STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF MICHIGAN, Plaintiff/Appellee, vs. MATTHEW JOSEPH CONNOLLY; WILLIAM LOUIS GOODMAN; LAUREN BRICE HANDY; PATRICE WOODWORTH-CRANDALL, Defendants/Appellants.	SC No. _____ COA Nos. 364104; 364105; 364106; 364107 Circuit Court Nos. 2019-045615-FH; 2019-045621-FH; 2019-045623-FH; 2019-045627-FH

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DEFENDANTS'/APPELLANTS' APPLICATION FOR LEAVE TO APPEAL AND BRIEF IN SUPPORT

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GROUNDS FOR APPEAL

The Court of Appeals' decision affirming Defendants' convictions conflicts with decisions of the U.S. Supreme Court involving the application of the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. MCR 7.305(B)

This case involves the exercise of conscience by four individuals (Defendants) who engaged in a peaceful act of civil disobedience. At most, it was a misdemeanor trespass case. Unfortunately, it was transformed into a felony. The criminal statute at issue (MCL 750.81d(1)) permits arbitrary and selective enforcement of the law against civil rights protestors. It is a club that can be used by prosecutors to suppress peaceful civil rights protests on matters with which the county prosecutor disagrees. Regardless of whether you agree or disagree with Defendants on the issue of abortion, the fact that this felony statute can be applied under circumstances not involving the use of force but the exercise of conscience should concern anyone who fears the weaponization of government to suppress political opponents.

On June 7, 2019, Defendants peacefully entered the Women's Health Center in Flint, Michigan—an abortion center. No violent act was committed by any Defendant. No violent act was threatened by any Defendant. No Defendant assaulted, battered, or wounded any police officer. No Defendant possessed any weapons. No Defendant fled or attempted to flee the scene upon the arrival of the police officers. Defendants were peaceful throughout. Yet, Defendants are now convicted *felons* for what amounts to a peaceful trespass.

Upon their arrests, Defendants engaged in a time-honored act reminiscent of the civil rights movement that is often described as "passive resistance," although that description is inaccurate here *because Defendants offered no resistance*—they simply went limp, and the officers carried them out to awaiting police vehicles. Defendants explained to the officers that they could not

morally assist with their own arrests. But Defendants did nothing that prevented the officers from exercising their police authority and arresting them. Defendants were in fact arrested and carried off the property.

There is a difference between ***actively resisting*** or ***actively obstructing*** an arrest and simply ***not assisting*** in your own arrest, particularly when the arrestee's conscience prohibits such active participation, as in this case. Nonetheless, because they were abiding by their sincerely held religious beliefs, Defendants are now convicted felons for having violated MCL 750.81d(1), which effectively converted a peaceful trespass that involved no violence, no threats of violence, no personal injury, and no property damage into a violent felony.

As the evidence shows without contradiction, if a similarly situated defendant had to be carried to police vehicles following his arrest because the defendant was voluntarily intoxicated or had a medical reason, the defendant would not be charged with the felony offense at issue. In other words, MCL 750.81d(1) is being enforced in a manner that violates the First and Fourteenth Amendments to the United States Constitution. The lower courts failed to apprehend and thus misapplied controlling U.S. Supreme Court precedent on the application of the First (free exercise) and Fourteenth (equal protection) Amendments. Justice compels reversal of the felony convictions.[1]

In the final analysis, like many other peaceful civil rights advocates—Martin Luther King, Jr., and Rosa Parks come immediately to mind—Defendants were peacefully exercising their rights of conscience. They are not felons nor does the law or evidence support a felony conviction.

[1] On June 29, 2022, a jury convicted Defendants of the felony offense of Assaulting/Resisting/Obstructing a Police Officer (MCL 750.81d(1)) and two misdemeanor offenses: Disturbing the Peace (MCL 750.170) and Trespass (MCL 750.552). (Trial Tr [Vol II] at 169-79).

Indeed, the convictions will forever be listed on Defendants' criminal history as convictions for a *violent* felony as this criminal statute appears in the assault section of the criminal code.

The convictions should be reversed and the cases remanded for dismissal of the felony charges and for a new trial before a properly instructed jury on the remaining misdemeanor offenses.

JURISDICTIONAL STATEMENT

The Circuit Court sentenced Defendants on November 18, 2022. Defendants timely filed their Claims of Appeal on December 9, 2022, which was within 21 days of the entry of judgment. See MCR 7.105(A)(2). The Michigan Court of Appeals affirmed the Circuit Court on May 30, 2024. This timely application, filed within 56 days of the Court of Appeals decision, follows. See MCR 7.305(C)(2).

QUESTIONS PRESENTED

I. Did the Circuit Court commit reversable error by failing to dismiss the felony offense of Assaulting/Resisting/Obstructing a Police Officer (MCL 750.81d(1)) on free exercise grounds under the First Amendment to the United States Constitution? (Mot to Quash Hr'g Tr at 40 at Ex 2; Trial Tr [Vol II] at 47-60 at Ex 4).

Circuit Court's/Court of Appeals' Answer: No.

Defendants' Answer: Yes.

II. Did the Circuit Court commit reversable error by failing to dismiss the felony offense of Assaulting/Resisting/Obstructing a Police Officer (MCL 750.81d(1)) on equal protection grounds under the Fourteenth Amendment to the United States Constitution? (Mot to Quash Hr'g Tr at 40 at Ex 2; Trial Tr [Vol II] at 47-60 at Ex 4).

Circuit Court's/Court of Appeals' Answer: No.

Defendants' Answer: Yes.

III. Did the Circuit Court commit reversable error by denying Defendants' requests for jury instructions on the defense of others and necessity, particularly in light of the U.S. Supreme Court's decision in *Dobbs v Jackson Women's Health Organization*, 142 S Ct 2228 (2022)? (Mot for Jury Instructions Hr'g Tr at 41-47 at Ex 5; Order Denying Mot for Jury Instructions at Ex 6; Trial Tr [Vol II] at 69-76 at Ex 4).

Circuit Court's/Court of Appeals' Answer: No.

Defendants' Answer: Yes.

STATEMENT OF FACTS[2]

I. Facts Related to Criminal Offenses.

The Women's Health Center ("WHC") is a facility that "offer[s] abortion services." (Prelim Exam Tr ["PE Tr"] at 19:18-20 at Ex 7; *id.* at 28:12-15; Trial Tr [Vol I] at 192:10-23 at Ex 8). On June 7, 2019, Defendants peacefully entered WHC because they oppose abortion.[3] (PE Tr at 20:3-4; *id.* 28:20-23 at Ex 7). Defendants have "a religious or moral objection to abortion." (*Id.* 28:24-25 to 29:1-2 at Ex 7; Trial Tr [Vol I] at 198:7-11 at Ex 8). The WHC Office Manager (Ms. Peggy Thon) asked Defendants to leave the center's waiting area "[b]ecause they were approaching [WHC] patients, handing out red roses, and letting [the patients] know that they were doing wrong." (PE Tr at 21:9-11 at Ex 7; Trial Tr [Vol I] at 198:12-16 at Ex 8). Upon realizing that Defendants were in the waiting area, the Office Manager moved the patients into the back of the facility, at which time, per the testimony of the Office Manager, Defendants began "singing.

[2] The testimony provided at the preliminary examination mirrored the testimony at trial, and each trial transcript is precisely the same. Accordingly, Defendants cite here to the preliminary examination transcript ("PE Tr") and generically to the trial transcript ("Trial Tr"), noting whether it is volume I or volume II. The transcripts were filed in the Court of Appeals.

[3] At the time, WHC advertised abortions up to 24 weeks gestation. (See Trial Tr [Vol I] at 194).

They were praying and they were shouting loud enough to try and reach the people that were behind the door," and Defendants were stating "[t]hat there was help. That [the WHC] patients were murdering children."[4] (PE Tr at 25:19-25; see also *id.* 30:25 to 31:1-5 [observing Defendants "handing out literature and roses," "praying," "singing" "religious songs," and "pleading with individuals not to have an abortion"] at Ex 7). At no time while they were in the abortion center did Defendants engage in violence or threaten any act of violence. (*Id.* at 29:23-25 to 30:1-4; 34:17-23 at Ex 7; see also Trial Tr [Vol I] at 199:11-24; 201:2-4 at Ex 8). Defendants did not prevent anyone from entering or leaving the abortion center. (PE Tr at 34:2-6 at Ex 7; see also Trial Tr [Vol I] at 200:23-25 to 201:1 at Ex 8).

Trooper Huey was the first officer to answer the call and was dispatched to WHC. (PE Tr at 99:14-25 at Ex 7). Upon arriving at the abortion center, Trooper Huey spoke with Defendants and "asked them to leave and they basically said that they would like to leave but they couldn't so they didn't leave." (*Id.* at 101:14-16 at Ex 7). One of the Defendants told Trooper Huey that they "had a religious or moral objection to abortion [and] that was the basis for their protest." (*Id.* at 109:15-18 at Ex 7). "After they told [Trooper Huey] that they wouldn't leave[, he] was under the impression that they probably had to be arrested for trespassing and [he] asked [for] more cars to help transport people." (*Id.* at 102:3-8 at Ex 7). Trooper Huey made a radio call stating, "[N]o active trouble, refusing to leave, backseats needed for transportation." (*Id.* at 109: 19-25 to 110:1-4 at Ex 7). Additional officers arrived to assist. (*Id.* at 102:9-15 at Ex 7).

Upon the arrival of the additional officers, Defendants were asked to leave the abortion center by the Office Manager and by Detective Trooper Martin. When Defendants did not comply with the requests to leave, the officers arrested them. (*Id.* at 44:13-25 to 45:1-19 at Ex 7). Upon

[4] Defendants were pleading with the women to not have an abortion. (PE Tr at 31:6-8).

being told that they were under arrest, Defendants simply went "limp." (*Id.* at 35:1-3 at Ex 7). Per the Office Manager:

> Q: Did you see any of the individuals when they were being arrested make any effort to strike or wound or batter or fight an Officer to prevent him from arresting them?
>
> * * *
>
> A: No.

(*Id.* at 37:22-24; 38:7 at Ex 7).

While being arrested, Defendants expressed to the officers "that they wanted to leave but that they felt morally obligated to stay because abortions were taking place." (*Id.* at 51:10-15 at Ex 7; see also Trial Tr [Vol I] at 225:11-13 [acknowledging that Defendants could not morally assist with their own arrests] at Ex 8).

The officers carried each Defendant out of the abortion center and into awaiting police vehicles. Defendants did not engage in any violence against any officer. They did not assault any officer. They did not kick or strike any officer. They did not batter or wound any officer. Defendants did not brandish or possess any weapons. At all times, Defendants were "peaceful." (PE Tr at 52:15-25 to 53:1-7; *id.* at 126:2-3 at Ex 7; see also Trial Tr [Vol I] at 222:7-25 to 226:1-12 at Ex 8). Per the testimony of Detective Trooper Martin:

> Q: At the moment they were told that they were under arrest the defendants went limp, is that right?
> A: Yes.
> Q: Other than going limp did any defendant fight any Officer ***or physically struggle with them at any time***?
> A: ***No, sir***.
> Q: ***Would it be fair to say that they just wouldn't actively participate in their own arrest?***
> A: ***Yes***.

(PE Tr at 53:14-22 [emphasis added]; see also *id.* at 54: 4-6 [testifying that no Defendant attempted to flee from the scene] at Ex 7).

Per the testimony of Trooper Huey:

Q: You testified that I believe, I wrote down here, on a couple of occasions that one or two of the defendants made the comment that they can't assist you with their arrest? Is that correct?
A: Yes, I heard that from at least two. I don't know, I don't remember specifically. I'm pretty sure I had it right the first time when I guessed it was Mr. Goodman.
Q: And, it was your, ***did you have an understanding that the sentiment they were conveying is they morally could not assist with you arresting them from the abortion center?***
A: ***Mr. Connolly explained that to me, yes. He was nice***.
Q: ***You said he was nice?***
A: ***He was.***

(*Id* at 112:8-20 [emphasis added] at Ex 7).

Per the testimony of Officer Poole:

Q: At any time when you were assisting the, with transporting either defendant Handy or defendant Goodman, did any of them kick you?
A: No, sir.
Q: Any of them punch you?
A: No, sir.
Q: Anyone try to thrash or escape from your carrying of them?
A: No, sir.
Q: Were you wounded by any of the defendants?
A: No, sir.
Q: Were you battered by any of the defendants?
A: No, sir.
Q: Were you struck by any of the defendants?
A: No, sir.
Q: Were you assaulted by any of the defendants?
A: No, sir.
Q: Did you observe any of the defendants trying to flee from being arrested?
A: No, sir.
Q: ***Would it be fair to say that when they were placed under arrest they went limp***?
A: ***Yes***.

(*Id.* at 127:1-22 [emphasis added] at Ex 7).

All Defendants were placed in police vehicles, taken to the "Flint city jail," and booked.

(*Id.* 53:23-25 to 54:1-3 at Ex 7).

In sum, Defendants' actions on June 7, 2019, were non-violent; no Defendant committed any act of violence; all Defendants were peaceful. (See *supra*).

During the trial, Detective Trooper Huey testified similarly and as follows:

Q. So you are the officer in charge of the investigation of this case, correct?
A. I was.
Q. And at the moment when you told the defendants that they were under arrest, they were actually in the custody and control of the officers, correct?
A. Correct.
Q. And you were first to arrive on the scene?
A. I was.
Q. And I believe it was you that made the radio call that we heard previously "no active trouble, refusing to leave, backseats needed for transportation?" Is that -- do you recall making that call?
A. Yes. Anything that said 3555 before it is what I said. So that ***there was no trouble, and take their time***. Numerous times, I said that.
Q. All right. In fact, we heard on the radio there -- multiple times, they said no hurry for the officers to arrive, correct?
A. Yes, sir.
Q. Okay, and when you -- ***so there was no active trouble when you arrived and the rescuers were inside***. Is that correct?
A. ***Correct.*** No physical altercation or anything.
Q. And when you spoke with the defendants and asked them to leave, they told you that they wanted to leave, but they couldn't, correct?
A. I'm not sure if all of them said that. Some of them did, yes.
Q. Okay. In fact, I believe it was Mr. Goodman who said I would like to leave, but then he said he can't leave, correct?
A. I do remember that, yes.
Q. And you said you dealt mostly with Mr. Connelly?
A. Mostly, yes.
Q. ***And you understood when they said that they -- when they were explaining that they would like to leave, but they couldn't leave is because they -- in good conscience, they could not assist you with their arrests. Is that correct****?*
A. ***Yes***.
Q. And you understood that?
A. I understood what they were implying, yes.
Q. I believe you had a conversation with Mr. Connelly about that. Is that correct?
A. I think I did briefly, yes.
Q. And I believe -- and at the preliminary examination, you referred to Mr. Connolly as being nice, correct?
A. ***Yeah, he was nice***.
Q. In fact, he was cordial to you, wasn't he?
A. Absolutely.

Q. And you indicated you had some involvement with defendant Handy as well. Is that correct?
A. Yes.
Q. ***And she also expressed to you that she couldn't assist you with her -- with you arresting her based on her religious objection, correct****?*
A. ***Yeah, she repeatedly said that. Yes****.*
Q. And no defendant threatened any act of violence. Is that correct?
A. That's correct.
Q. No defendant engaged in any act of violence?
A. That's correct.
Q. No defendant possessed a weapon?
A. Not that I know of.
Q. ***And the defendants were peaceful****?*
A. ***Yes****.*
Q. At no time when you were carrying defendant Connolly was he thrashing or kicking or fighting you. He just went limp, correct?
A. He did.
Q. No defendant assaulted any officer?
A. No.
Q. No defendant kicked any officer?
A. That's correct.
Q. No defendant battered any officer?
A. Correct.
Q. No defendant wounded any officer?
A. Correct.
Q. ***And you understood that they morally cannot assist you with arresting them, correct****?*
A. ***That's what they told me, yes****.*
Q. Why didn't the officers use a wheelchair to move them out of the abortion center?
A. I didn't notice a wheelchair anywhere in there. But also we are not trained to use wheelchairs. They teach us how to carry people with a three man or a four man carry. So that's what we did.
Q. ***So it's a pretty standard training SOP to carry them out the way you carried them out****?*
A. ***Yes***, it does get a little dicey when you have more than one department because you're not all doing the same. So I daresay, if we had like all one department or all state troopers, we would have functioned more efficiently because everybody does it the same way. But yes.
Q. Did anybody ask to see if there was a wheelchair available? After all, this was a medical facility.
A. No, sir.
Q. How about a gurney? Did anybody ask you if there was a gurney available to be able to transport them out?
A. Did not check.

> Q. So you just used what your SOP would be for carrying somebody out who physically would not come out, correct?
> A. Correct.

(Trial Tr [Vol I] at 222:7-25 to 226:1-12 [emphasis added] at Ex 8).

On June 7, 2019, Defendants were at the WHC abortion center because they honestly and reasonably believed that their peaceful actions were necessary to protect mothers and their unborn babies from the imminent harm caused by the violence of abortion. Defendants' objective was to peacefully and persuasively convince the mothers and their family members to choose life. At no time did any Defendant physically obstruct access to the abortion center. And at no time did any Defendant use violence toward anyone. (See *supra*).

Dr. Monica Miller testified on behalf of Defendants. Dr. Miller has been actively involved in the pro-life movement for over four decades. She has a Ph. D. in Theology from Marquette University. She taught Theology at the university-level from 1986 to 2019, and she currently teaches Catholic Moral Theology as a part-time professor at Sacred Heart Major Seminary in Detroit. Dr. Miller has written dozens of published articles in the area of Theology, and she has three books published on theological subjects. Dr. Miller confirmed that Defendants' actions, including their "passive resistance," were motivated by their sincerely held religious beliefs. (Trial Tr [Vol II] at 88:19-25 to 91:1-11; 92:2-25 to 93:1-2; 94:6-18; 95:5-25 to 99:1-22 at Ex 4).

Dr. Miller testified in relevant part as follows:

> A. . . . . I also need to explain if the moms continue to refuse to respond to our offer and they are not going to walk out with us - - the principal of a red rose rescue also means we have to stay with the abandoned aborted children. They have no defense. They have no one to protect them. They have no voice. So it is a spiritual principle or maybe a philosophical principle, if you will, that we have to remain with the unwanted. We can't just leave them. Somebody -- they have at least a right for somebody to be with them in their final hour. And so that's why the red rose rescuers, when they make that commitment to stay, they, in conscience, must remain. They can't just walk out. So there is that aspect to it. So it is both reaching out to the moms, trying to persuade those mothers, offer them help. But if they

continue to -- you know, they are going to continue to go through with the abortion, then the rescuers have to stay with the unborn children that are about to be aborted.
Q. Are these red rose rescues peaceful?
A. They are very peaceful.
Q. Ever use force, threats, or physical obstruction to block access during such rescues?
A. No, we won't permit it.
Q. Now, we have seen in this case [that] upon the arrest of the four defendants, we saw that they, the rescuers, they went limp. They didn't provide any response. Is there a reason for that in the red rose rescue, a theological basis for that?
A. Right, and I think I more or less already explained that. They can't just leave. They have to be taken away. They can't cooperate with abandoning the unborn children who are about to be aborted. And so that's why, in principle, they will go limp and the police officers may have to carry them out or maybe put them in a wheelchair and wheeled them out. But it is a point of conscience for those who have made the decision to participate in a red rose rescue, that they can't just leave the abortion clinic on their own initiative.
Q. And so that action is compelled by religious convictions? Is that correct?
A. Yes, it is.
Q. Could you explain (inaudible)?
A. Well --
Q. Let me ask you this. Is it an act of conscience?
A. It is an act of conscience because we have to remain in solidarity with the unwanted and unborn children who are going to be aborted are unwanted. I'll be honest with you, frankly, they are treated like trash. And somebody has to be their voice and remain with them and not just leave in that final minute as these moms are going to go down the hallway and their children are going to die.
Q. Is it out of respect and dignity for the officers that the rescuers won't in good conscience perform any direct action against them while they are trying to arrest them?
A. It is absolutely forbidden. We won't allow it.

* * *

Q. In the context of the rescuers where it would violate their conscience to actively participate in their arrest, morally and spiritually and theologically speaking, is it a grave offense against God for them to violate their conscience in that context?
A. If their conscience was telling them I cannot leave these unborn children who are about to be aborted, they have to follow that conscience. And if they don't follow their conscience in this -- if that is what their conscience is telling them to do, and this is an educated conscience -- this is not just my whim, or my opinion, or what I think -- but there is an object of good that needs to be defended and you don't do that, then you are guilty of violating the moral law. And you know, within the context of religion, you would call it sin and they have to avoid that.
Q. So they would be morally culpable if they violated their--
A. Yes.
Q. --own conscience?

A. Morally culpable. That's perfect. Yes.

(Trial Tr [Vol II] at 99:22-25 to 102:1-8; 103:7-25 to 104:1-2 at Ex 4).

In support of their renewed motion for jury instructions on the defense of others and necessity, Defendants' counsel made the following proffer on the record at the trial:

> In light of the Court's ruling to deny the request for the defenses of defense of others and necessity in this case, I would like to proffer testimony that the defendants would have offered at this time in support of that jury instruction. Each one of the defendants [is a] veteran[] in the pro-life movement. They have vast prior experience [which] confirmed their honest and reasonable belief that coerced abortions, which are [il]legal in Michigan and were illegal in -- on June 7, 2019, were taking place at the Women's Health Center. And this belief was based upon their prior experiences which they would have testified to dealing with counseling with women, the number of times they have experienced the situation where there was coercion in the abortion decision, not to mention the fact that . . . abortion results in the death of an innocent human life. There was testimony that the abortions at this center occur up to [24] weeks. Based on their understanding, at 24 weeks, a child is able to survive outside the womb. At 24 weeks, the child has a heartbeat. At 24 weeks, the child feels pain. They would testify that there is a coercive nature of abortion [as] it is against a mother's natural instinct to destroy the life in her – within her. They would also testify in their experience that economic conditions, particularly those that are existing here in Flint, where poor women are disproportionately affected by abortion, forced into abortion decisions due to the cost of abortion being less than the raising of a child, the fact that there is a large number of single moms, fathers abandoning the mom and the child, and those are typically and unfortunately not a [rare] situation that results in coercion on the mother to have a -- to make the fateful abortion decision. Not to mention, they would also testify to their understanding that Flint is in a sex trafficking corridor which also calls for the proliferation of abortions, and under the context tend to be coerced. Similarly, they would testify that it is their honest and reasonable belief that there were abortions taking place where the women were not properly informed, as the law requires. An abortion performed on somebody who is not fully informed of the decision is a violation of the law. And for similar reasons, based on all of their experience dealing with conversations with women, all of their experience in the pro-life movement, their experience demonstrates that women were not being informed about what an abortion is. There are risks and dangers associated with it and [the women are] not getting the information required by law. These -- this conglomerate, as it were, of beliefs motivated their actions and they honestly and reasonably believed that their actions would have defended an innocent human life and that they were necessary under the circumstances, and we believe that the jury instructions should have been given, and we proffer this by way of evidence as testimony as to what they would have offered in support of that.

(Trial Tr [Vol II] at 115:24-25 to 118:1-18 at Ex 4).

In sum, Defendants' actions on June 7, 2019, were motivated by their honest and reasonable beliefs based on biological facts and science, their personal experiences and observations regarding the harm caused by abortion, their personal experiences and observations, which demonstrate that most abortions are the result of coercion and lack informed consent, and their sincerely held religious beliefs.

Through their peaceful actions, Defendants were performing an act of defense of others—a morally positive action on behalf of persons (mother and unborn child) whose lives were *imminently* in danger. It was action arising from necessity, particularly since the police officers at the scene would not respond to Defendants' requests for assistance but instead protected the abortion center and its practices.

II. Rulings and Orders of the Circuit Court and Court of Appeals.

On November 25, 2019, the Circuit Court denied Defendants' motion to quash the felony charge. (Order Denying Mot. to Quash at Ex 3; Mot to Quash Hr'g Tr. at 40 at Ex 2). On May 26, 2022, the Circuit Court denied Defendants' requests for jury instructions on the defense of others and necessity. (Order on Mot for Jury Instructions Ex 6; Mot for Jury Instructions Hr'g Tr. at 41-47 Ex 5). This motion was renewed during the trial and denied once again. (Trial Tr [Vol II] at 69-76 at Ex 4). On June 29, 2022, the Circuit Court denied Defendants' motion to dismiss the felony charge following the close of evidence. (Trial Tr [Vol II] at 47-60 at Ex 4). On May 30, 2024, the Court of Appeals affirmed. (Court of Appeals Op at Ex 1).

ARGUMENT

I. The Circuit Court Erred by Failing to Dismiss the Felony Charge on Constitutional Grounds.

A. Standard of Review.

The Court reviews *de novo* constitutional questions. *People v Bennett*, 344 Mich App 12, 16; 999 NW2d 827 (2022). "*De novo* review means that we review the issues independently, with no required deference to the trial court." *People v Jarrell*, 344 Mich App 464, 473; 1 NW3d 359 (2022) (quotation marks and citation omitted).

B. Free Exercise.

The Circuit Court and the Court of Appeals misapprehend the requirements of the Free Exercise Clause of the First Amendment. Discrimination against religious beliefs and practices need not be overt to run afoul of the First Amendment. To that end, the courts failed to understand the relevant implications of the cases cited by Defendants demonstrating that the application of MCL 750.81d(1) in this case violates the Free Exercise Clause.

"The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such." *McDaniel v Paty*, 435 US 618, 626 (1978). Moreover, "[t]he 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." *Bible Believers v Wayne Cnty*, 805 F3d 228, 255 (CA 6, 2015) (*en banc*).

When a law burdens religious exercise and exempts similar non-religious conduct, the government's enforcement of the law must satisfy strict scrutiny—the "most rigorous scrutiny" under the law. *Church of the Lukumi Babalu Aye, Inc v City of Hialeah*, 508 US 520, 534, 546 (1993) (striking down on Free Exercise Clause grounds an ordinance prohibiting the sacrifice of animals); see also *id.* at 546 ("To satisfy the commands of the First Amendment, a law restrictive

of religious practice must advance interests of the highest order and must be narrowly tailored in pursuit of those interests.") (internal quotations and citations omitted).

In *Church of the Lukumi Babalu Aye, Inc v City of Hialeah*, the Court struck down on free exercise grounds an ordinance prohibiting animal sacrifice that defined sacrifice as the "unnecessary" killing of an animal. See *id.* The law permitted some animal killings as "necessary," but deemed the ritual, religious killing of an animal as unnecessary and thus criminal. By exempting some animal killings but prohibiting animal killings for religious reasons, the ordinance violated the challengers' right to the free exercise of religion. See, e.g., *id.* at 537-38 ("Respondent's application of the ordinance's test of necessity devalues religious reasons for killing by judging them to be of lesser import than nonreligious reasons. Thus, religious practice is being singled out for discriminatory treatment.").

Consequently, if the enforcement of a law excuses certain conduct but then punishes similar conduct motivated by religious beliefs, the law violates the Free Exercise Clause of the First Amendment. In fact, more recently, the U.S. Supreme Court explained in *Fulton v City of Philadelphia*, 141 S Ct 1868, 1877 (2021), that "[a] law . . . lacks general applicability [and thus violates the Free Exercise Clause] if it prohibits religious conduct *while permitting secular conduct that undermines the government's asserted interests in a similar way.*" (emphasis added). This is precisely what happened in this case.

As set forth below, the application of MCL 750.81d(1) in this case punishes conduct motivated by religious beliefs *but exempts other conduct causing the same alleged harm* (*i.e.*, requiring officers to carry an arrestee) in violation of the First Amendment.

During the preliminary examination, Sergeant Daly testified as follows:

> Q: You ever have to arrest someone who is intoxicated to the point that you had to carry them to the police vehicle?

A: No, because I've never had somebody that intoxicated for me to put them in a police vehicle. Typically, if they're that intoxicated I have them transported by ambulance.
Q: Did you have to carry them to the ambulance?
A: With, with (sic) gurney to where they're at usually, so, yeah I've had to pick people up.
Q: Do you know if there was any felony charges brought against the individual because they couldn't walk out on their own because they were too intoxicated?
A: Not that I can, no, not that I recall.

(PE Tr at 97:8-19 at Ex 7).

Trooper Huey similarly testified as follows:

Q: Have you ever had an occasion where you had to arrest somebody that was intoxicated that you had to carry them from outside of wherever you were arresting them to your vehicle?
A: I'm trying to think of a specific instance. I'm sure there has been. I think I can recall one, yes, but he was, he also had a disability so I'm sure I have but I can't remember a specific one.
Q: Do you recall, at least an incident that you recall, whether or not the individual was also charged with a felony because he had to be carried out?
A: Well, that would be, no, I don't believe he was but physically [he] was unable to help himself.

(PE Tr at 112:23-25 to 113:1-10 at Ex 7).

During the trial, Detective Trooper Huey testified as follows:

Q. Did you remember . . . an incident where you had somebody with a physical disability and was intoxicated and had to be carried out?
A. Yes, I do remember that. I've got it.
Q. Okay, and I believe you testified here that that individual was not charged with a crime, correct?
A. Not for resisting or obstructing or anything of that nature, no. . . .

(Trial Tr [Vol I] at 228 at Ex 8).

In these situations, the intoxicated person is not being punished for drinking too much,[5] even though the officers would have to carry the person to a police vehicle following his arrest (or

[5] Voluntary intoxication is not a defense to a crime. See MCL 768.37; *People v Shutter*, No 336613, 2018 Mich App LEXIS 3049, at *12 (Ct App Aug 21, 2018) (citing MCL 768.37) ("Voluntary intoxication is not a defense in Michigan.").

use a gurney from an ambulance, which they could have used in the case of Defendants as well). Similarly, the physically disabled person is not being punished for his medical disability, even though the officers would have to carry the person to a police vehicle following his arrest. Yet, Defendants are being punished for exercising their religious beliefs. In each case, the person is not actively assisting in his own arrest, yet the only persons being punished for doing so are Defendants. The intoxicated person is unable to assist due to his intoxication. The disabled person is unable to assist due to his disability. And Defendants are unable to assist due to their religious beliefs. Such disparity of treatment violates the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment (as set forth further below). Thus, the prosecution of Defendants for violating this statute because they were complying with their religious convictions, violated Defendants' rights protected by the First and Fourteenth Amendments.

The Court of Appeals affirmed the convictions, concluding, in relevant part that:

> defendants fail to acknowledge the difference between their cited examples [the intoxicated person and the disabled person] and the facts of this case. Specifically, when asked at trial, the officers described situations where individuals could not physically comply with their orders and, therefore, were not charged with resisting or obstructing. Defendants were physically able to comply with the officers' orders, and their failure to do so amounted to a statutory violation.

(Court of Appeals Op at 10 at Ex 1). This assertion demonstrates a fundamental misunderstanding of religious exercise. A person may be *physically* capable of doing a task (such as eating pork, or shaving his beard, or working on a Sunday), but their religious convictions prohibit them from doing so. See, e.g., *Holt v Hobbs*, 574 US 352 (2015) (holding that a state prison's policy preventing an inmate from growing a short beard substantially burdened the inmate's sincerely held religious belief because a beard was required by his religion); *Groff v DeJoy*, 143 S Ct 2279, 2286 (2023) (holding, in a case involving a former Postal Service employee who believed for

religious reasons that Sunday should be devoted to worship and rest not secular labor, that showing "more than a de minimis cost" does not suffice to establish "undue hardship" under Title VII to justify burdening the religious belief or practice, as an employer that denies a religious accommodation must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business).

In sum, the application of MCL 750.81d(1) in this case violates the Free Exercise Clause because it punishes religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way.

C. Equal Protection.

As noted above, the application of this felony statute also violates the equal protection guarantee of the Fourteenth Amendment. As stated by the Sixth Circuit:

> The Equal Protection Clause of the Fourteenth Amendment commands that no state shall . . . deny to any person within its jurisdiction the equal protection of the laws. To state an equal protection claim, a plaintiff must adequately plead that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment . . . *burdens a fundamental right*, targets a suspect class, or has no rational basis.

Bible Believers, 805 F3d at 256 (*en banc*) (internal quotations and citation omitted) (emphasis added). "In determining whether individuals are 'similarly situated,' a court should not demand exact correlation, but should instead seek *relevant similarity*." *Bench Billboard Co v City of Cincinnati*, 675 F3d 974, 987 (CA 6, 2012) (emphasis added) (internal quotation marks omitted).

For similar reasons as to why the application of the felony statute in this case violates the First Amendment, its application also violates the Equal Protection Clause of the Fourteenth Amendment. The "relevant similarity" with regard to the conduct at issue is an officer having to physically carry an arrestee. The disparate enforcement in this case burdens Defendants' fundamental rights because the government punished Defendants for abiding by their religious

beliefs and not actively participating in their arrests (thereby requiring the police officers to carry them) while others who also do not actively participate in their arrests (thus also requiring the police officers to carry them) for secular reasons (*e.g.*, intoxication or physical disability) are not similarly punished by the government, in violation of the equal protection guarantee of the Fourteenth Amendment.

II. The Circuit Court Committed Reversible Error by Denying Defendants' Requested Jury Instructions on the Defense of Others and Necessity.

A. Standard of Review.

Claims of instructional error are reviewed *de novo*. *People v Kurr*, 253 Mich App 317, 327, 654 NW2d 651, 656 (2002). A court also reviews *de novo* the constitutional question of whether a defendant was denied his constitutional right to present a defense as a result of a trial court's refusal to provide a requested instruction. *Id.*

B. A Circuit Court Must Instruct on a Proposed Defense Supported by Evidence.

A trial court must "properly instruct the jury so that it may correctly and intelligently decide the case." *People v Clark*, 453 Mich 572, 583, 556 NW2d 820 (1996). "The instructions must include all elements of the charged offense and *must not exclude* material issues, *defenses*, and *theories*, if there is evidence to support them." *People v McIntire*, 232 Mich App 71, 115, 591 NW2d 231 (1998), *rev'd on other grounds* 461 Mich 147, 599 NW2d 102 (1999) (emphasis added).

As stated by this Court:

> The court's obligation to instruct on a proposed defense was described in *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995):
>
> > A criminal defendant has the right to have a properly instructed jury consider the evidence against him. *People v Vaughn*, 447 Mich 217; 524 NW2d 217 (1994); *People v Lewis*, 91 Mich App 542; 283 NW2d 790 (1979). However, a trial court is not required to present an instruction of

> the defendant's theory to the jury unless the defendant makes such a request. *People v Wilson*, 122 Mich App 1, 3; 329 NW2d 513 (1982). Further, when a jury instruction is requested on any theories or defenses and is supported by evidence, *it must be given to the jury by the trial judge*. *People v Rone (On Remand)*, 101 Mich App 811; 300 NW2d 705 (1980). A *trial court is required to give a requested instruction*, except where the theory is not supported by evidence. *People v Stubbs*, 99 Mich. App. 643; 298 N.W.2d 612 (1980); *People v Stapf*, 155 Mich. App. 491; 400 N.W.2d 656 (1986).

People v Rodriguez, 463 Mich 466, 472-73, 620 NW2d 13, 16 (2000) (emphasis added).

Here, Defendants requested jury instructions that they would have supported with evidence. Indeed, the proffered evidence, at a minimum, raised the appropriate inference to permit the requested defense instructions and thus permit the jury to find in favor of Defendants. See *People v Hubbard*, 115 Mich App 73, 77 (1982) (providing that the court is simply required to determine whether there is proffered evidence "from which each element of such defense *may be inferred* before the defense may be considered by a trier of fact") (emphasis added); *United States v Cervantes-Flores*, 421 F3d 825, 828 (CA 9, 2005) (providing that a defense is only precluded where "the proffered evidence, *construed most favorably to the defendant*, would fail to establish all elements of that defense") (emphasis added).

As set forth below, the Circuit Court's refusal to give the instructions on the defense of others and necessity was error as a matter of law, and this error violated Defendants' right to due process. A new trial with a properly instructed jury is warranted.

C. Defendants' Proposed Instructions Were Warranted.

Dobbs v Jackson Women's Health Organization is a game changer.[6] The Supreme Court issued its landmark decision just days (June 24, 2022) before the trial commenced (June 29, 2022)

[6] The offenses and trial occurred prior to the passage of Proposal 3 (Article I, § 28 of the Michigan Constitution). Consequently, Proposal 3 has no relevance to this appeal, and this Court need not opine as to whether it has an impact on any future cases involving the defenses at issue here.

in this case.[7] In *Dobbs*, the U.S. Supreme Court stated, unequivocally: "*Roe* *was egregiously wrong from the start*. Its reasoning was exceptionally weak, and the decision has had damaging consequences." *Dobbs v Jackson Women's Health Org*, 142 S Ct 2228, 2243 (2022) (emphasis added). In other words, there was *never* a legal basis or foundation for concluding that abortion was a right protected by the U.S. Constitution. The Circuit Court erroneously ignored this important precedent, particularly as it applied to the requested defenses, as we will explain further below.

Unlike a vast majority of states at the time, Michigan was unique in that, as a matter of constitutional interpretation, its law proscribing abortion remained valid following *Roe v Wade*, 410 US 113 (1973). See *People v Bricker*, 389 Mich 524 (1973) (refusing to invalidate state criminal law proscribing abortion and construing the law consistent with the federal constitution while maintaining loyalty to the public policy of the state); see also *id.* at 529 (noting that "[i]t is the public policy of the state to proscribe abortion"). In short, on June 19, 2019, Michigan law recognized the humanity of the unborn and provided broad protection for this human life.

In *People v Higuera*, 244 Mich App 429, 431, 625 NW2d 444, 446 (2001), for example, the defendant, a medical doctor, sought dismissal of charges brought under Michigan's criminal abortion statute (MCL 750.14) for allegedly inducing the abortion of a fetus of approximately 28 weeks. The defendant's argument that the statute was repealed by implication was rejected, and his constitutional arguments similarly could not insulate him from prosecution because the statute clearly reached the conduct involved. As a result, the dismissal of the charge was reversed. See *id.* at 449-50. In other words, the Michigan appellate court applied principles of Michigan law and

[7] Defendants renewed their motion for the requested jury instructions at trial in light of *Dobbs*. (Trial Tr [Vol II] at 69-76 at Ex 4).

Michigan's strong public policy of providing protection for the unborn in a case involving abortion even prior to *Dobbs*.

Prior to *Dobbs*, Michigan law prohibited, with a narrow exception for medical emergencies, any physician from performing an abortion without "*informed* written consent, given freely and without coercion." See MCL 333.17015 ("[A] physician shall not perform an abortion otherwise permitted by law without the patient's informed written consent, given freely and without coercion to abort."). Michigan law also proscribed coerced abortions. See MCL 750.213a (proscribing coerced abortions and providing, *inter alia*, "information that a pregnant female does not want to obtain an abortion includes *any fact* that would clearly demonstrate to a reasonable person that she is unwilling to comply with a request or demand to have an abortion") (emphasis added).

In 1998, Michigan passed the Fetal Protection Act (MCL 750.90a *et seq*). Pursuant to this Act:

> If a person intentionally commits [a criminal assault] against a pregnant individual, the person is guilty of *a felony punishable by imprisonment for life* or any term of years if all of the following apply:
>
> (a) The person intended to cause a miscarriage or stillbirth by that individual or *death or great bodily harm to the embryo or fetus*, or acted in wanton or willful disregard of the likelihood that the natural tendency of the person's conduct is to cause a miscarriage or stillbirth or death or great bodily harm to the embryo or fetus.
>
> (b) The person's conduct resulted in a miscarriage or stillbirth by that individual or *death to the embryo or fetus*.

MCL 750.90a (emphasis added); see *Kurr*, 253 Mich App at 322 ("The plain language of [MCL 750.90a] shows the Legislature's conclusion that fetuses are worthy of protection as *living entities* as a matter of public policy.") (emphasis added).

In *People v Kurr*, 253 Mich App 317 (2002), the defendant killed her boyfriend with a knife and was convicted by a jury of voluntary manslaughter. The trial court sentenced her as a fourth-offense habitual offender to five to twenty years imprisonment. The defendant appealed her conviction, arguing that she should have been allowed a jury instruction regarding the defense of others because the jurors could have concluded that she killed her boyfriend while defending her unborn children.[8] The appellate court agreed that a defense of others jury instruction was appropriate and reversed the conviction, remanding the case for a new trial. *Id.* at 318-19.

Thus, in a case involving a defendant on trial for *homicide*—that is, the defendant used *lethal* force to protect an unborn life—the court held that "the defense [of others] extend[s] to the protection of a fetus, viable or nonviable." *Id.* at 321. Consequently, the defense of the "other" could not have applied unless the "other" was fully human and had an independent right to life worthy of protection—including the use of deadly force to protect that life. Thus, *Kurr* stands for the proposition that under Michigan law, the defense of others applies when the "other" is "a fetus, viable or nonviable." Furthermore, it is illogical to claim that this defense only applies to an assault against the mother. (See e.g., Court of Appeals Op at 16 at Ex 1). That defense is called self-defense (the mother protecting herself from an assault). The defense of *others* necessarily involves a third person, and in this case, that third person is the viable or nonviable fetus.

In dicta, the *Kurr* court stated: "Our holding today does not apply *to what the United States Supreme Court* has held to constitute lawful abortions." *Id.* at 326 (emphasis added). This is where *Dobbs* has changed the legal landscape. The only possible basis for denying the defense of others instruction in this case would be a court's reliance on the *Kurr* dicta, which is what the

[8] The defendant was pregnant with quadruplets at the time of the stabbing. *Kurr*, 253 Mich App at 318 n1.

Circuit Court did here. But there was no longer any legal basis for such reliance. "*Roe was egregiously wrong from the start*." *Dobbs*, 142 S Ct at 2243 (emphasis added). Thus, it was "egregiously wrong" to deny Defendants the requested defense of others instruction in this case.

The evidence (presented and proffered) at trial showed that abortion causes grave harm in that its very purpose is to end the life of a human being. Collectively, Defendants have many decades of experience in the pro-life movement. They have witnessed firsthand the harm caused by abortion to not only the unborn babies but to their mothers. They have witnessed the coercion that is inherent in virtually every abortion, which necessarily includes those performed at WHC. Too often, it is a family member, husband, or boyfriend who insists on the abortion, coercing the mother into making the fateful decision. The mother's *natural* instinct is to *protect* the life within her. Defendants have spent time and treasure to help prevent the harm of abortion and to care for those who have been harmed by this violent act, specifically including the mothers.

In sum, it is indisputable that at all relevant times Michigan law recognized and protected the humanity of the unborn—the individual and unique "other" who is alive within a mother's womb. It is indisputable that Michigan law extends the defense of others to situations where the "other" is a "fetus, viable or nonviable." It is indisputable that *Roe v Wade* "was egregiously wrong from the start" (*i.e.*, it was rendered *void ab initio* by *Dobbs*). Thus, it is indisputable that *Roe* and its legal implications have been rendered a nullity by the U.S. Supreme Court. Furthermore, it is indisputable that even prior to *Dobbs*, coerced abortions and abortions without informed consent were illegal in Michigan. And it is indisputable that WHC engages in the killing of innocent human life for profit, and it was doing so in June 2019.

Accordingly, Defendants were entitled to the requested instructions in that their actions were honestly and reasonably done for the express purpose of protecting innocent human life from

imminent and violent harm, including death. Whether these beliefs were honest and reasonable under the facts were issues for a properly instructed jury to decide.

D. Michigan Law Recognizes the Requested Defenses.

1. Defense of Others.

As noted, in *People v Kurr*, 253 Mich App 317 (2002), the court recognized the defense of others in the context of a defendant taking the life of another to defend her unborn children from violence. See also *id.* at 324 ("Our Legislature, as noted earlier, has expressed its intent that fetuses and embryos be provided strong protection under the law from assaults against pregnant women, and we believe that our decision today effectuates that intent."). Because this defense is available for a *homicide*, it should be available for the statutory violations at issue here. An unborn child cannot consent to the abortion, which is an assault against his or her life—a life that Michigan law, certainly at the time, recognized and protected. And *Roe v Wade* no longer stands as a bar to this defense in light of *Dobbs*. Moreover, it was Defendants' honest and reasonable belief that the women going to the abortion center on June 7, 2019, were doing so under duress and coercion as it is against a mother's natural instinct (and thus the natural moral law inscribed on the hearts of every person) to destroy the life of the baby in her womb. Michigan law proscribes abortion under coercive circumstances. See, e.g., MCL 333.17015; MCL 750.213a; MCL 750.90a. Accordingly, Defendants were entitled to an instruction on the proposed defense of others.

2. Necessity.

Michigan courts also recognize the availability of the necessity defense in cases involving trespass. As stated by the court in *People v Hubbard*, 115 Mich App 73, 77 (1982):

> We are of the opinion that, in an appropriate factual situation, a defense of necessity may be interposed to a criminal trespass action. However, there must be some evidence from which each element of such defense may be inferred before the defense may be considered by a trier of fact.

The court ultimately rejected the defense in the context of the defendants' protest on the property of a nuclear power plant, stating, in relevant part, that "[i]n order to raise the defense of necessity, defendants' criminal act must support an *inference* that the criminal act would alleviate the impending harm. We conclude that defendants' act of criminal trespass alone could not *reasonably be presumed* to have any effect in halting the production of nuclear power at Big Rock." *Id.* at 80 (stating that "defendants have acknowledged that the purpose of their trespass was to inform the company and others of their perceived danger attendant to nuclear power") (emphasis added). Consequently, unlike the futile attempt to halt the production of nuclear power at a power plant by simply trespassing on the property, Defendants' actions could "reasonably be presumed" to have the effect of halting the harm caused to women and their unborn babies who were present at the abortion center on the day in question. Thus, unlike halting a nuclear power plant, Defendants' presence at the abortion center placed them in a position to provide *direct assistance* to those who were in imminent harm and to actually avert that harm. Certainly, Defendants' acts "support an inference" that they would alleviate the impending harm.

Contrary to the Court of Appeals' opinion, Defendants were not protesting abortion. (See Court of Appeals Op at 18 at Ex 1 ["There is no evidence that defendants needed to trespass inside the WHC on the day in question to effectively protest."]). They were rescuing innocent human life. A person does not enter a burning house to rescue a child in danger because the person is protesting fire. There is no question that human life was in imminent danger of death at WHC on June 7, 2019.

Here, the jury should have been permitted to "weigh the loss of the life of the developing fetus against the property rights the trespass statute protects, and the social order values the arrest statute supports." See *People v Archer*, 143 Misc 2d 390, 401, 537 NYS2d 726, 732-33 (City Ct

1988) (permitting the necessity defense in the abortion context and stating that "[t]he jury may weigh the loss of the life of the developing fetus against the property rights the trespass statute protects, and the social order values the arrest statute supports").

3. Proposed Instructions.

In support of their motion, Defendants submitted proposed instructions on the defense of others and on the defense of necessity. Michigan has a model jury instruction for the defense of others. See CJI2d 7.21; see also 7.22. Defendants proposed a slightly revised version for this case as follows:

> *7.21 Defense of Others*
>
> *(1) The defendants claim that they acted to prevent serious harm to others. A person has the right to use force or even take a life to defend someone else under certain circumstances. If a person acts in lawful defense of another, his or her actions are justified and he or she is not guilty of the criminal offense.*
>
> *(2) You should consider all the evidence and use the following rules to decide whether the defendants acted in lawful defense of another. Remember to judge the defendants' conduct according to* ***how the circumstances appeared to them at the time of their acts****.*
>
> *(3) First, at the time they acted, the defendants must not have been engaged in the commission of a crime.*
>
> *(4) Second,* ***when they acted, the defendants must have honestly and reasonably believed that another was in danger of being killed or seriously injured. If their belief was honest and reasonable, they could act at once to prevent the harm, even if it turns out later that they were wrong about how much danger anyone was in****.*
>
> *(5) Third, if the defendants only feared a minor injury, then they were not justified. The defendants must have been afraid that someone would be killed or seriously injured. When you decide whether they were so afraid, you should consider all the circumstances: the conditions of the people involved, including their relative strength, whether anyone was armed with a dangerous weapon or had some other means of injuring another, the nature of the other person's attack or threat, and whether the defendants knew about any previous violent acts or threats made by the attacker.*

(6) Fourth, at the time the defendants acted, ***they must have honestly and reasonably believed that what they did was immediately necessary****. Under the law, a person may only use as much force as he or she thinks is needed at the time to protect the other person. When you decide whether the defendants' actions appeared to be necessary, you may consider whether the defendants knew about any other ways of preventing the harm, and you may also consider how the excitement of the moment affected the choice the defendants made.*

(7) The defendants do not have to prove that they acted in defense of others. Instead, the prosecutor must prove beyond a reasonable doubt that the defendants did not act in defense of others.

Defendants' proposed instruction on the defense of necessity was patterned after the defense of necessity instruction recommended by the U.S. Court of Appeals for the Ninth Circuit. Defendants' proposed instruction was set forth as follows:

In some situations, necessity may excuse a person's committing what would otherwise be a criminal offense, including the offenses in this case. A person is allowed to commit what would otherwise be a criminal offense if the person acts out of necessity. The rule of necessity exists because it would be unjust and contrary to public policy to impose criminal liability on a person if the harm that results from his/her breaking the law is significantly less than the harm that would result from his/her complying with the law in that particular situation.

The defendant contends that [he] [she] acted out of necessity. As I stated, necessity legally excuses the crimes charged.

The defendant must prove necessity by a preponderance of the evidence. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of the trespass charge.

A defendant acts out of necessity if at the time of the crime charged:

1. *The defendant was faced with a choice of evils and chose the lesser evil;*
2. *The defendant honestly and reasonably believed [he] [she] acted to prevent imminent harm;*
3. *The defendant reasonably anticipated [his] [her] conduct would prevent such harm; and*
4. *There were no other legal alternatives to violating the law.*

If you find that each of these things has been proved by a preponderance of the evidence, you must find the defendant not guilty.

In sum, whether Defendants honestly and reasonably believed that human life was in grave and imminent danger at WHC on June 7, 2019, thereby justifying Defendants' actions in this case, was an issue for the jury. Defendants were entitled to a properly instructed jury—a jury that should have considered the defense of others and the defense of necessity when judging the criminality of Defendants' peaceful actions under the circumstances of this case.

CONCLUSION

The Court should grant review, reverse the Court of Appeals, vacate the convictions, dismiss the felony charges, and remand to the Circuit Court to dismiss the cases and return the matters to the District Court for a retrial on the trespassing offenses, allowing for the defense of others and necessity instructions.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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Counsel for Appellants/Defendants

STATEMENT OF COMPLIANCE

Pursuant to MCR 7.212, I hereby certify that this brief contains 10, 035 words. Counsel is relying on the word count of the word-processing system used to prepare the brief.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2024, a copy of this brief was filed electronically through the Court's filing system and that a copy was served via this electronic filing system upon the County Prosecutor, David S. Leyton.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
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