

Order

Michigan Supreme Court
Lansing, Michigan

March 6, 2026

Megan K. Cavanagh,
Chief Justice

169177

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 169177
COA: 370794
Wayne CC: 22-006622-FH

MELVIN FORD,
Defendant-Appellant.

_____ /

On order of the Court, the application for leave to appeal the August 28, 2025 judgment 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.

WELCH, J. (*concurring*).

I agree with the Court’s decision to deny leave to appeal under these facts. I write separately because I believe courts could be misconstruing our decision in *People v Moreno*, 491 Mich 38 (2012). Through an appropriate case, this Court should clarify whether a defendant’s common-law right to resist unlawful conduct includes the right to resist an officer’s use of excessive force during an otherwise lawful arrest.

In *Moreno*, this Court held that the statute that prohibits resisting or obstructing an officer performing their duties, MCL 750.81d, did not abrogate the common-law right to resist unlawful conduct by an officer. *Moreno*, 491 Mich at 48. This common-law right allows defendants to “use such reasonable force as is necessary to prevent illegal attachment and to resist an illegal arrest” *People v Krum*, 374 Mich 356, 361 (1965). “[T]he basis for such preventive or resistive action is the illegality of an officer’s action, to which defendant immediately reacts.” *Id.* The resisting-arrest statute prohibits obstructing or resisting a “person” who is “performing his or her duties,” MCL 750.81d(1), but it does not abrogate the common-law right to resist an officer’s unlawful conduct that stretches *beyond* the officer’s legal duties, *Moreno*, 491 Mich at 57. Therefore, to convict a defendant of resisting or obstructing arrest, the prosecution must show in its case-in-chief that the officer’s actions were lawful. *Id.* at 52.

Before *Moreno*, defendants charged with resisting arrest could assert as an affirmative defense that an officer used excessive force. See *People v Baker*, 127 Mich

App 297, 299 (1983) (“Defendant did not deny that he used force to resist the arrest. Rather, he claimed that the arrest was unlawful in that the degree of force used by the officer was excessive. Those claims, if believed, would have constituted complete defenses to the charge.”). Several states continue to recognize this affirmative defense. See, e.g., *Parvin v Campbell*, 641 F Appx 446, 449-450 (2016) (“[A]n officer’s excessive use of force is a defense to a charge of resisting arrest under Tennessee law”); *Mansfield v Studer*, 2012-Ohio-4840, ¶ 97 (Ohio App, 2012) (“[E]xcessive force is an affirmative defense to resisting arrest.”).

These decisions echo *Moreno*’s reasoning: officers act outside their duties when they act unlawfully, and defendants may reasonably respond to unlawful behavior. See *McEuen v State*, 388 P3d 779, 782-783 (Wy, 2017) (“When a peace officer uses excessive force, he is not considered to be engaged in the lawful performance of his official duties, and the law permits a person to use the force he or she reasonably believes is necessary to protect against that use of excessive force.”); *Smith v City of Hemet*, 394 F3d 689, 695-696 (CA 9, 2005) (“Excessive force used by a police officer at the time of the arrest is not within the performance of the officer’s duty. . . . A conviction for resisting arrest . . . may be lawfully obtained only if the officers do not use excessive force in the course of making that arrest.”) (emphasis omitted).

But after *Moreno*, the Court of Appeals appears to have changed course. In unpublished decisions, the Court of Appeals has narrowed *Moreno*, holding that the lawfulness of an officer’s conduct depends only on whether the *initial* reason for the arrest was valid. See, e.g., *Cummings v Lewis*, unpublished opinion per curiam of the Court of Appeals, issued July 3, 2012 (Docket No. 303386), p 3 n 3 (2013) (“*Moreno* does not stand for the proposition that excessive force is an affirmative defense to resisting a lawful arrest.”); *People v Rolland*, unpublished opinion per curiam of the Court of Appeals, issued December 17, 2015 (Docket No. 322788), p 4 (“[T]he common-law right to resist an unlawful arrest arises where the initial arrest itself was unlawful.”). Based on these unpublished Court of Appeals decisions, the Eastern District of Michigan has similarly concluded that finding that an officer used excessive force would not invalidate a

conviction for resisting that force.¹

I question whether the lower courts are correctly interpreting *Moreno*. That case did not limit the common-law right to resist unlawful *conduct* to only unlawful *arrests*. It reiterated that MCL 750.81d did not “abrogate the common-law right to resist unlawful arrests or other unlawful invasions of private rights.” *Id.* at 58 (emphasis added). The Court discussed “the common-law right to resist an officer’s unlawful *conduct*.” *Moreno*, 491 Mich at 50 (emphasis added). Under the common law, an officer’s excessive force is unlawful conduct that justifies a defendant’s resistance—even if the underlying arrest is lawful. A defendant who resists excessive force does not violate MCL 750.81d because an officer is not “performing his or her duties” when using unlawful force.

Through an appropriate case, this Court should clarify *Moreno* and address whether defendants have a common-law right to reasonably resist *all* unlawful conduct. But because I agree that the officers in this case acted lawfully, I agree with this Court’s decision to deny leave in this case.

¹ See *Shirley v Eastpointe*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued August 30, 2013 (Case No. 11-14297) (ruling that plaintiff can succeed on federal claims under 42 USC 1983 based on an officer’s use of excessive force without invalidating the plaintiff’s previous conviction for resisting arrest); *Nelson v Green Oak Twp*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued January 20, 2016 (Case No. 14-10502) (same); *Johns v Oakland Co*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued August 18, 2016 (Case No. 15-cv-12924) (same).



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I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 6, 2026

Elizabeth Kingston-Miller
Clerk