

142442-3

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellant,

v

Docket Nos. 142442, 142443

MONTEEZ DONOVAN LAIDLER,

Defendant-Appellee.

Wayne Circuit Court No. 2009-012575-01-FC  
Court of Appeals Docket Nos. 204147, 295111

DEFENDANT-APPELLEE'S SUPPLEMENTAL BRIEF IN OPPOSITION TO  
PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

CERTIFICATION OF SERVICE

DFAE's Suppl

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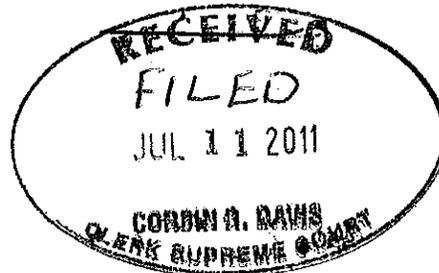


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QUESTION PRESENTED

WHETHER THE COURT OF APPEALS PROPERLY HELD THAT APPELLEE WAS  
ERRONEOUSLY ASSESSED 100 POINTS FOR OFFENSE VARIABLE 3, INCREASING HIS  
MINIMUM SENTENCE GUIDELINE RANGE FROM 12-20 MONTHS TO 36-60 MONTHS FOR  
FIRST DEGREE HOME INVASION WHERE THE CO-OFFENDER WAS NOT A "VICTIM"  
BECAUSE HE WAS NOT HARMED BY APPELLEE'S CRIMINAL ACTIVITY OR BY THE  
CRIME THAT HE AND APPELLEE JOINTLY COMMITTED.

Plaintiff-Appellant answers this question "No".  
Defendant-Appellee answers this question "Yes".

STATEMENT OF APPELLATE JURISDICTION

On August 12, 2009, Defendant-Appellee was convicted in the Wayne County Circuit Court following a trial by jury. On September 2, 2009 he was sentenced. On October 7, 2009 he was re-sentenced. On September 17, 2009 Appellee claimed an appeal of right to the Michigan Court of Appeals from the initial sentencing (Docket No. 294147) and on November 16, 2009 from the re-sentencing (Docket No. 295111), both pursuant to Mich Const 1963, art 1 § 20, MCL 600.308(1), MCL 770.3, MCR 7.203(A), MCR 7.204(A)(2). On November 25, 2009 they were consolidated. In an opinion dated December 28, 2010, Appellee's conviction was affirmed but remanded for resentencing. On January 18, 2011 Plaintiff-Appellant filed an Application for Leave to Appeal to this Honorable Court. This Court has jurisdiction pursuant to MCR 7.301(A)(2); 7.302(C)(2)(b).

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## STATEMENT OF FACTS

In Docket No. 294147, Defendant-Appellee Marteez Donovan Laidler (hereinafter "Appellee") appealed as of right his conviction, following a jury trial, of first-degree home invasion, MCL 750.110a(2). He was originally sentenced to a prison term of 110 months to 20 years. After the trial court discovered that it had utilized an incorrect sentencing guidelines grid at his original sentencing, he was resentenced to a lesser prison term of 48 months to 20 years. He appealed that sentence as of right in Docket No. 295111.

Appellee's conviction arises from an incident in which he and Dante Holmes broke into a house that they apparently believed was unoccupied. The homeowner was present and fatally shot Holmes as he reached inside a broken window to unlock it. Appellee admitted that he was with Holmes at the house. The prosecutor's theory at trial was that Appellee assisted Holmes by helping him up to the window, which was six feet off the ground.

As to his sentence, Appellee contended, and the Court of Appeals agreed, that he is entitled to resentencing, holding:

Offense variable 3 (OV 3) considers "physical injury to a victim," MCL 777.33(1), and it assesses points depending on the degree of injury suffered by "a victim," MCL 777.33(1)(a)-(f). In relevant part here, it requires that 100 points be assessed when "[a] victim was killed." MCL 777.33(1)(a), (b). For purposes of OV 3, the term "victim" means "any person harmed by the criminal actions of the charged party." *People v Albers*, 258 Mich App 578, 593; 672 NW2d 336 (2003).

MCL 777.33(2)(b) instructs further that 100 points are to be scored "if death results from the commission of a crime and homicide is not the sentencing offense." In this non-homicide sentencing offense case, the trial court determined that the death of defendant's co-felon, Holmes, justified a 100-point score for OV 3. It reasoned that "it doesn't have to be the victim" that was killed to warrant such a score, and that 100 points could be assessed whenever "someone died as a result of the commission of [the] crime," because subsection (2)(b) does not specifically refer to a victim. We disagree.

As already noted, MCL 777.33(1) authorizes the assessment of points only where a "victim" of the sentencing offense is killed or injured. Contrary to the reasoning of the trial court, subsection (2)(b) does not expand the applicability of this offense variable. Instead, it limits the offenses for which 100 points can be assessed. A 100-point score can only be imposed for non-homicide sentencing offenses where the death results from the commission of a crime. Neither of those limiting conditions can enlarge OV 3 so that it would authorize the imposition of points where there is no physical injury to a "victim" as required by subsection (1).

Here, Holmes simply was not a “victim” because he was not harmed by defendant’s criminal activity, or by the crime that was committed, jointly, by defendant and Holmes. *Albers*, 258 Mich App at 593. Rather, the “victim” of the crime here was the homeowner, and he was not injured.<sup>1</sup> So, there being no “physical injury to a victim,” here, OV 3 is simply inapplicable. MCL 777.33(1).<sup>2</sup>

Because the scoring error affects the appropriate guidelines range, resentencing is required. *People v Francisco*, 474 Mich 82, 89-92; 711 NW2d 44 (2006). Defendant’s conviction is affirmed but his sentence is vacated and the case is remanded for resentencing. We do not retain jurisdiction.

On January 18, 2011, Plaintiff-Appellant filed an Application for Leave to Appeal to this Honorable Court. Herein, Appellee answers in opposition thereto.

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<sup>1</sup>In *Albers*, 258 Mich App at 580, defendant was convicted of involuntary manslaughter after her young son set fire to their apartment, resulting in the death of a child residing in another apartment in the same complex. The defendant challenged the assessment of 25 points under OV 3, for life-threatening or permanent injury to a second child resulting from that same fire. Our Court upheld the scoring, concluding that the other child was also a “victim” of the sentencing offense, and explaining, as noted above, that a “‘victim’ includes any person harmed by the criminal actions of the charged party.” *Id.* at 591-593. Nothing in *Albers* supports the prosecutor’s assertion here, adopted by the trial court, that under the circumstances presented in this case, defendant’s co-felon is a “victim” within the meaning of OV 3. Nor has the prosecutor offered, or this Court found, any authority for such a proposition.

<sup>2</sup>We further note that the requirement of MCL 777.33(2)(b), that a death result from the commission of a crime, was not satisfied here. Even if Holmes might properly be considered a “victim,” his death resulted from the actions of the homeowner, not from the commission of a crime.

## ARGUMENT

THE COURT OF APPEALS PROPERLY HELD THAT APPELLEE WAS ERRONEOUSLY ASSESSED 100 POINTS FOR OFFENSE VARIABLE 3, INCREASING HIS MINIMUM SENTENCE GUIDELINE RANGE FROM 12-20 MONTHS TO 36-60 MONTHS FOR FIRST DEGREE HOME INVASION WHERE THE CO-OFFENDER WAS NOT A "VICTIM" BECAUSE HE WAS NOT HARMED BY APPELLEE'S CRIMINAL ACTIVITY OR BY THE CRIME THAT HE AND APPELLEE JOINTLY COMMITTED.

### Standard of Review

The trial court has discretion in the application of the law to guidelines scoring provided that there is a sufficient record to support its decision. People v Hornsby, 251 Mich App 462; 650 NW2d 700 (2002). The interpretation and application of the sentencing guidelines present questions of law subject to de novo review on appeal. People v Cannon, 481 Mich 152, 156; 749 NW2d 257 (2008).

### Discussion

The ultimate authority to provide penalties for criminal offenses is constitutionally vested in the Legislature, Const 1963, art 4, § 45, and the primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature. People v Stephan, 241 Mich App 482, 496; 616 NW2d 188 (2000). The authority to impose sentences and to administer the sentencing statutes enacted by the Legislature lies with the judiciary. See MCL 769.1(1); People v Hegwood, 465 Mich 432, 437; 636 NW2d 127 (2001); People v Babcock, 244 Mich App 64, 68; 624 NW2d 479 (2000).

When interpreting a statute the trial court must properly reconcile inconsistencies and give meaning to all words in the statute. People v Budnick, 197 Mich App 21, 24; 494 NW2d 778 (1992); Stephan, supra 421 Mich App at 497. When it comes to sentencing a criminal defendant, the responsibility of a circuit judge is to impose a sentence within the limits set by the Legislature. People v Milbourn, 435 Mich 630, 651; 461 NW2d 1 (1990). Thus, when a statute is clear and unambiguous "it must be enforced as written, with every word accorded its plain and ordinary meaning." People v Fields, 448 Mich 58, 67; 528 NW2d 176 (1995).

In August of 1998, 1998 PA 317 was signed into law providing statutory Sentencing Guidelines for virtually all felony offenses committed on or after January 1, 1999. The conviction

offense here, first degree home invasion [MCL 750.110a(2)], is included in the statutory Sentencing Guidelines. It is a Crime Against a Person and a Class B Offense. [MCL 777.16f].

A minimum sentence imposed by a court for an enumerated felony committed on or after January 1, 1999 "shall be within the appropriate sentence range," MCL 769.34(2), absent a departure for a substantial and compelling reason as allowed by MCL 769.34(3). Unlike the judicial Sentencing Guidelines that were mere recommendations, the statutory Sentencing Guidelines have the effect of law. People v Hegwood, *supra*.

The Due Process Clause of US Const, Am XIV requires a trial court to impose a sentence based on accurate information. Townsend v Burke, 334 US 736; 68 S Ct 1252; 92 L Ed 1690 (1948). See also, Const 1963, art 1, § 17. A sentence based on inaccurate information violates due process and entitles the defendant to a resentencing. *Id*; People v Malkowski, 385 Mich 244; 188 NW2d 559 (1971); People v Triplett, 407 Mich 510; 287 NW2d 165 (1980). Likewise, a sentence based in part on the erroneous scoring and application of the sentencing guidelines requires resentencing. People v Walker, 428 Mich 261; 407 NW2d 367 (1987); People v Whetstone, 426 Mich 866; 395 NW2d 8 (1986).

A sentencing court has discretion to assign scores when there is evidence on the record to support the score. People v Cain, 238 Mich App 95; 129; 605 NW2d 28 (1999). Appellee contends that offense variable 3 was scored for second degree home invasion absent any evidence that "a victim was killed:" as a result of this offense. Instead of 100 points it should be scored zero. Removing this assessment would reduce Appellee's Total OV from 110 to 10, his OV Level from VI to II and his minimum sentence guideline range from 36-60 months to 12-20 months. MCL 777.63. Appellee's sentence was based upon inaccurate information. Resentencing is now required.

Offense Variable 3 [MCL 777.33] deals with the degree of injury sustained by a victim. The instructions for OV 3 state:

(1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) A victim was killed	100
(b) A victim was killed	50
(c) Life threatening or permanent incapacitating injury occurred to a victim	25
(d) Bodily injury requiring medical treatment occurred to a victim	10
(e) Bodily injury not requiring medical treatment occurred to a victim	5
(f) No physical injury occurred to a victim	0

The instructions for OV 3 state:

In cases involving multiple offenders, if 1 offender is assessed points for death or physical injury, all offenders shall be assessed the same number of points.

Score 100 points if death results from the commission of the offense and homicide is not the sentencing offense.

Score 50 points under the variable if death results from the offense or attempted offense that involved the operation of a vehicle, vessel ORV, snowmobile, aircraft, or locomotive and any of the following apply:

The offender was under the influence of or visibly impaired by the use of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

The offender had an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

The offender's body contained any amount of a controlled substance listed in schedule 1 under section 7212 or a rule promulgated under that section, or a controlled substance described in section 7214(a)(iv).

Do not score 5 points if "bodily injury" is an element of the sentencing offense.

"Requiring Medical Treatment" refers to an injury's need for treatment not whether a victim was successful in obtaining treatment.

MCL 777.33 provides no definition of "victim" for purposes of OV 3. Under MCL 780.752(m) of the Crime Victim Rights Act, "Victim" means any of the following:

(i) An individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, except as provided in subparagraph (ii), (iii), or (iv).

(ii) The following individuals other than the defendant if the victim is deceased:

(A) The spouse of the deceased victim.

(B) A child of the deceased victim if the child is 18 years of age or older and sub-subparagraph (A) does not apply.

(C) A parent of a deceased victim if sub-subparagraphs (A) and (B) do not apply.

(D) The guardian or custodian of a child of a deceased victim if the child is less than 18 years of age and sub-subparagraphs (A) to (C) do not apply.

(E) A sibling of the deceased victim if sub-subparagraphs (A) to (D) do not apply.

(F) A grandparent of the deceased victim if sub-subparagraphs (A) to (E) do not apply.

(iii) A parent, guardian, or custodian of a victim who is less than 18 years of age and who is neither the defendant nor incarcerated, if the parent, guardian, or custodian so chooses.

(iv) A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process if he or she is neither the defendant nor incarcerated.

In People v Albers, 258 Mich App 578; 672 NW2d 336 (2003), Karen Sue Albers was charged with involuntary manslaughter, MCL 750.321. The charge arose from a fire that occurred at the Ithaca Apartments, where Ms. Albers and her three young sons, Michael, Joshua, and Brent, lived. On the night of February 20, 2001, while Ms. Albers was sleeping, her six-year-old son Brent removed her lighter from under a cushion on which she was lying and started a fire in their apartment. The fire spread to an upstairs apartment, trapping Melissa Byers, her twenty-two-month-old son Christopher, and a neighbor boy, Jeremiah Sikes, who was spending the night at the Byers' apartment. Christopher Byers died of smoke inhalation caused by the fire.

The Michigan Court of Appeals was asked to determine the proper meaning of "victim" as used in MCL 777.33. It found that it is not clear and unambiguous, and sought "to effectuate the Legislature's intent through a reasonable construction, considering the purpose of the statute and the

object sought to be accomplished." People v McKinley, 255 Mich App 20, 28; 661 NW2d 599 (2003), quoting Macomb Co. Prosecutor v Murphy, 464 Mich 149, 158; 627 NW2d 247 (2001).

The Albers Court found no case law establishing the proper meaning of the term "victim" for purposes of OV 3 and concluded that, for purposes of OV 3, "victim" means "any person harmed by the criminal actions of the charged party." Id at 593. Relying on Albers, the Court of Appeals held here that Holmes was not a "victim" because he was not harmed by Appellee's criminal activity or by the crime committed by Appellee and Holmes. The "victim" of the crime was the homeowner, who was not injured. The harm to Holmes was inflicted by the lawful actions of the homeowner.

The law regarding self defense holds that a person must retreat if retreat is safely possible before he may exercise deadly force to repel an attack. Pond v People, 8 Mich 150 (1860). Where, however, the person is attacked in his own home, where he has a right to be, there is no duty to retreat. Id, People v Stallworth, 364 Mich 528, 535; 111 NW2d 742 (1961); People v Mroue, 111 Mich App 759, 765; 315 NW2d 192 (1981).

The Michigan Court of Appeals articulated the principle regarding the absence of a duty to retreat when attacked at one's home in People v Godsey, 54 Mich App 316, 319; 220 NW2d 801 (1974), by reiterating the oft-cited words of the renown legal scholar, Justice Cardozo:

"It is not now, and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home." People v Tomlins, 213 NY 240, 243-244; 107 NE 496, 497 (1914).

Thus, under MCL 777.33(1), Holmes was not a victim of the unlawful conduct underlying Appellee's conviction. Rather he was harmed by the lawful response by the complainant. Under these circumstances, the Court of Appeals properly held that in the context of this case, OV 3 was inapplicable and that the 100 points for that variable were erroneously assessed by the trial court.

The corresponding reduction of 100 points would reduce the guidelines range from 36-60 months to 12-20 months. Because Appellant's sentence here is based upon an inaccurate calculation of the guidelines range and is, therefore, inconsistent with the law, he is entitled to be resentenced.

People v Francisco, 474 Mich 82, 89-92; 711 NW2d 44 (2006).

RELIEF REQUESTED

WHEREFORE, Defendant-Appellee MONTEEZ DONOVAN LAIDLER prays this Honorable Court deny Plaintiff-Appellant's Application for Leave to Appeal the decision of the Court of Appeals granting him resentencing.



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