

ILLINOIS PROSECUTOR SERVICES, LLC

PO Box 722, Carlinville, IL 62626
Phone: (217) 854-8041 Fax: (217) 854-5343
Website: www.ipsllonline.com
E-mail: don@ipsllonline.com



LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of March – 2026 - ALTERNATIVE

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People v. Terrence Carswell, 2026 IL App (1st) 231884, February 4, 2026.

THE CASE: Carswell was convicted of the Offense of *Resisting Arrest*. [720 ILCS 5/31-1(a)(1)]. In 2023, the Illinois Legislature amended the offense of Resisting Arrest to add a new subsection. Specifically, the new subsection (d) provided: “A person shall not be subject to arrest for resisting arrest under this Section unless there is an underlying offense for which the person was initially subject to arrest.” What does this amendment mean and how does it affect Illinois law enforcement?

FACTS: Police officers responded to a report of a residential burglary at 2 a.m. on the morning in question. The officers investigated the premises and found the intruder was no longer present. During their investigation, the officers discovered Carswell sitting on the front porch of the home. An Officer asked him what he was doing. Carswell responded that he was part of a neighborhood watch and wanted to know why the officers were there. The Officer asked Carswell to leave. Carswell moved to the sidewalk but began swearing at the officers. The Officer suspected Carswell was intoxicated. A second Officer asked the homeowner if she knew Carswell. Over objection, the court permitted the Officer to testify that the homeowner said she did not know Carswell and she wanted him off her property. The Officer informed Carswell that the homeowner wanted him to leave. He responded, “F*** you!” and raised his middle finger. The officers continued to direct Carswell to leave, informing him he would be arrested for obstructing their investigation if he did not leave. Carswell remained, however, and continued stepping onto the property.

Eventually, the officers told Carswell he was under arrest. Carswell refused to place his hands behind his back and made his body tense. The officers tackled him to the ground. Carswell refused to allow the officers to place him in handcuffs, keeping his hands under his abdomen as he lay face down. After a five-minute struggle, the officers turned Carswell on his side and pulled his arms behind his back, placing him in handcuffs.

Carswell testified to his version of events. He was in the vicinity and noticed police activity. He did not live at the residence but approached to ask the officers what was going on. He walked up to the first step but not onto the porch. The officers asked him to leave, and he moved to the sidewalk. Carswell denied that he stepped back onto the property. He estimated the time it took the officers to place him in handcuffs was two minutes. In closing arguments, defense counsel pointed to subsection (d) of the resisting statute (id. § 31-1(d)), which the legislature added by enacting Public Act 101-652, § 10-215 (eff. Jan. 1, 2023), commonly known as the SAFE-T Act. Subsection (d) states: “A person shall not be subject to arrest for resisting arrest under this Section unless there is an underlying offense for which the person was initially subject to arrest.” 720 ILCS 5/31-1(d). Counsel asserted that subsection (d) required the People to prove not only that the Carswell resisted arrest but also to prove beyond a reasonable doubt that the Carswell committed a predicate offense for which he was initially subject to arrest. In this case, she contended, the People failed to prove the predicate offense of criminal trespass to real property (id. § 21-3) because the evidence to establish the elements of that offense relied on an inadmissible hearsay statement of the property owner.

The trial court rejected defense counsel's interpretation of the statute, finding that subsection (d) did not require the People to prove a predicate offense. It's plain language, the court reasoned, referred only to whether a person is subject to arrest, not to whether a person could be convicted for resisting arrest. According to the Court, if the legislature intended to add proof of a predicate offense as an element that must be proven to convict a person for resisting arrest, the court observed, it “could have easily amended this in the bill *** but they did not.” The court went on to find Carswell guilty of Resisting Arrest. This appeal followed.

THE LAW: Prior to being amended by Public Act 101-652 (the SAFE-T Act), Section 31-1 of the Criminal Code was entitled, “Resisting or obstructing a peace officer, firefighter, or correctional institution employee. Resisting or obstructing a peace officer, firefighter, or correctional institution employee.” It contained a single

offense of “Resisting or Obstruction a Peace Officer” found in subsection (a). At the time this offense occurred, Section 31-1 was amended [by Public Acts 101-652 and 102-28] to create two subsections within Section 31-1. Subsection (a)(1) concerns a suspect who “resists arrest.” Subsection (a)(2) concerns a suspect who “obstructs the performance by one known to the person to be a peace officer”

ISSUE: Was Carswell properly convicted of the offense of “Resisting Arrest” where the People failed to prove beyond a reasonable doubt the underlying offense for which he was initially subject to arrest?

ARGUMENT: On appeal, Carswell argued (1) the evidence was insufficient because the People failed to prove him guilty of an underlying offense beyond a reasonable doubt and (2) the trial court erred by admitting out-of-court (hearsay) statements.

FINDINGS: The appellate court noted that Carswell argued that the new subsection (d) of the Offense of Resisting Arrest, either added an element to the offense of Resisting Arrest (by requiring the People to prove that the Officers had probable cause to arrest Carswell for an underlying offense [in this case, the underlying offense was Criminal Trespass to Residence] or it created an exception to the Offense of Resisting Arrest that the People were required to negate. Under either construction, Carswell contended, the provision in Subsection (d) required the People to prove that Carswell was subject to arrest for an underlying offense (here Criminal Trespass) to sustain a conviction for Resisting Arrest. The trial court rejected this interpretation. Before the appellate court, Carswell argued the trial court's interpretation was incorrect and, furthermore, that the evidence was insufficient to prove he had committed criminal trespass to real property. Thus, he contended that either his conviction must be reversed or the appellate court should remand this case for a new trial.

The appellate court found that subsection (d) did not add a new element to the offense of Resisting Arrest. Nor did it provide an exception to that offense or an affirmative defense. The Court reasoned that by subsection (d)'s plain language, the provision conditioned a person being “subject to arrest for resisting arrest” upon “an underlying offense for which the person was initially subject to arrest.” In other words, a person is not subject to a lawful arrest for resisting arrest without first being subject to arrest for some other offense. Notably, the statute did not address whether a person can be convicted for resisting arrest without to People proving the existence of the underlying offense for which the defendant could have been arrested. The Court declared that to construe subsection (d) as an element of the offense, an exception, or an affirmative defense would amount to adding a provision or limitation the legislature did not.

The Court held that instead of adding an additional element, an exception, or a defense, subsection (d) merely makes an arrest for resisting arrest without a predicate offense unlawful. The Court further noted that this does not give rise to an exception or defense, however, because Illinois law does not permit a person to resist an unlawful arrest. According to the Illinois Supreme Court, section 31-1 of the Criminal Code must be read in conjunction with section 7-7 of the Code which prohibits a defendant from using force in an attempt to defeat an arrest. Specifically, the Court held that “(a) person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.” Accordingly, the court concluded that “resistance of even an unlawful arrest by a known officer is a violation of section 31-1.”

CONSLUSION: The Court of Appeals affirmed Carswell's conviction for Resisting Arrest.

EDITOR'S NOTE: If a suspect can still be convicted of Resisting Arrest even if the People do not have probable cause to believe that an underlying offense has occurred, what is the effect of the passage of Subsection (d). If Officers make an illegal arrest, they can be disciplined or sued, and if the arrest was unlawful, any evidence the police discovered as a result of this “illegal arrest” must be suppressed under the “Fruit of the Poisonous Tree Doctrine.

QUIZ QUESTIONS FOR THE MONTH OF MARCH – 2026 - ALTERNATIVE

People v. Terrence Carswell, 2026 IL App (1st) 231884, February 4, 2026.

1. In January of 2023, the Illinois Legislature modified the Offense of Resisting Arrest by providing, “(a) person shall not be subject to arrest for resisting arrest under this Section unless there is an underlying offense for which the person was initially subject to arrest.”
 - a. True.
 - b. False.

2. In this case, did Carswell argue that the new subsection affirmatively changed the Offense of Resisting Arrest by requiring the People to prove beyond a reasonable doubt that prior to his arrest, the Officers had probable cause to believe that he had already committed an arrestable offense. That arrestable offense in this case was “Criminal Trespass to Residence.”
 - a. Yes. .
 - b. No.

3. Did the appellate court in this case agree with the argument of Carswell?
 - a. Yes.
 - b. No.

4. 4. The appellate court in this case declared that an arrest made for Resisting Arrest without first having probable cause to believe that a predicate offense had already been committed was an illegal arrest.
 - a. True.
 - b. False.

QUIZ ANSWERS FOR THE MONTH OF MARCH – 2026 - ALTERNATIVE

People v. Terrence Carswell, 2026 IL App (1st) 231884, February 4, 2026.

1. In January of 2023, the Illinois Legislature modified the Offense of Resisting Arrest by providing, “A person shall not be subject to arrest for resisting arrest under this Section unless there is an underlying offense for which the person was initially subject to arrest.”
 - a. True. This new subsection was added by Public Acts 101-652 and 102-28 and cited as “720 ILCS 5/31-1(d).”

2. In this case, did Carswell argue that the new subsection affirmatively changed the Offense of Resisting Arrest by requiring the People to prove beyond a reasonable doubt that prior to his arrest, the Officers had probable cause to believe that he had already committed an arrestable offense. That arrestable offense in this case was “Criminal Trespass to Residence.”
 - a. Yes. That is what Carswell argued.

3. Did the appellate court in this case agree with the argument of Carswell?
 - b. No. The Court rejected this argument. It found that new subsection (d) did not add a new element to the offense of Resisting Arrest, nor did it provide an exception to that offense or an affirmative defense.

4. The appellate court in this case declared that an arrest made for Resisting Arrest without first having probable cause to believe that a predicate offense had already been committed was an illegal arrest.
 - a. True. The Court held that instead of adding an additional element, an exception, or a defense, to the Offense of Resisting Arrest, subsection (d) merely made an arrest for Resisting Arrest without a predicate offense unlawful.