those -- of the motion challenging that claim on it's face. And then similarly, we obviously have the -- the pending motion on the -- or, not the pending, the motion that you ruled on -- on the defense of necessity and the defense of others. Just again -- just raising those to --

THE COURT: Sure.

MR. MUISE: -- and to preserve those for appeal.

THE COURT: Sure.

Ms. -- Ms. Fitch, in response.

MS. FITCH: Your Honor, I think the Court was -- was ruled properly in those. The caselaw is there and if he needs to do an appeal, he needs to do an appeal.

THE COURT: All right. Taking a look at -- as it relates to the -- I'm sorry I've got to dig back here because [247]I have all my materials from that. Give me just one second.

MS. FITCH: And I -- I -- if you want, if are you -- are you finished or --

MR. MUISE: No.

MS. FITCH: -- okay. And, your Honor, I don't think there was enough evidence to bring forth the necessity and the defense of others.

THE COURT: Okay.

MS. FITCH: Because clearly there was nothing on going on illegal in the abortion clinic. And the abortion clinic is a -- they provide legal services and there's no evidence of criminality by all of the police officers and there's -- there's no reason for necessity or defense of others.

THE COURT: All right. And again, looking to specifically the request to dismiss the claims under count three, which is -- and again -- I'm sorry, I keep looking at court four. But count four was already voluntarily dismissed.

MS. FITCH: Oh, is he asking -- because I thought he just wanted his -- his -- his appeal preserved, that's all.

THE COURT: I think so.

MS. FITCH: I don't think he made --

MR. MUISE: Yes.

MS. FITCH: -- a motion --

THE COURT: Okay.

[248]MS. FITCH: -- under for directive verdict --

MR. MUISE: We have —

MS. FITCH: -- for trespass yet.

MR. MUISE: No I -- I'd -- well, only insofar as that we -- I know the Court already ruled, but that's --

THE COURT: Sure.

MR. MUISE: -- I'm renewing the motion at this point to obviously preserve it. I mean I -- I assume I know where the Court's going to go --

THE COURT: Sure.

MR. MUISE: -- on the response, but --

THE COURT: Sure.

MR. MUISE: -- that's the point.

THE COURT: And -- and -- and again, this is -- this is count three, and I know that we addressed this at length and in depth on December 1st -- I believe it was on December 1st when we had the motion hearings here, and this was a challenge to -- the Defendant's were seeking to dismiss the counts of both loitering and interference with a business, alleging that the statutes were overbroad and vague, and that there was a double jeopardy issue. But that -- I think that double jeopardy issue was eliminated when the City voluntarily dismissed the loitering charge. So, it was really constitutional claims regarding vagueness and overbreadth regarding the statute at issue here this -- I'm sorry, the [249]city ordinance. I need to be clear about that.

MR. MUISE: The city —

THE COURT: The city ordinance for disturbing the peace- interfering with a business. And for the reasons indicated in the motion hearing on December at the time that I denied that, I would continue to deny that motion to dismiss count three on those grounds. Specifically, the vagueness and overbreadth issues for the reasons previously stated.

As it relates to the request for those jury instructions regarding necessity and defense of others, again, even after -- after hearing the evidence and the testimony today -- what I previously said is I would take that -- you know, I denied the motion preliminarily indicating that if

the evidenced adduced at trial established that the clinic was engaged in illegal conduct and that the Defendants were responding to illegal conduct on the part of the clinic, then I would consider a renewed motion for necessity -- necessity and defense of others.

But as I stated yesterday, under the applicable caselaw in this state -- and I'm required to follow caselaw, I'm required to apply the rule of law; the evidence that was adduced during trial does not support this instruction. Including even the -- the evidence that I denied regarding the article from NPR. Because again, there was no evidence in

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Appendix E

JURY TRIAL – VOLUME IV OF IV
BEFORE THE HONORABLE CYNTHIA M. ARVANT,
DISTRICT JUDGE

Southfield, Michigan - Friday, February 24, 2023

* * *

[6]MR. MUISE: I am. I have just one preliminary --

THE COURT: Sure.

MR. MUISE: -- matter, and it's related to the -- the motions.

THE COURT: Yeah.

MR. MUISE: In particular with the motion to dismiss. I just want to -- because I was thinking about the Court's ruling --

THE COURT: Sure.

MR. MUISE: -- last evening, and -- and my understanding with -- we moved to dismiss the trespass charge on behalf of three Defendants --

THE COURT: Yes.

MR. MUISE: -- and with the language 24450 Evergreen Road, section -- Suite 220, and my understanding for like, the Court's ruling is because there's evidence that they were at or near, at least. Suite 220. But I think the evidence is contrary to that with regard to Mr. Connolly.

All right. He never even went down that hallway. He stayed by that elevator the whole time. So, I would -- I would just request based on what the Court's reasoning was, that the Court reconsider that ruling with regard to Matthew Connolly specifically because there -- there is no evidence that he went anywhere near Suite 220 of the Evergreen Road.

THE COURT: All right. Ms. Fitch.

[7]MS. FITCH: Your Honor, I'm just looking at the --

THE COURT: I'm sorry. That was specifically as to Mr. Connolly.

MS. FITCH: Your Honor, I still think that there's enough evidence because again, it says refused to leave the location after being advised to leave by security and the police. And it is just down the hall from where the elevator is, and you -- you can -- you can clearly see that he's part of the group that's outside that clinic.

THE COURT: Uh-huh.

MS. FITCH: Because in fact, there's -- there's evidence to show that he's working in concert with Monica Miller, as well as Laura Gies is seen in some of the video with him. So, I think -- I think there's enough evidence to show that -- that he was associated with this group outside of 220, and he was part of the group that was -- that was related to the -- to the disturbance that was outside 220 and inside 220.

THE COURT: Mr. Muise, by way of response.

MR. MUISE: Yes, your Honor. I mean, we're not talking about disturbance, we're talking about we're talking just about the trespass charge.

THE COURT: Sure.

MR. MUISE: And there's no charge of conspiracy, there's no allegations of aiding and abetting. Each Defendant [8]is being treated separately and individually with regard to the facts. I believe that's how the Court's going to be instructing the jury as well.

THE COURT: Uh-huh.

MR. MUISE: So, to try to somehow, you know, create a conspiracy now, I think would be totally inappropriate.

THE COURT: Right. I -- there's no -- there's no conspiracy charge here. I mean, and so I don't think like the -- on a conspiracy theory that -- that, you know, Mr. Connolly could be charged with trespass, you know, because he was with the people who were in front of the door, but when I'm looking at the complaint, as it relates to Mr. Connolly, the location 24450 Evergreen Road #220, count one, willfully entered upon the lands or premises of another without lawful authority after have being forbidden to do so by the owner or occupant, etcetera, etcetera, etcetera. To wit: refused to leave the location after being advised to leave by security and the police.

I think it's an issue for the jury to sort out. You can certainly make the argument to the jury that -- that the City hasn't established that Matthew Connolly was -- was at that location, but, you know, the -- the jury might see it otherwise. They may -- they may be willing to, you know, to -- to adopt that argument. But I -- I think this is something that has to go to the jury. I mean, I think there's [9]nothing exact about that location as far as that they had to be in the suite. He was clearly at the location. And I think it's going to -- that's something the jury has to decide. He was -- I -- thinking about all of the video, I -- I don't recall that there was video of him being at the clinic, but I don't know. I don't know. We didn't see everything. I don't know if he was ever down there. I don't know that.

But again, that's not for me to decide. I think that's an issue for the jury to decide. So, I would -- I would -- as it relates to Matthew Connolly, the renewed motion to dismiss the trespass count as to him, I would continue to deny that and leave that as an issue for the jury to resolve.

All right. All right. Any other preliminary matters before we begin?

MR. MUISE: No, your Honor.

THE COURT: Okay. Let's bring in our folks and we'll be ready to roll. Do we need the --

MR. MUISE: Yes.

THE COURT: Okay. Yeah, let me get that going too.

MR. MUISE: A little bit.

THE COURT: Are you -- Ms. Fitch, are you hooked up? Yeah.

MS. FITCH: Yes.

THE COURT: Okay. Okay, we'll just leave that sitting there.

* * *

[30]Q. -- of the two fairly large men?

A. Yes. Yes.

Q. And did they throw you to the ground when you went out that door?

A. Yes, they did.

Q. Now, you said he -- he laid on top of you; Stanley, the security guard?

A. Yes.

Q. And you told him to get off of me now?

A. Yes.

Q. How many times?

A. Multiple times.

Q. And what did he do?

A. He stayed on top of me.

Q. Did he eventually get off of you?

A. Yes.

Q. Did you ever try to go back into the abortion clinic then?

A. I did not.

Q. Now, when you eventually were removed from the office building, we saw in the video that officers picked you up and put you in a wheelchair, and they wheeled you out, is that correct?

A. That's correct.

MS. FITCH: Are you done with this?

MR. MUISE: Yeah.

[31]MS. FITCH: Okay.

BY MR. MUISE:

Q. And we -- we heard testimony about you wouldn't get up and -- and walk out on your own but you needed to be wheeled out by the wheelchair, correct?

A. Correct.

Q. And why was that?

A. Because in conscious I couldn't leave the mothers and the children to suffer the violence of abortion.

Q. And so, was -- was your actions at that point motivated by your religious beliefs?

A. Yes, they were.

Q. Are you compelled by your religious beliefs to follow your conscious ?

A. Yes, I am.

Q. Did you prevent the officers from wheeling you out of the abortion center?

A. No.

Q. Did you resist or obstruct your arrest?

A. No.

Q. In fact, we saw on video that when they were going to place you under arrest you laid down and placed your hands behind your back so they could handcuff you; is that correct?

A. I did, yes.

Q. Would it be fair to say that you let the police officers do to [32]you what they -- what they felt they needed to do?

A. Yes.

Q. Would it be fair to say you didn't offer any resistance to what they were doing?

A. I didn't offer any resistance, no.

Q. Did you attempt to flee from the officers?

A. No.

Q. Did you make any threats to the officers?

A. No.

Q. Did you use any abusive language towards the officers?

A. No.

Q. Did you prevent the officers from arresting you?

A. No.

Q. And as we noted, you actually put your hands behind your back for them to put you in handcuffs, correct?

A. Yes.

Q. Did you or any other Defendant that you could observe assault any police officer?

A. No.

Q. Did you or any other Defendant that you observed batter any police officer?

A. No.

Q. Did you or any other Defendant you observed wound any police officer?

A. No.

[33]Q. Did you or any other Defendant you could observe physically resist any police officer?

A. No.

Q. Did you or any other Defendant you observed physically obstruct any police officer?

A. No.

Q. Did you or any Defendant you observed physically oppose any police officer?

A. No.

Appendix E

Q. Did you or any other Defendant you could observe physically interfere with any police officer?

A. No.

Q. Did you or any Defendant you could observe physically endanger any police officer?

A. No.

Q. Is it accurate to say that you as a matter of conscious cannot voluntarily walk out of that building where abortions are taking place?

A. That is true.

Q. And it would be -- because it would violate your conscious to do so?

A. Yes.

Q. We also saw on the video that once you were outside the building, you got up -- we saw that with others as well -- got up and walked and got into the police vehicles, correct?

[34]A. Yes, that's correct.

Q. And -- and so -- why, what's the difference between the -- being wheeled out from inside the building to actually getting up and walking to the police vehicle?

A. Well, at the point when I was at the police vehicle, in my conscious I knew I was no longer able to intervene in a life and death situation, and so that moment had passed and now I had no obstacle in getting up and -- and cooperating with the police at that point.

Q. And you -- you saw from the video every one of the Defendants followed that same process, correct?

A. That's correct.

Q. Sir, were your actions peaceful throughout the time that you were in that office building?

A. Yes.

Q. Were your actions peaceful while the officers were arresting you?

A. Yes.

Q. Were your actions peaceful while the officers were wheeling you out of the building?

A. Yes.

Q. At any time on April 23rd of 2022, were your actions anything but passive and peaceful?

A. No.

MR. MUISE: Just a -- your Honor, Defense Exhibit D

* * *

Appendix E

[99]THE COURT: That's their own personal belief that they choose to follow. And -- and again, the law -- we have no indication that this law is applied to them because of their religious beliefs or that it's applied disparately to someone who has different religious beliefs, or that it's -- that this ordinance and the language of this ordinance would excuse conduct on the part of other people who physically and willful could comply but prohibits conduct of people who physically and willing could comply but don't on the basis of religious grounds. I mean -- because it doesn't -- we don't even get to that. I mean, it -- it doesn't even get to that. These are -- I -- I just don't see the basis.

MR. MUISE: Okay.

THE COURT: I think it's distinguishable on the facts. Again, all the testimony was that these folks were able to comply and chose not to. Their basis for doing so, that's their -- that's their decision. But there -- I have no indication from this record nor can I can conclude that this violated the free exercise provisions. So, I would deny that motion.

Any other motions from Defense?

MR. MUISE: No, your Honor.

THE COURT: Are we prepared to move to closings?

MS. FITCH: Yes.

MR. MUISE: Defense is.

* * *

Appendix E

[152]THE COURT: -- is that correct?

JUROR TODERO: Yes.

THE COURT: All right. Sir, I'm going to ask you to read those verdicts into the record, please.

JUROR TODERO: Just read the whole thing --

THE COURT: Right.

JUROR TODERO: -- verbatim?

THE COURT: Yes. Actually, that would be the -- probably the best way to do that.

JUROR TODERO: Okay. The People of the City of Southfield, Plaintiff, versus Laura Gies, Defendant.

Do I need the case number and all that?

THE COURT: No. You don't have to read that, no, thank you. Just the -- the most important thing is the name of each party.

JUROR TODERO: Okay.

THE COURT: If you could just --

JUROR TODERO: Okay. So, Laura Gies: Trespass, we had guilty. Resisting/obstructing police officer, guilty. Interfering with a business, not guilty.

THE COURT: Okay.

JUROR TODERO: For -- for Monica Miller: For trespass, we have guilty. Resisting/obstruct -- obstructing a police officer, guilty. Interfering with a business, not guilty.

[153]For Matthew Connolly: Trespass, guilty. Resisting/obstructing a police officer, guilty. Interfering with a business, guilty.

For Jacob Gregor: Trespass, guilty. Resisting/obstructing a police officer, guilty. Interfering with a business, guilty.

For Christopher Moscinski: Trespass, guilty. Resisting and obstructing a police officer, guilty. Interfering with a business, guilty.

And for Elizabeth Wagi : Trespass, guilty. Resisting and obstructing a police officer, guilty. Interfering with a business, guilty.

THE COURT: All right. Do either of you want me to poll the jurors?

MR. MUISE: Yes, your Honor.

THE COURT: Okay. You may be seated. Thank you so much.

I'm going to ask you -- let me ask you starting with juror number one. Juror number one, you've heard the

verdicts as read into the record by your foreperson. Were those and are those the verdicts that you agreed upon?

JUROR GILLINGS: Yes.

THE COURT: Juror number two, were those and are the verdicts that you reached?

JUROR TODERO: Me?

* * * *

APPENDIX F — EXCERPTS FROM SENTENCING TRANSCRIPT, 46TH JUDICIAL DISTRICT COURT (SOUTHFIELD, MICHIGAN), DATED FEBRUARY 24, 2023

STATE OF MICHIGAN
46TH JUDICIAL DISTRICT COURT
(SOUTHFIELD, MICHIGAN)

File No. 22-S-00322-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

MATTHEW CONNOLLY,

Defendant.

File No. 22-S-00354-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

LAURA FRANCINE GIES,

Defendant.

File No. 22-S-00351-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

JACOB ALEXANDER GREGOR,

Defendant.

Appendix F

File No. 22-S-00353-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

MONICA MARIE MILLER,

Defendant.

File No. 22-S-00352-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

CHRISTOPHER LUKE MOSCINSKI,

Defendant.

File No. 22-S-00350-OM

THE PEOPLE OF THE CITY OF SOUTHFIELD,

v

ELIZABETH JANE WAGI,

Defendant.

Appendix F

DEFENDANT'S MOTION FOR NEW TRIAL AND DIRECTED VERDICT OF ACQUITTAL ON CERTAIN CHARGES AND SENTENCING

BEFORE THE HONORABLE
CYNTHIA M. ARVANT, DISTRICT JUDGE

Southfield, Michigan – Friday, February 24, 2023

* * *

[80]that would require that any of these Defendants agree that they will not violate any criminal law or ordinance of this or any other state. Any term – probationary condition would also include that they not have any contact with their co-Defendants, because the pattern in this case demonstrates that when they're together bad things happen. And any other Defendant that's here – if I had a whole bunch of kids standing here on a retail fraud, I'd say you know what guys, you can't have contact with each other because when you're hanging around people that made you do bad things you tend to do bad things. So – and again, these parties are acting in conjunction with each other. Viewing the videos, I have every reason to assume that based on this, you know, if they get together this is likely to happen again. So, any term and condition of probation would be that they not have any contact with any of their other co-defendants, that they not be within 500 feet of any clinic that provides abortion services. And again, my concern is that if they are sentenced to

probation, will any Defendant comply with these terms and conditions of probation based on what is the stated mission statement of the Red Rose Rescue. So, that's an issue that I will address with each Defendant personally.

But again, in this case, the reasons why the statutory presumption can be rebutted are that I don't have habitual sentence enhancements in district court, but I have

* * *

[86]THE COURT: Sure.

MR. MUISE: And then the other objection I would have with regard to the – your restriction at the abortion clinic, that insofar as it, you know, covers traditional public forum such as public sidewalks and so forth we would object to it on the – on the ground that it violates the first amendment and it would need to be limited to activity that's not protected by the first amendment. I understand, you know, trespassing going on the property and so forth, but – but first amendment activity should be excluded from that.

THE COURT: Okay. All right. So –

MR. MUISE: Mr. Connolly said he didn't –

THE COURT: – under that overview –

MR. MUISE: Okay.

THE COURT: – as it relates to Mr. Connolly, any additions, corrections, or deletions to the information contained in the report?

MR. MUISE: I don't believe so, your Honor.

THE COURT: Okay. And I know this report is a little bit – there's some holes in it.

MR. MUISE: Yeah.

THE COURT: But the problem is that Mr. Connolly – we don't have an address for him and every address we've had we've mailed things to and it comes back. And I know you've indicated that he's homeless, so unfortunately without any way

* * *

[92]told pre-trial services that she would abide by probation; if she will stand up in court and say she would abide by probation – probation we don't have an objection to that as long as she knows that if she violates then – then jail time is always on the table.

THE COURT: All right. Mr. Muise, and additions, corrections, or deletions to the information contained in the pre-sentence report?

MR. MUISE: There were some minor things, like there was a misspelling of a – of a city but there was nothing material –

THE COURT: Okay.

MR. MUISE: – that – to address. And – and again, I don't know if the – with regard to if she – if the Court's willing to put Ms. Wagi on probation, whether my comments with regard to the second and third elements how that's going to – how those will work out.

THE COURT: Sure. All right. Ms. Wagi, anything you'd like to say before sentence is imposed today?

DEFENDANT WAGI: No.

THE COURT: Okay. If I place you on probation, are you going to comply with the terms of probation?

DEFENDANT WAGI: Yes.

THE COURT: So, you will pay fines and costs? I mean, I guess my question to you then is under the – under [93]the mission statement you have – I guess, in your mind do you have a serious personal reason for agreeing to comply with probation?

DEFENDANT WAGI: My husband.

MS. DEVRIES: I need you to speak up, Miss, it's being recorded.

MR. MUISE: Speak up.

DEFENDANT WAGI: My husband asked me not to do the jail time.

THE COURT: Okay. Well, in here's the thing, there are going to be terms and conditions of probation; I outlined what some of those will – are earlier. Your husband can't comply with probation, only you can. So, if you're willing to comply with probation here's what I will say. Very, very few people leave this court through the back door, because I believe that there is always a better alternative than jail. And if you're willing to comply with the terms and probation – and conditions of probation, that is fabulous. That is really the best possible outcome here. So, I would be inclined to – to impose a condition of probation on your case.

Ms. Wagi, here is – here is what I would do as it relates to your case. As it relates to count one trespass, fines and costs in the amount of $100. There are state minimum costs of $50. There is a victim rights fee of $75. [94]There's an assessment fee of $100. The recommendation is for 18 months of probation; I would adopt that recommendation but I'll talk about that in just a second. There'd be probation oversight expenses of $720.

While you are on probation you may not have contact with your co-defendants unless it is for legal purposes. So, unless you're meeting with Counsel on this case and – and hopefully not any other cases, but no contact with your co-defendants at all. So, I think you're going to have to hang up your Red Rose Rescue hat, at least while you're on probation to this Court. You may not be within 500 feet of any clinic, and I understand – you may not be within 500 any clinic that provides abortion services or counseling; Planned Parenthood, Northland, any other clinics in the

state of Michigan that – or anywhere actually, because you're from – I think Wisconsin.

MR. MUISE: Wisconsin.

THE COURT: You may not violate any laws or ordinances of this or any other state.

MR. MUISE: May I, your Honor?

THE COURT: Yes.

MR. MUISE: So, you're not going to make a first amendment exception for your – your –

THE COURT: No.

MR. MUISE: – ban –

[95]THE COURT: No.

MR. MUISE: The other issue that I have though with that, a lot of hospitals that you would go to for routine medical care also –

THE COURT: Unless –

MR. MUISE: – perform abortions.

THE COURT: They're going to have to find – then go to Ascension Providence – go to –

MR. MUISE: She's a –

THE COURT: – Saint Mary's, go to Saint Joe's then.

MR. MUISE: There may not be one in Wisconsin.

THE COURT: Well, the problem is a whole lot of places in this universe provide abortion services now, and I don't want them anywhere where that happens, because the problem is – and that's why I think I can legally tell them they cannot be within 500 feet of an abortion clinic, because of what happened here, and what's happened before, and – and – and you know, this – Ms. Wagi knows, she's been to 100 protests over the last 25 years. She knows where she can and can't be.

MR. MUISE: It – that's – that's one of the other minor points that's probably not exactly correct, but it's been – not material.

THE COURT: Okay. I'm going to ask that she complete 10 days of community service. And she can pay the [96]fines and costs over the course of probation. The community service has to be at an approved 501(c)(3) organization.

As it relates to the term of probation, 18 months, under the law in the state of Michigan you have an ability to ask me to terminate probation when you've completed half of probation; so at the nine month point if you have paid the fines and costs, if you – if you haven't had any violations for the proceeding 90 days, and if you've made at least a

good faith effort to pay the fines and costs, you can request early termination of probation. And I'll tell you what I tell every Defendant, I will grant that. If you're in compliance with the statute, if you've done the things I've asked you to do, I will terminate probation early. My interest in these cases is letting people move past this and put it behind themselves. So, if you do complete those things within nine months you can ask for early termination of probation. And if you are with – if you meet the criteria of the statute, meaning you have complied with the terms and conditions of probation, haven't violated within the preceding 90 days, and made a good faith effort to pay the fines and costs, then I will terminate probation early. Okay.

Ms. Wagi, do you have any questions for me?

Oh, I'm sorry, I have to address counts two and three. As it relates to count two, fines and costs of $100. State minimum cost of $50. Probation concurrent with count [97]one.

As it relates to count three, fines and costs of $100. State minimum costs of $50. And probation concurrent with count one.

Let me ask, Mr. Muise – and fines and – the bond can be applied to the fines and costs imposed today.

Mr. Muise, any questions regarding the terms and conditions of probation as it relates to Ms. Wagi.

MR. MUISE: Nothing further, your Honor.

Appendix F

THE COURT: Okay. Ms. Wagi, do you have any questions for me?

DEFENDANT WAGI: Is that all three counts?

THE COURT: Pardon.

DEFENDANT WAGI: Is that all three counts?

THE COURT: Yes. Yes.

DEFENDANT WAGI: Okay.

THE COURT: Yes. We're going to have you have a seat. When we're done here today, we can take you down to the probation department –

COURT OFFICER SKUBIC: I can take her now.

THE COURT: Oh, okay, you can go now and take care of that now, actually. And you – you're welcome to come back up when your done with probation.

The next case I have is 22-S-351. City of Southfield versus Jacob Gregor. 20 –

[98]Ms. Fitch, did you receive a copy of a police – pre-sentence report as it relates to Mr. Gregor?

MS. FITCH: I did. And I just would like to make a couple comments, if I could.

THE COURT: Sure.

MS. FITCH: Mr. Gregor is apparently relatively new to this. He only has a prior OWI, which was back in 2017, which was handled with a conviction and probation. He did state to the probation department that he is more than willing to follow any type of probation terms that were given to him. I'm – I'm fine with – with – with probation, if he will tell the Court that he will abide by anything that the Court will – will hand down.

THE COURT: All right. Mr. Muise, any additions, corrections, or deletions to the information contained in Mr. Gregor's PSI?

MR. MUISE: Nothing material, your Honor. He's from a family of 12 children. I think that's all.

THE COURT: I'm sorry.

MR. MUISE: He's from a family of 12 children, not 11.

THE COURT: Sure.

MR. MUISE: But that's –

THE COURT: Any – any comment on the sentencing recommendation as it relates to Mr. Gregor?

[99]MR. MUISE: No, your Honor. Same with – obviously with the conditions the – the Court is intending –

THE COURT: Sure.

MR. MUISE: – to provide. Obviously, the exception for the – the legal matters. Would you – was the Court consider the exception for church – attending church services?

THE COURT: Well, I mean, they can be in the same church. I just don't want them talking to each other.

MR. MUISE: Okay. So that's –

THE COURT: Yeah. They can avoid that.

MR. MUISE: – if it's just –

THE COURT: Yeah.

MR. MUISE: – if it's just not talking with each other.

THE COURT: Yep.

MR. MUISE: Okay. Because sometimes contact is – what does that mean?

THE COURT: Right.

MR. MUISE: I mean it's –

THE COURT: Right.

MR. MUISE: – that can be one of the – one of the issues.

THE COURT: We spend a lot of time fighting about what that means on a lot of cases in here.

[100]MR. MUISE: Sure.

THE COURT: All right. Mr. Gregor, any comment or anything you'd like to say before sentence is imposed today?

DEFENDANT GREGOR: No.

THE COURT: Okay. You come to the Court, and I – I – you're – I mentioned your name a lot today. And again, I'm mindful of the fact that you have no prior convictions for this. And like the officer said on the video – and – and you went into the clinic. They convinced you to go into the clinic, and that – God that almost feels a little disingenuous to me. They send the new guy in to – to take the fall. But – but here is what troubles me about this.

And again, I respect your opinions and you have every right to have these beliefs but you have to act within the confines of the law, and take it out to the sidewalk. Again, I think there's a whole lot of more effective ways to advocate in this regard. Lobby your legislature. Argue for passage of laws on the issue. Argue – argue for universal healthcare and mandatory paid leave; how about those things? Those are great things to argue for. Those are great ways to advocate your position, in my mind. And

you can have these beliefs, but you just can't act on them the way that you did on April 23rd.

And these officers gave you every opportunity to leave. I mean, they were practically begging, please go out [101]on the sidewalk. And this is one of those things that I – I don't think we would – really felt like – you know, kind of the – the way the officers were handling this and their sincerity in saying to the folks that were there that day, I get it, I respect your beliefs, but go outside. Please don't make us do this. Don't make us arrest you. I mean, and that's – this is one of those incidents where body cameras really show a very really human side of these police officers in trying to resolve a situation without arresting six people. And they gave you every chance.

And I hope, Mr. Gregor, again, that this is a learning experience for you. I hope that – I – will you comply with terms and conditions of probation? I guess that's my fundamental question?

DEFENDANT GREGOR: Yes.

MR. MUISE: May I – may I approach, your Honor.

THE COURT: Sure.

MR. MUISE: Just on one thing, and it's – I don't want to –

THE COURT: Sure. Yeah.

MR. MUISE: – address it out publicly, so if you –

THE COURT: Yeah. Come on up.

(At 11:51:25 a.m., off-record bench conference)

(At 11:51:53 p.m., bench conference concluded)

THE COURT: All right. We're back on the record.

[102]Mr. Gregor, today I'm prepared to in part adopt and in part deviate from the sentencing recommendation. Again, you have no prior offenses. I'd like to think that this is a learning experience for you, that you certainly can have the beliefs can have, and protest in ways that you want to protest, and have your voice be heard, and advocate in a way that's legal. So, as long as you're not trespassing, resisting or obstructing police officers, or interfering with businesses you're good; but you can't do the things that you did on April 23rd. And my hope is that you won't find yourself in this position again.

Again, the goal of this Court in imposing probationary sentences is so people can gain some insight into the choices that they made, and hopefully not make those same choices in the future. And I think you're an excellent candidate for probation give the fact that you have no previous offenses. So, the sentence of the Court today as it relates to count one, would be fines and costs in the amount of $100. State minimum costs of $50. A victim's rights fee of $75. An assessment fee of $100. The recommendation is for 12 months of probation, and I will

adopt that recommendation. I know that's a shorter time than Ms. Wagi's probation. I think that is cognoscitive of the fact that Ms. Wagi's had a lot of these incidents, and been involved in this, and has a prior [103]conviction for this same conduct, whereas Mr. Gregor does not. So, I would impose a period of probation of 12 months, but I'm going to talk to you about that in just a second. $480 in probation oversight expenses.

As a condition of probation, no contact with your co-defendants other than at – at meetings – you know, for legal purposes, at court, at meetings with Counsel. As it relates to Ms. Miller, I understand you go to the same parish, but I think I can, you know, leave you to – leave you to abiding by that condition. I think just so long as you're not sitting down having coffee with her after services, or sitting next to her during mass. So, no contact with co-D's, except for legal reasons, meetings, court. Can't go within 500 of any clinics that provides abortion services – clinic/hospital. Not violate any laws or ordinances of this or any other state. And ten days of community service.

You can pay the fines and costs over probation, so you'd have that 12-month period to do it. Now, as I said to Ms. Gies – well, let me kind of go through this. As it relates to count two, resisting and obstructing a police officer; again, fines and costs in the amount of $100. State minimum costs of $50. And probation concurrent with count one. As it relates to count three, disorderly-interfere with a business; fines and costs in the amount of $100. State minimum costs of $50. And probation concurrent with count [104]one.

Now, as I said to Ms. Wagi, under the law in the state of Michigan, you have a right to ask me for termination of probation when you hit the halfway point. So, when you've been on probation for six months, if you have complied with the terms of probation, met the terms and conditions, not had any violations within the preceding 90 days, and made a good faith effort to pay fines and costs, you can ask me for termination of probation. And if you're in compliance with that statute, I will grant it. So, you have an absolute ability to be off probation at that six-month period. And I'm – I'm representing to you today that if you're in compliance with the statue, I will grant that so that you'll be able to complete the terms and conditions of probation as quickly as possible and put this behind you.

Mr. Muise, any questions as it relates to Mr. Gregor?

MR. MUISE: Just the same objections to the – the conditions, particularly with regard to the –

THE COURT: Understood.

MR. MUISE: – first amendment challenge on the restriction of being near an abortion –

THE COURT: Understood.

MR. MUISE: – clinic. Okay.

THE COURT: All right. Mr. Gregor, any questions [105]for me today?

DEFENDANT GREGOR: No, your Honor.

THE COURT: Okay. We'll send you down to probation – oh, I'm sorry, there's one more thing I need to do on that. I'm sorry, I didn't say apply bond to fines and costs so he can do that certainly and that will cover most of them. I'm sorry, I didn't check that box. So, apply to that and he's all set.

Good luck to you, Mr. Gregor. I hope I hear from you in six months with a request for termination of probation.

As – next one, in case number order, is Mr. Moscinski.

Ms. Fitch, did you receive a copy of the PSI?

MS. FITCH: I have.

THE COURT: Any comment as to the sentencing recommendation.

MS. FITCH: Your Honor, he told Pretrial Services that he would not comply with any term of probation, therefore we're recommending jail. And obviously, not the 270 days, but we are asking for jail time.

THE COURT: All right.

MS. FITCH: I mean – he's – he – out of all of them, he has the most – the most convictions and I don't think these – this is – this is an accurate depiction of everything he's actually done. And most of them are 2021,

* * *

[116]basically what you're saying.

THE COURT: Yes, it is.

DEFENDANT MILLER: That's like trying to tell someone not to feed the poor, not to help people who are in danger. That's the essence of what you're asking. And you know, your Honor, I believe that if your life was in danger, if the law said that you could be exterminated for whatever reason, you would want someone to quote unquote break the law to defend you. The law is wrong. The law that says a certain people group, in this case unborn children, may be subject to extermination is just wrong. It's an unjust law.

And here – your Honor, here – here is where you, Judge Arvant, where you have the opportunity to put an upside – down world somewhat upside – right. You felt constrained during the trial that we could not have a defense of others, we could not have a defense of necessity. This is not just our private opinion that human life is sacred, that abortion kills people. You have an opportunity now, Judge Arvant, to do something right in a – in a system that's based on a lie, and – and here you have – you can see through that lie. You can set that lie aside now in the way that you're treating us in – in – in this sentencing phase, where you have a lot more discretion. That's what I'm asking you to do.

THE COURT: So, I – I guess let me ask, what are you asking me to do?

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APPENDIX G — RELEVANT STATUTORY PROVISION INVOLVED

Sec. 9.132. Interference with business.

(1) It shall be unlawful for any person to make or excite any disturbance in any tavern, store or grocery, manufacturing establishment or any other business place or in any street, alley, highway, public building, grounds or park, or at any election or other public meeting where citizens are peaceably and lawfully assembled.

(2) For purposes of this section, a disturbance shall be any act causing annoyance, disquiet, agitation or derangement to another, or interrupting his peace, or interfering with him in the pursuit of a lawful and appropriate occupation or contrary to the usages of a sort of meeting and class of persons assembled that interferes with its due progress or irritates the assembly in whole or in part.

APPENDIX H — STILL OF M. CONNOLLY FROM SECURITY VIDEO