
STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS

DONALD S. OWENS, P.J., and MICHAEL J. TALBOT and ELIZABETH L. GLEICHER, JJ.

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs.-

**Supreme Court
Docket No. 141161**

GLENN TERRANCE WILLIAMS a/k/a
GLEN TERRANCE WILLIAMS,

Defendant-Appellant.

Michigan Court of Appeals No. 284585
14th Judicial Circuit Court No. 06-053640-FC

BRIEF ON APPEAL – APPELLEE

ORAL ARGUMENT REQUESTED

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

- I. GIVEN THAT THE STATUTORY OFFENSE KNOWN AS “ROBBERY” BY ITS CATCH LINE DOES NOT REQUIRE THAT A TAKING OCCUR, WAS THERE A SUFFICIENT FACTUAL BASIS TO SUPPORT DEFENDANT’S PLEA?

Plaintiff-Appellee says, “Yes”.

Defendant-Appellant says, “No”.

The trial court says, “Yes”.

The Court of Appeals says, “Yes.”

- II. EVEN IF THIS HONORABLE COURT CONCLUDES THAT THERE MUST BE A COMPLETED LARCENY IN ORDER FOR ONE TO BE CONVICTED OF THE STATUTORY OFFENSE KNOWN AS “ROBBERY” BY ITS CATCH LINE, SHOULD DEFENDANT’S PLEA NOT BE SET ASIDE BECAUSE HE PLED TO THE CHARGED OFFENSE OF ASSAULT WITH INTENT TO ROB WHILE ARMED AND, CONSEQUENTLY, THE TRIAL COURT COULD PROPERLY ACCEPT HIS PLEA TO ARMED ROBBERY PURSUANT TO MCR 6.302(D)(1)?

Plaintiff-Appellee says, “Yes”.

Defendant-Appellant says, “No”.

The trial court did not answer this question.

The Court of Appeals did not answer this question.

COUNTERSTATEMENT OF JURISDICTION

This Court granted leave.

COUNTERSTATEMENT OF THE FACTS

Defendant appeals by leave granted from the Court of Appeals April 8, 2010, published decision affirming his August 14, 2006, judgment of sentence entered by the Muskegon County Circuit Court, the Honorable TIMOTHY G. HICKS, presiding. The trial court and Court of Appeals agreed with Plaintiff that a completed larceny (i.e., a “taking”) is *not* a necessary element to the statutory offense of robbery.

Defendant was convicted by guilty plea of armed robbery involving an Admiral station, MCL 750.529.¹ He was sentenced on August 14, 2006, to 15 to 25 years’ imprisonment.

(Appellant’s Appendix, p 49a.)

Defendant was originally charged in the alternative with armed robbery *and* assault with intent to commit armed robbery (Information; Appellee’s Appendix, p 1b), which carry the same punishment of life imprisonment or any term of years. See MCL 750.89 and MCL 750.529.

During the January 11, 2007, plea proceedings, Defendant agreed with the prosecutor’s election to proceed with count 1 (armed robbery) rather than count 2 (assault with intent to rob while armed). (Plea Tr, p 10; Appellant’s Appendix, p 23a.) Count 2 was thereafter dismissed by order of the trial court on January 12, 2007, on the prosecutor’s motion of *nolle prosequi*.

(Appellee’s Appendix, p 2b.)

¹ In File No. 06-53668-FC Defendant was also convicted by *nolo contendere* plea of armed robbery involving a Clark gas station. However, the Court of Appeals only granted leave and decided the issues in File No. 06-53640-FC regarding the Admiral case (Appellant’s Appendix, pp 72a, 79a *et seq.*), and denied leave to appeal in the Clark case, File No. 06-53668-FC (Appellant’s Appendix, p 72a), and this Court only granted leave to appeal in the Admiral case (*People v Williams*, 489 Mich 856; 795 NW2d 15 [2011]), denying leave in the Clark case, File No. 06-53668-FC (*People v Williams*, 482 Mich 1035; 757 NW2d 81 [2009], recon den 483 Mich 982, 764 NW2d 219 [2009]; Appellant’s Appendix, p 73a). Accordingly, because the Clark case, File No. 06-53668-FC, is not before this Court, the People do not respond to Defendant’s claim that he should also receive relief in the Clark case as argued in Defendant’s brief at pages 23-29.

Defendant provided the following factual basis for his plea: On July 14, 2006, he entered the Admiral Tobacco Shop near the corner of Henry and Sherman with the intent to steal money from the store. (Plea Tr, pp 24-25; Appellant's Appendix, pp 37a-38a.) He put his hand up underneath his coat or in his coat pocket, approached the clerk who was standing right in front of the register, faced her and, with the intent to have her give him the money out of the cash register, told her: "you know what this is, just give me what I want." (Plea Tr, pp 24-27, 29; Appellant's Appendix, pp 37a-40a, 42a.) No evidence was presented that he actually received any money or anything else of value from the store.

The trial court found that a factual basis for the plea was established. (Plea Tr, pp 29-30; Appellant's Appendix, pp 42a-43a.) Given that Defendant was also charged at the time with assault with intent to rob while armed, a factual basis was established for that charged offense pursuant to MCR 6.302(D)(1). See Argument II.

LAW AND ARGUMENT

I. THE STATUTORY OFFENSE KNOWN AS “ROBBERY” BY ITS CATCH LINE DOES NOT REQUIRE THAT A TAKING OCCUR AND, THEREFORE, THERE IS A SUFFICIENT FACTUAL BASIS TO SUPPORT DEFENDANT’S PLEA.

A. Standard of review

The denial of a motion to withdraw a guilty plea is reviewed for an abuse of discretion. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999), aff’d 463 Mich 446, 453; 618 NW2d 579 (2000). In reviewing the adequacy of the factual basis for a plea, the Court determines “whether the trier of fact could properly convict on the facts as stated by the defendant.” *People v White*, 411 Mich 366, 381-382; 308 NW2d 128 (1981), quoting *Guilty Plea Cases*, 395 Mich 96, 128-132; 235 NW2d 132 (1975), and *People v Haack*, 396 Mich 367, 376-377; 240 NW2d 704 (1976).

This Court reviews a trial court’s interpretation of a statute de novo. *Omdahl v W Iron Co Bdof Educ*, 478 Mich 423, 426; 733 NW2d 380 (2007).

B. Analysis of the issue

1. People v Randolph and the common law

In *People v Randolph*, 466 Mich 532; 648 NW2d 164 (2002), this Court held that “Michigan’s unarmed robbery statute is derived from the common law[, and, therefore,] ... base[d] ... on the language of the unarmed robbery statute and the common-law history of unarmed robbery[,] ... the force used to accomplish the taking underlying a charge of unarmed robbery must be contemporaneous with the taking [and that] ... [t]he force used later to retain stolen property is not included.” *Id.*, 536-537.

In a footnote, the Court noted that, “[i]f there were any doubt that the unarmed robbery statute codified the common law, this Court dispelled it in *Stout v Keyes*, 2 Doug 184, 188

(Mich, 1845)[, wherein] ... this Court ... explained that our constitution did not abrogate, but rather retained, the common law.” *Randolph*, 466 Mich at 537 n 4. The Court explained that, underpinning the holding in *Stout v Keyes*, 2 Doug 184, 188 (Mich, 1845), was the fact that “[i]n almost every part of the Revised Statutes of 1838 relating to rights and remedies, the common law is incidentally or otherwise recognized.” *Randolph*, 466 Mich at 537 n 4, citing *Stout*.

To be clear, however, *Stout* did not directly address Michigan’s robbery statute or whether it “codified the common law.” Instead, *Stout* was a mortgage foreclosure action “brought by Keyes against John and Francis Stout, before a justice of the peace.” *Stout*, 2 Doug at 188. For this reason, the Court in *Randolph* quoted Michigan’s Revised Statutes of 1838, Title 1, Chapter 3, § 12, that contained Michigan’s robbery statute, to confirm how “the common law [was] incidentally or otherwise recognized” in it:

If any person shall, *by force and violence, or by assault or putting in fear, feloniously rob, steal and take from the person of another* any money or property, which may be the subject of larceny, (such robber not being armed with a dangerous weapon,) he shall be punished by imprisonment in the state prison not more than life, or for any term of years. [*Randolph*, 466 Mich at 537 n 5. Emphasis by the Court.]

The *Randolph* Court observed that, “[o]ther than stylistic changes, the only substantive modification since the first statute is the addition of the phrase ‘or in his presence.’” *Randolph*, 466 Mich at 537 n 5. Thus, from the language used by the Legislature, the Court held that it is “consistent with the common-law definition of robbery[,]” *id.*, giving rise to its conclusion that the statute “codified the common law.” *Id.*, 536-537.

Although the *Randolph* decision did not provide a detailed explanation for the Court’s conclusion that Michigan’s robbery statute “codified the common law,” its brief analysis is consistent with that used in its earlier decision in *People v Covelesky*, 217 Mich 90; 185 NW 770

(1921), which Judge GLEICHER relied on in her dissent below. In *Covelesky*, the Court examined a subsequent version of the robbery statute (namely, 3A Compiled Laws 1915, compiler's § 15206), *Covelesky*, 217 Mich at 94, which—although it had some “stylistic changes,” *Randolph*, 466 Mich at 537—continued to contain the “*familiar words* ‘rob,’ ‘robber,’ ‘robbed,’ [which, the Court noted,] appear[ed] four times [in the statute.]” *Covelesky*, 217 Mich at 100 (emphasis supplied).

In those days (i.e., 1921) the Legislature was generally not in the business of defining statutory terms, and, therefore, there was no glossary for the Court to consult. Hence, when the Court used the term “*familiar words*” in *Covelesky* to describe, “‘rob,’ ‘robber,’ ‘robbed,’” it was not talking in lay terms. Instead, it meant that those “*familiar words*” were well defined or understood *under the common law*. Thus, the Court applied the “well-recognized rule for construction of statutes ... that when words are adopted having a settled, definite, and well-known meaning at common law, it is to be assumed they are used with the sense and meaning which they had at common law, unless a contrary intent is plainly shown.” *Covelesky*, 217 Mich at 100. Although clearly distinguishable, *Covelesky* will remain a common theme in this brief because it is an important case for two reasons. First, it will help explain the People’s disagreement with Judge GLEICHER’s dissent because she relied on it (superficially at least) to support what she described as her “common-law lens” approach. *People v Williams*, 288 Mich App 67, 90-93; 792 NW2d 384 (2010) (GLEICHER, J., dissenting). Second, it serves as a reminder of how important the language of a statute is in understanding what the Legislature intended and, as a consequence, it will help make the People’s case that the Legislature did *not* intend the elements of common-law robbery (especially the “taking” element) after it rewrote MCL 750.529 and MCL 750.530 in 2004 PA 128.

2. 2004 PA 128

When this Court decided *Randolph*, MCL 750.529 provided:

Any person who shall assault another, and shall *feloniously rob, steal and take* from his person, or in his presence, any money or other property, which may be the subject of larceny, such *robber* being armed with a dangerous weapon, or any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon, shall be guilty of a felony, [Emphasis supplied.]

In response to this Court's decision in *Randolph*, the Legislature adopted 2004 PA 128, which completely rewrote MCL 750.529 and MCL 750.530 as follows:

A person who engages in conduct proscribed under section 530 [MCL 750.530] and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony punishable by imprisonment for life or for any term of years. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be sentenced to a minimum term of imprisonment of not less than 2 years. [MCL 750.529.]

(1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.

(2) As used in this section, "in the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property. [MCL 750.530.]

The Legislature thus erased any reference to the words rob, steal, take, robber or any derivative of those terms² and replaced them with the entirely new element of "*in the course of committing a larceny*," which can be proved, *inter alia*, by showing "acts that occur in an attempt to commit the larceny."

² The only reference to the term "robbery" is found in the statute's catch line, which cannot be used when interpreting the text of the statute. See MCL 8.4b.

The importance of *Randolph* and *Covelesky* in discussing the present statute is how this Court studies the actual words of a statute *before* concluding that it “codifie[s] the common law.” Therefore, although the People do not dispute that Michigan’s “robbery” statutes “codified the common law” up until 2004, given that they have been rewritten by the Legislature in 2004 PA 128, this Court must (as it did in *Randolph* and *Covelesky*) study the actual words of the new version of the statute *before* concluding whether it “codifie[s] the common law.” When doing so, the Court should conclude that the Legislature did not “codif[y] the common law” when it rewrote the statute. First, it erased the “familiar words” (viz., “feloniously rob, steal and take” along with “robber”) that compelled this Court in *Covelesky* to “observe[] that Michigan’s robbery statutes embody the common-law offense of robbery[.]” *Williams*, 288 Mich App at 90 (GLEICHER, J., dissenting), citing *Covelesky*, 217 Mich at 96-97. Second, it not only erased the “familiar words” of “feloniously rob, steal and take” along with “robber,” it also excluded any of their derivatives from the new version of the statute, meaning, plainly, that the Legislature no longer included those elements as part of its new statutory offense. And, third, it incorporated “an attempt” (where the “the larceny” need not be completed),³ as an alternative means of proving the element of “in the course of committing a larceny.” In this latter regard, because the inchoate concept of attempt is clearly foreign to and outside the common-law lexicon for robbery (i.e., it is not one of those “familiar words” identified in *Covelesky* vis-a-vis common-law robbery), it follows that the Legislature plainly intended that a completed larceny is no longer an element under the new statutory offense. In short, this legislative act—2004 PA 128—together with the words the Legislature expressly used *and excluded*, establish that this statutory offense no longer “codifie[s] the common law.”

³ “It is the nature of ‘attempts’ that the attempted crime is not completed.” *People v Konrad*, 449 Mich 263, 291; 536 NW2d 517 (1995).

3. Rules of statutory interpretation.

a. *General rules*

The fundamental purpose of judicial construction of statutes is to ascertain and give effect to the intent of the Legislature. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). “In interpreting the statute at issue, [the Court] consider[s] both the plain meaning of the critical word or phrase as well as ‘its placement and purpose in the statutory scheme.’” *Id.*, 237. “As far as possible, effect should be given to every phrase, clause, and word in the statute.” *Id.*, 236. “Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis must begin with the wording of the statute itself.” *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). “Each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence.” *Id.* “The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another.” *Id.* Where the language of the statute is clear and unambiguous, the Court must follow it.” *Id.* And, “[c]ourts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002); *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999).

b. *Rules regarding statutes modifying the common law*

In Michigan, the Constitution controls the applicability of the common law. Const 1963, art 3, § 7 provides: “The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed.” In applying this constitutional provision, another constitutional provision

mandates the separation of powers, see Const 1963, art 3, § 2, which provides: “The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” “The legislative power of the State of Michigan is vested in a senate and a house of representatives.” Const 1963, art 4, § 1. “The legislative power is the authority to make, alter, amend, and repeal laws.” *Harsha v Detroit*, 261 Mich 586, 590; 246 NW 849 (1933), quoting Cooley, Const Lim (8th Ed), p 183. It should thus go without saying that, just as “[o]ne Legislature cannot limit or restrict the power of its successor,” *Id.*; see also *Studier v Michigan Public School Employees’ Retirement Bd*, 472 Mich 642, 660; 698 NW2d 350 (2005), neither can the courts restrict the Legislature in exercising its constitutional authority to make, modify, alter, or repeal the law—including the common law.

Still apparently considered, however, is the anachronistic doctrine that statutes in derogation of the common law are to be strictly construed.⁴ See, e.g., *Koenig v City of South Haven*, 460 Mich 667, 677 n 3; 597 NW2d 99 (1999). This Court should abandon this doctrine.

Justice SCALIA has criticized how common-law judging has influenced law students over the years to become lawyers and judges who blindly adhere to common-law traditions:

What intellectual fun all of this is! It explains why first-year law school is so exhilarating: because it consists of playing common-law judge, which in turn consist of playing king-devising, out of the brilliance of one’s own mind, those laws that ought to govern mankind. How exciting! And no wonder so many law students, having drunk at this intoxicating well, aspire for the rest of their lives to

⁴ It is unclear when this rule came into being, but it has been around at least since the day of Lord Coke. Theodore Sedgwick, *A Treatise on the Rules which Govern The Interpretation and Construction of Statutory and Constitutional Law* (2d ed), pp 273-274. Also, in the era of Queen Anne, its use is found in *Arthur v Bokenham*, 11 Mod 148, 150 (Eng C P, 1708) as follows: “Statutes are not presumed to make any alteration in the common law, further or otherwise than the act does expressly declare.... Therefore in doubtful cases we may enlarge the construction of acts of Parliament according to the reason and sense of the law-makers, expressed in other parts of the act, or guessed, by considering the frame and design of the whole.”

be judges! [Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton: Princeton University Press, 1997), p 7.]

In 1936, Justice HARLAN F. STONE, wrote that “[t]he reception which the courts have accorded to statutes presents a curiously illogical chapter in the history of the common law.” Stone, *The Common Law in the United States*, 50 HARV L REV 4, 12 (1936) (hereinafter *Stone*). Consistent with Justice SCALIA’s observation, Justice STONE blames this on Lord Coke and Blackstone before the advent of the separation of powers and the expansion of law-making by legislative bodies: “That such has been the course of the common law in the United States seems to be attributable to the fact that, long before its important legislative expansion, the theories of Coke and Blackstone of the self-sufficiency and ideal perfection of the common law, and the notion of the separation of powers and of judicial independence, had come to dominate our juristic thinking.” *Stone*, p 14. As a consequence, “[t]he statute was looked upon as in the law but not of it, a formal rule to be obeyed, it is true, since it is the command of the sovereign, but to be obeyed grudgingly, by construing it narrowly and treating it as though it did not exist for any purpose other than that embraced within the strict construction of its words.” *Stone*, p 14. “Apart from its command, the social policy and judgment, expressed in legislation by the lawmaking agency which is supreme, would seem to merit that judicial recognition which is freely accorded to the like expression in judicial precedent.” *Stone*, pp 13-14. Finally, he states, “[i]t is difficult to appraise the consequences of the perpetuation of incongruities and injustices in the law by this habit of narrow construction of statutes and by the failure to recognize that, as recognitions of social policy, they are as significant and rightly as much a part of the law, as the rules declared by judges.” *Stone*, p 14.

Roscoe Pound was even more critical. “Strict construction is only a feature, therefore, although the most unfortunate feature, of the common law attitude toward legislation.” Pound,

Common Law and Legislation, 21 HARV L REV 383, 386 (1908) (hereinafter *Pound*). He observes that “[w]e are told commonly that three classes of statutes are to be construed strictly: penal statutes; statutes in derogation of common right; and statutes in derogation of the common law.” *Pound*, 386. He then notes that “[a]n eminent authority has objected to all of these categories and has pointed out that all classes of statutes ought to be construed with a sole view of ascertaining and giving effect to the will of the lawmaker.” *Pound*, 386. That eminent scholar was none other than Theodore Sedgwick who wrote the *Treatise on the Rules which Govern The Interpretation and Construction of Statutory and Constitutional Law*. Pound quotes Sedgwick’s early work as follows: “The idea that an act may be strictly or liberally construed, without reference to the legislative intent, according as it is viewed either as a penal or a remedial statute, either as in derogation of the common law or as a beneficial innovation, is in its very nature delusive and fallacious.” *Pound*, 404 n 3, quoting Sedgwick, *Construction of Const and Stat Law*, c. viii, *fin*.

Sedgwick’s view is that the doctrine that statutes in derogation of the common law are to be strictly construed is an anachronistic one, grounded in history that no longer should prevail, especially in the United States: “To understand the meaning and present value of the rule that statutes in derogation of the common law are to be strictly construed, we must keep in mind the feelings of our ancestors in regard to that system of jurisprudence.” Theodore Sedgwick, *A Treatise on the Rules which Govern The Interpretation and Construction of Statutory and Constitutional Law* (2d ed), p 273 (hereinafter *Sedgwick*). “[T]o our ancestors the common law represented the old customs of the country, the ancient landmarks of their property; and, what was more dear to them still, the common law as opposed to the civil law represented, imperfectly it is true, that irrepressible desire for absolute liberty of thought and speech and action—the chief

glory of our race.” *Sedgwick*, pp 273-274. Thus, “[t]his is the reason why the common law is the subject of the fervid eulogy of our ancestors, and why the courts saw fit to regard every statutory innovation on its ancient observances with distrust and disfavor.” *Sedgwick*, p 274. He soundly rejects the continued value of this doctrine as follows:

But in regard to the common law now, while insistent strenuously upon the propriety in all cases of adhering strictly to the expressed intention of the Legislature, let us not attach too much value to maxims which really belong to another age. The condition of things has very essentially altered since the time of Lord Coke. The procedure of the law in which he glorified is almost wholly effaced; as far as it related to real estate, its maxims are in a great measure abrogated; in regard even to private relations, its doctrines are materially changed, and the liberties of that portion of our race at least which occupies American soil, rest upon a surer basis than ancient customs. *It would appear, therefore, that the doctrine that statutes in derogation of the common law are to be strictly construed, has now truly no foundation in our jurisprudence*; and, though it will long, no doubt, be familiar to the forensic ear, that there is really no reason whatever why the innovating statutes of our day should be regarded with any peculiar severity, or be subjected to any particularly stringent rules of interpretation, because they abrogate some ancient rule of that renowned, but somewhat obsolete, system of jurisprudence. [*Sedgwick*, 274. Emphasis supplied.]

Roscoe Pound stated that, except in narrow circumstances, this judicial rule of strict construction of statutes deemed to be in derogation of the common law “is without excuse and is merely an incident of the general attitude of courts toward legislation.” *Pound*, 387. He expounded on this point thusly:

The proposition that statutes in derogation of the common law are to be construed strictly has no such justification. It assumes that legislation is something to be deprecated. As no statute of any consequence dealing with any relation of private law can be anything but in derogation of the common law, the social reformer and the legal reformer, under this doctrine, must always face the situation that the legislative act which represents the fruit of their labors will find no sympathy in those who apply it, will be construed strictly, and will be made to interfere with the *status quo* as little as possible. [*Pound*, 387.]

Thus, the doctrine of strictly construing a statute that is deemed in derogation of the common law has not only outlived its usefulness or importance, it is no longer viable because of

the danger of its misuse by the judiciary in interpreting a statute. This latter evil is acute because it invites judges to give greater credence or weight to the common law (adopted by judges) over a law adopted by the Legislature in which the People of the State of Michigan vested its legislative power, Const 1963, art 3, § 7. It also violates the constitutional principle of separation of powers that clearly places legislative authority *exclusively* in the Legislature. Const 1963, art 4, § 1. Like the power to tax,⁵ the power to interpret can be used to destroy the will of the People through its Legislature when the judiciary applies judicially created rules of statutory construction whenever its judge-made laws are altered, amended, or repealed by the Legislature. Rather than apply this strict construction paradigm, the better practice would be to recognize that the Legislature has chosen to act, and, therefore, depending on its words, obviously intended to make a change.

4. Interpretation of MCL 750.529 and MCL 750.530

The Legislature did three things in drafting this new version of the statute. **First**, it erased the “familiar words” (viz., “feloniously rob, steal and take” along with “robber”) that compelled this Court in *Covelesky* to “observe[] that Michigan’s robbery statutes embody the common-law offense of robbery[.]” *Williams*, 288 Mich App at 90 (GLEICHER, J., dissenting), citing *Covelesky*, 217 Mich at 96-97. **Second**, it excluded the word “robbery,” “steal,” or “take” or any of their derivatives from the new version of the statute, meaning, plainly, that the Legislature no longer included those elements as part of its new statutory offense. **Third**, it incorporated “an attempt” (where the “the larceny” need not be completed),⁶ as an alternative element to support the element of “in the course of committing a larceny.” Because the inchoate

⁵ *McCulloch v Maryland*, 17 US (4 Wheat) 316, 431; 4 L Ed 579 (1819) (“the power to tax involves the power to destroy”).

⁶ “It is the nature of ‘attempts’ that the attempted crime is not completed.” *People v Konrad*, 449 Mich 263, 291; 536 NW2d 517 (1995).

concept of attempt is clearly foreign to what is “familiar” under the common-law offense of robbery, the Legislature plainly intended that a completed larceny is no longer an element to be proved.

In place of the “familiar words” that encompass common-law robbery, *Covelesky*, 217 Mich at 100, the Legislature adopted a phrase to define the conduct that is proscribed by this new statute, to wit: “in the course of committing a larceny”. Although it did not provide a specific definition of this phrase, it states what the phrase “includes”:

As used in this section, “in the course of committing a larceny” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property. [MCL 750.530(2).]

There are thus two undefined terms that will require interpretation—*course* and *attempt*. The first term is nontechnical. The second is a “familiar” legal term of art.

“Where a nontechnical undefined word is used in a statute, the Legislature has directed that the term should be ‘construed and understood according to the common and approved usage of the language...’ MCL 8.3a.” *Chandler v Co of Muskegon*, 467 Mich 315, 319-320; 652 NW2d 224 (2002). “As might be expected, in undertaking to give meaning to words this Court has often consulted dictionaries.” *Chandler, supra*, 467 Mich at 320. See also *People v Perkins*, 473 Mich 626, 639; 703 NW2d 448 (2005).

When considering “a legal term of art, resort to a legal dictionary to determine its meaning is appropriate.” *People v Jones*, 467 Mich 301, 304-305; 651 NW2d 906 (2002); MCL 8.3a.

The key word in the phrase “in the course of committing” is the word “course”. It is defined in *The Random House College Dictionary* (rev ed, 1984), p 308, in part as follows:

1. advance or progression in a particular direction; onward movement. 2. a direction or route taken or to be taken. 3. the path, route, or channel along which anything moves: *the course of a stream*. 4. the ground, water, etc., on which a race is run, sailed, etc. 5. the continuous passage through time or a succession of stages: *in the course of a year*. 6. a customary manner of procedure; regular or natural order of events: *as a matter of course*. 7. a mode of conduct; behavior. 8. a particular manner of proceeding: *Try another course of action*. 9. a systemized or prescribed series: *a course of lectures*. 10. a program of instruction, as in a college or university....

Nothing in the definition of the word “course” mandates a completion. One merely need be “in a particular direction of” or be in “onward movement of” committing a larceny to be “in the course of committing a larceny”. This view is supported by the alternative means by which to prove the element of “in the course of committing a larceny.” In other words, “in the course of committing a larceny *includes* acts that occur in an attempt to commit the larceny[.]” MCL 750.530(2), and, therefore, showing “acts that occur in an attempt to commit the larceny” satisfies this element. By expressly including in the disjunctive an “attempt”, the Legislature is clear in stating that acts occurring in an attempt to commit the larceny are sufficient to complete the *statutory* offense. See and compare *Johnson v United States*, ___ US ___; 130 S Ct 1265, 1269; 176 L Ed 2d 1 (2010) (“[b]ecause the elements of the offense are disjunctive, the prosecution can prove a battery in one of three ways”).

Defendant considers the italicized word “the”, in the phrase “acts that occur in an attempt to commit *the* larceny” as the key term in MCL 750.530(2), completely ignoring the Legislature’s placement of the word “attempt” before the words “the larceny.” He says that “[t]he statute uses **the definite article—*the***—to refer to the larceny” (Defendant’s brief, p 12.) He asserts that “[t]his language makes it clear that the crime must include an actual larceny, i.e., the larceny at issue in the charged crime.” (Defendant’s brief, p 12.) His emphasis and reliance on the word “the” here, however, is misplaced and flawed for at least three reasons.

First, the word “the” merely explains what “in the course of committing *a* larceny includes[.]” MCL 750.30(2) (emphasis supplied). Therefore, the word “the” is only a definite article in the context of the indefinite article “a” found in the phrase, “in the course of committing *a* larceny[.]” *Id.* (emphasis supplied.) Its emphasis, therefore, is unhelpful to understanding what the Legislature intended. Also, as explained by the majority’s opinion below, “[t]he term ‘a larceny’ [in MCL 750.530(2)] denotes a more generic, non-specific or generalized act.” *Williams*, 288 Mich App at 75. Therefore, “[t]he fact that the term ‘the larceny’ is subsequently used within this subsection of the statute merely denotes a reference back to the more generalized ‘a larceny.’” *Id.* As a “logical[.]” consequence, “acts taken in the process of committing a larceny necessarily include steps or behaviors occurring at any point in the continuum, despite whether they are successfully completed.” *Id.*, 75-76.

Second, the phrase reads: “an attempt to commit the larceny,” MCL 750.530(2). The key “familiar word” here is “an attempt,” which precedes “the larceny.” One cannot understand what is meant by “the larceny” in this context without “consider[ing] both the plain meaning of the critical word or phrase as well as ‘its placement and purpose in the statutory scheme.’” *Sun Valley Foods Co*, 460 Mich at 237. “As far as possible, effect should be given to every phrase, clause, and word in the statute” and “[t]he statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended.” *Id.*

In applying these principles, by understanding how the word “attempt” is generally used will help to provide grammatical context to the phrase “an attempt to commit the larceny.” A review of some of this Court’s relevant decisions together with the jury instructions on the subject of “an attempt” should serve as the best sources for answering this inquiry. For example, in *People v Youngs*, 122 Mich 292, 293; 81 NW 114 (1899), this Court stated: “To constitute an

attempt, at the common law, something more than an intention or purpose to commit crime is necessary.... ‘Between preparation for the attempt and the attempt itself there is a wide difference. The preparation consists in devising or arranging the means or measures necessary for the commission of *the* offense’” and “[t]he act, to constitute a criminal attempt, must be one immediately and directly tending to the execution of *the* principal crime[.]” (Citation omitted; emphasis supplied.)

In *People v Bauer*, 216 Mich 659, 661; 185 NW 694 (1921), this Court explained that “[t]he three essentials of the offense” of attempt are “(1) [t]he intent to commit *the* crime; (2) an act necessary to its commission; (3) the failure to consummate its commission.” (Emphasis supplied.)

Finally, in *People v Konrad*, 449 Mich 263, 291; 536 NW2d 517 (1995), this Court noted that “[a]n ‘attempt’ has been defined as an overt act done with the intent to commit *the* crime, and which, except for the interference of some cause preventing the carrying out of the intent, would have resulted in the commission of *the* crime.” (Emphasis supplied.)

When reading these decisions, one should readily recognize that the definite article “the” in reference to “the crime” is the preferred usage when applying the law on “attempts.” And, when reading these decisions, this Court clearly did not mean to say that “the crime” had to be completed. To the contrary, all attempts include the separate element of “the failure to consummate [the crime’s] ... commission[.]” *Bauer*, 216 Mich at 661; *Konrad*, 449 Mich at 291; *Youngs*, 122 Mich at 292. This is true whether the word “attempt” is used under the common law, *Youngs*, 122 Mich at 292, or under the statute, MCL 750.92.

Indeed, when examining the jury instructions, the first one to consult is CJI2d 9.1 that comprises the general instruction on attempt for MCL 750.92. The following language is used:

“that the defendant took some action toward committing *the* alleged crime, but failed to complete *the* crime.” (Emphasis supplied.) Likewise see CJI2d 18.7 that defines “attempt” under the robbery instruction as having two elements as follows:

First, the defendant must have intended to commit *the* crime. Second, the defendant must have taken some action toward committing *the* alleged crime, but failed to complete *the* crime.... In order to qualify as an attempt, the action must go beyond mere preparation, to the point where *the* crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to *the* crime the defendant is charged with attempting and not some other goal. [CJI2d 18.7. Emphasis supplied.]

Accordingly, although the definite article “the” is universally used in the context of “an attempt,” it obviously does not envision a completed offense. The same reasoning applies to the interpretation of the phrase “acts that occur in an attempt to commit the larceny” in MCL 750.530(2).⁷

Third, Defendant’s emphasis and reliance on the word “the” is misplaced because it fails to consider the defendant’s intent and actions, which, based upon the statute’s language, necessarily must be considered. In other words, to satisfy the element of “in the course of committing a larceny,” the trier of fact may convict if it finds “acts that occur in an attempt to commit the larceny.” MCL 750.530(2). The defendant may not know at the attempt stage that he will not complete *the* targeted larceny. This case is an example of that. Defendant entered the Admiral station with the intent to steal money. He put his hand up underneath his coat or in his

⁷ Even if a lay dictionary were consulted to discern the meaning of the word “attempt,” it is clear that the thing attempted need not be completed. See, e.g., *The Random House College Dictionary* (rev ed, 1984), p 87, which states:

v.t. 1. to make an effort at; try; undertake; seek; *to attempt to debate; to attempt to walk six miles.* 2. to attack; make an effort against. 3. *Archaic.* to tempt.
—*n.* 4. an effort made to accomplish something. 5. an attack or assault: *an attempt upon one’s life....*
See *try....*

pocket and trained it on the clerk. He told her “you know what *this* is, give me what I want.” At the time, he had the intent to get the money out of the cash register. He clearly did not know that “the larceny” he intended would not be completed. Yet, what he did “include[d] acts that occur[red] in an attempt to commit the larceny.” He was focused on “the larceny.” In his eyes, he was “in the course of committing a larceny” when he walked into that Admiral station, put his hand under his coat or in its pocket and then saying what he did to the clerk. “*The* larceny” he was in the course of committing was the one involving the clerk opening the cash register and handing over its contents—the money inside. Quite literally, at the moment he addressed the clerk, he had committed all the “acts ... in an attempt to commit the larceny” he intended, which is “include[d]” in the phrase “in the course of committing a larceny.”

Judge GLEICHER’s dissent effectively writes the word “attempt” out of the statute, thus violating the canon that “[c]ourts ... must avoid an interpretation that would render any part of the statute ... nugatory.” *Koontz*, 466 Mich at 312; *Hoste*, 459 Mich at 574. The majority, on the other hand, recognized that the Legislature rewrote the statute to include this term and, therefore, gave meaning to the term as follows:

The legislative definition of “in the course of committing a larceny” specifically “includes acts that occur in an attempt to commit the larceny....” The term “attempt,” which is not defined within the statute, is recognized to mean:

1. The act or an instance of making an effort to accomplish something, esp. without success. 2. *Criminal law*. An overt act that is done with the intent to commit a crime but that falls short of completing the crime. • Attempt is an inchoate offense distinct from the attempted crime. Under the Model Penal Code, an attempt includes any act that is a substantial step toward commission of a crime, such as enticing, lying in wait for, or following the intended victim or unlawfully entering a building where a crime is expected to be committed. [Black’s Law Dictionary (8th ed).]

As such, the statutory language specifically considers and incorporates acts taken in an attempt to commit a larceny, regardless of whether the act is completed.

This is consistent with the language of MCL 750.530(2), which distinguishes, by the use of the word “or,” acts committed in “an attempt to commit the larceny” from those acts occurring “during the commission of the larceny” or any subsequent acts comprising flight or efforts to retain any property. The term “or” is “used to connect words, phrases, or clauses representing alternatives.” *Random House Websters College Dictionary* (1997). Hence, an attempt to commit a larceny comprises a separate and distinct action and is not merely a component of a completed larceny. In addition, we would note that MCL 750.530(2) defines “in the course of committing *a* larceny” (emphasis added) and not “*the* larceny.” The term “a larceny” denotes a more generic, non-specific or generalized act. The fact that the term “the larceny” is subsequently used within this subsection of the statute merely denotes a reference back to the more generalized “a larceny.” Logically, acts taken in the process of committing a larceny necessarily include steps or behaviors occurring at any point in the continuum, despite whether they are successfully completed. This language necessarily demonstrates the Legislature’s intent to include attempts to commit a larceny, both by implication and by the specific language contained in this statutory provision.

* * *

An “attempt” is defined within this section of the criminal jury instructions as having “two elements”:

First, the defendant must have intended to commit the crime.
Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime.... In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other goal. [CJI2d 18.7.]

Clearly, the criminal jury instructions have specifically been revised to fully coincide with the statutory language of MCL 750.529 and MCL 750.530 and to include a definition of the term “attempt” separate from the more general instruction of a crime comprising an attempt. CJI2d 9.1. [*Williams*, 288 Mich App at 75-77. Footnotes omitted.]

Remarkably, although the majority was incorporating the Legislature’s choice of the word “attempt” into the statute, Judge GLEICHER’s says that, “[i]n [her] estimation, the majority erroneously reaches its holding *by reading into the statute language that the Legislature did not*

incorporate into the statute.” *Williams*, 288 Mich App at 90 (GLEICHER, J., dissenting; emphasis supplied).

In interpreting this statute, Judge GLEICHER rejected general rules of statutory interpretation in favor of reading the statute through the “lens” of the common law: “I approach my analysis bearing in mind that ‘[u]nderlying the criminal statutes of this state is the common law.’” *Williams*, 288 Mich App at 90 (GLEICHER, J., dissenting). After saying this, Judge GLEICHER postulated: “When a statute incorporates general common-law terms to describe an offense, we thus construe the statutory crime *through the lens of common-law definitions.*” *Williams*, 288 Mich App at 91 (GLEICHER, J., dissenting; emphasis supplied). In no volume of the Michigan Reports, at least not one of recent vintage, does this Court automatically pull out “the lens of the common law” to interpret a statute. Instead, it follows the rules contained in Argument I.B.3.a. at page 8. This is particularly significant here because, although Judge GLEICHER identified the lens she was using, she never focused it on any “general common-law terms” such as the word “attempt.” In essence, her analysis is that, because “[u]nder the common law, the crime of robbery indisputably included as an essential element the commission of a larceny,” “I conclude that the Legislature did not intend that the armed robbery statute would permit a conviction absent an accomplished larceny.” *Williams*, 288 Mich App at 91-93 (GLEICHER, J., dissenting). Her view that the common law controls is gleaned from what she says is this Court’s “observ[ation] that Michigan’s robbery statutes embody the common-law offense of robbery[.]” *Williams*, 288 Mich App at 90 (GLEICHER, J., dissenting), citing *Covelesky*, 217 Mich at 96-97. However, that is, at best, a superficial reading of *Covelesky*. In particular, it overlooks how this Court came to that “observ[ation].” Specifically, this Court read the statute and found that the Legislature used “familiar words,” including “‘rob,’ ‘robber,’

‘robbed,’” and noted how those “familiar words” “appear[ed] four times” in the statute. *Covelesky*, 217 Mich at 100. Because the statute had no glossary for these words, this Court applied the well-understood rule that common-law terms of art are to be given their common-law meanings. *Id.* Hence, if there is any value to be accorded to the *Covelesky* Court’s analysis *in the context of the present statute*, because the Legislature chose to dump these “familiar words” and excluded all their derivatives, it actually intended to exclude the elements of common-law robbery from this statute. Indeed, the last vestige of the word “robbery” only remains as a catch line “inserted” by the publisher (rather than the Legislature), to be use only “for purposes of convenience to persons using publications of the statutes” and it cannot “be deemed to be a part of the section or the statute, or be used to construe the section more broadly or narrowly than the text of the section would indicate[.]” MCL 8.4b.

Judge GLEICHER’s dissent concludes that “[r]eading §§ 530(1) and (2) as a contextual whole, it appears that the Legislature sought to make clear that robbery encompasses acts that occur before, during, *and* after the larceny, not that the Legislature intended to eliminate larceny as an element of the crime.” *Williams*, 288 Mich App at 96 (GLEICHER, J., dissenting; emphasis supplied). At the end of her dissent, she repeats this conclusion as follows: “it appears that the Legislature sought to make clear that robbery encompasses acts that occur before, during, *and* after the larceny.” *Williams*, 288 Mich App at 96 (GLEICHER, J., dissenting; emphasis supplied). That, however, is neither what the statute actually says nor “appears ... to make clear.” To the contrary, if one were to paraphrase loosely what § 530(2) actually says it would be that the Legislature “sought to make clear that robbery encompasses acts that occur before, *or* during, *or* after the larceny.” In other words, the Legislature used the disjunctive “or” because it intended that the statutory offense was completed either with acts that occur before, *or* during, *or* after the

larceny.” See and compare *Johnson*, 130 S Ct at 1269 (“[b]ecause the elements of the offense are disjunctive, the prosecution can prove a battery in one of three ways”). Even this simplistic paraphrasing of the statute, however, fails to do justice to the Legislature’s chosen language. Instead, the key statutory term is not the word “before”, but rather, the Legislature used the specific well-understood legal term of art “attempt”: “As used in this section, ‘in the course of committing a larceny’ includes acts that occur in an *attempt* to commit the larceny[.]” MCL 750.530(2) (emphasis supplied).

Accordingly, Defendant’s contention that the trial court abused its discretion in not permitting him to withdraw his plea in File No. 06-53640-FC is without merit.

II. EVEN IF THIS HONORABLE COURT CONCLUDES THAT THERE MUST BE A COMPLETED LARCENY IN ORDER FOR ONE TO BE CONVICTED OF THE STATUTORY OFFENSE KNOWN AS “ROBBERY” BY ITS CATCH LINE, DEFENDANT’S PLEA SHOULD NOT BE SET ASIDE BECAUSE HE PLED TO THE CHARGED OFFENSE OF ASSAULT WITH INTENT TO ROB WHILE ARMED AND, CONSEQUENTLY, THE TRIAL COURT COULD PROPERLY ACCEPT HIS PLEA TO ARMED ROBBERY PURSUANT TO MCR 6.302(D)(1).

A. Standard of review

The interpretation and application of a court rule is reviewed de novo. *Pellegrino v Ampco Sys Parking*, 486 Mich 330, 338; 785 NW2d 45 (2010).⁸

B. Analysis of the issue

Defendant was charged alternatively with armed robbery *and* assault with intent to commit armed robbery (Information; Appellee’s Appendix, p 1b), which carry the same punishment of life or any term of years. See MCL 750.89 and MCL 750.529.

During the January 11, 2007, plea proceedings, Defendant agreed with the prosecutor’s election to proceed with count 1 (armed robbery) rather than count 2 (assault with intent to rob while armed). (Plea Tr, p 10; Appellant’s Appendix, p 23a.) Count 2 was thereafter dismissed by order of the trial court on January 12, 2007, on the prosecutor’s motion of nolle prosequi. (Appellee’s Appendix, p 2b.)

Under MCR 6.302(D)(1), “[i]f the defendant pleads guilty, the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading.” Therefore, if Defendant’s claim is correct (that he cannot be convicted of armed robbery because there was no larceny), he nevertheless

⁸ Defendant referenced this Court Rule in his motion (Appellant’s Appendix, p 54a), and “[a] cross appeal [is] not necessary to urge an ‘alternative ground for affirmance.’” *Middlebrooks v Wayne Co*, 446 Mich 151, 166; 521 NW2d 774 (1994).

pled to “the offense charged” of assault with intent to rob while armed that is supported by a factual basis presented during the plea proceedings.

The elements of assault with intent to rob while armed are: (1) an assault, (2) with an intent to rob or steal, (3) while the defendant is either armed with a dangerous weapon “or any article used or fashioned in a manner to lead a person so assaulted reasonably to believe it to be a dangerous weapon.” MCL 750.89.

In *Guilty Plea Cases*, 395 Mich at 130, this Honorable Court explained: “A factual basis for acceptance of a plea exists if an inculpatory inference can reasonably be drawn by a jury from the facts admitted by the defendant even if an exculpatory inference could also be drawn[.]”

In the instant case, Defendant admitted that he entered the Admiral Tobacco Shop with his hand up underneath his coat or in his coat pocket while telling the clerk standing at the register “you know what this is, just give me what I want.” (Plea Tr, pp 24-27, 29; Appellant’s Appendix, pp 37a-40a, 42a.) In saying, “you know what *this* is” with his hand in his pocket, “an inculpatory inference” exists that, by using the word “this,” Defendant identified “an[] article used or fashioned in a manner to lead a person ... reasonably to believe [that his pocket contained] ... a dangerous weapon,” MCL 750.89. See, e.g., *People v Jolly*, 442 Mich 458, 468-470; 502 NW2d 177 (1993), wherein this Court stated:

The typical ... feigned weapon method involves[*inter alia*] ... a finger or other object hidden in a bag or under a coat to simulate the appearance of a weapon together with threatening behavior and statements indicating the existence of a weapon. The existence of some object, whether actually seen or obscured by clothing or something such as a paper bag, is objective evidence that a defendant possesses a dangerous weapon or an article used or fashioned to look like one.

An assault occurs either by an attempt to commit a battery or by an unlawful act which places another in reasonable apprehension of receiving an immediate battery. *People v Nickens*,

470 Mich 622, 628; 685 NW2d 657 (2004). “[A]n inculpatory inference” was established during Defendant’s plea that he was committing an unlawful act and, when doing so, he placed another (the store clerk) in reasonable apprehension of receiving an immediate battery by feigning the existence of a weapon in his pocket. Therefore, the charge of assault with intent to rob while armed was established during Defendant’s plea proceedings.

Accordingly, because Defendant pled to the charged offense of assault with intent to rob while armed, the trial court could properly accept his plea to armed robbery pursuant to MCR 6.302(D)(1). See and compare *People v Lafay*, 182 Mich App 528, 532; 452 NW2d 852 (1990), wherein the Court stated:

Phillip and Gerald were originally charged with receiving or concealing stolen property and pled guilty to attempted larceny from a building. They maintain that there was no evidence of a building to support their convictions. They are correct. It does not follow, however, that the judge erred in accepting their plea to attempted larceny in a building.

The judge, through questioning a defendant, must establish factual support for the offense charged or for the offense to which the defendant is pleading. MCR 6.302(D)(1), formerly MCR 6.101(F)(3)(a). The judge may take evidence on each element of the crime charged, even if the elements of the lesser offense are not made out by a defendant's recitation of facts. This is true even if the crime pled to is not a lesser included offense of the crime charged. *People v Hutcherson*, 96 Mich App 365; 292 NW2d 466 (1980).

In this case, as the prosecutor noted at the plea proceedings, the facts supported Phillip and Gerald’s guilt of the offense charged, receiving and concealing stolen property. Defendants do not allege that the judge failed to establish all elements of that crime.

See also *People v Hutcherson*, 96 Mich App 365, 367-368; 292 NW2d 466 (1980) (a factual basis showing an assault with intent to rob armed was held sufficient to support a plea to assault with intent to commit criminal sexual conduct where the defendant was originally charged with assault with intent to rob armed), and *People v Royal*, 52 Mich App 10; 216 NW2d 427 (1974).

Defendant does not claim that all the elements of assault with intent to rob while armed were not satisfied and the record clearly supports each element of that charged offense. Therefore, regardless whether this Honorable Court concludes that there must be a completed larceny to commit statutory armed robbery, Defendant's plea should not be set aside.

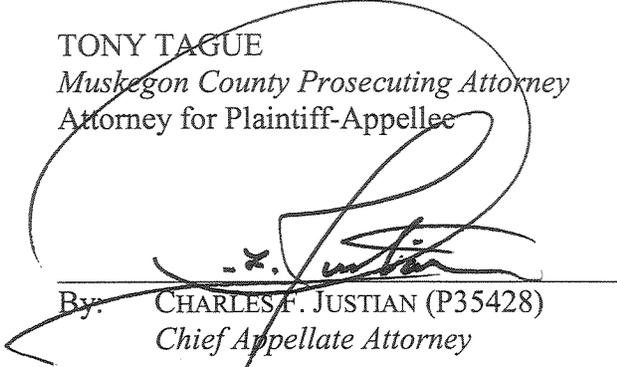
RELIEF REQUESTED

FOR THE FOREGOING REASONS, Tony Tague, Prosecuting Attorney in and for the County of Muskegon, by Charles F. Justian, Chief Appellate Attorney, respectfully requests that this Honorable Court affirm the decision of the Michigan Court of Appeals or dismiss Defendant's application as improvidently granted.

Respectfully submitted,

TONY TAGUE
Muskegon County Prosecuting Attorney
Attorney for Plaintiff-Appellee

Dated: June 14, 2011



By: CHARLES F. JUSTIAN (P35428)
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