

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

Supreme Court No. 150119  
Court of Appeals No. 317054  
Circuit Court No. 13-161-FH

FATEEN MUHAMMAD,

Defendant-Appellant.

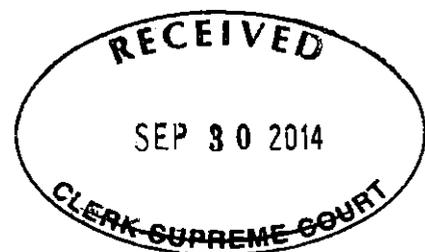
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**PEOPLE'S ANSWER TO APPLICATION FOR LEAVE TO APPEAL**

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    NOTICE BECAUSE: (1) DEFENDANT WAS ARRAIGNED ON THE COMPLAINT  
    AND WARRANT WHICH CONTAINED THE HABITUAL OFFENDER NOTICE AND  
    HE WAS SERVED WITH A COPY PRIOR TO THE PRELIMINARY  
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## STATEMENT OF QUESTION PRESENTED

I. WHETHER THE TRIAL COURT ERRED IN DISMISSING THE HABITUAL OFFENDER NOTICE WHEN: (1) DEFENDANT WAS ARRAIGNED ON THE COMPLAINT AND WARRANT WHICH CONTAINED THE HABITUAL OFFENDER NOTICE AND HE WAS SERVED WITH A COPY PRIOR TO THE PRELIMINARY EXAMINATION, (2) THE FELONY INFORMATION CONTAINING THE HABITUAL OFFENDER NOTICE WAS TIMELY FILED AND (3) THE FAILURE TO TIMELY SERVE DEFENDANT'S ATTORNEY WITH A COPY OF THE FELONY INFORMATION WAS HARMLESS ERROR?

Plaintiff-Appellant answers, "Yes."

Defendant-Appellee answers, "No."

## **STATEMENT OF APPELLATE JURISDICTION**

Plaintiff concurs in Defendant's statement of appellate jurisdiction.

## STATEMENT OF FACTS

Defendant was charged with Home Invasion, first degree, Assault with Intent to do Great Bodily Harm less than Murder, and habitual offender, fourth offense, for having entered without permission the home of his estranged wife and having assaulted her (which was also a violation of a Personal Protection Order). The criminal complaint was filed in the 54-A District Court on February 6, 2013.<sup>1</sup> That criminal complaint charged Defendant as a fourth habitual offender. Defendant was arraigned on the complaint the same day.<sup>2</sup> At the arraignment, the district court judge advised defendant of the charges and that “[e]ach of those has a habitual offender notice.” And that “[t]he penalties could be made greater than 20 years and 10 years respectively.”<sup>3</sup> Defendant requested a court-appointed attorney and was appointed attorney Joseph Curi.<sup>4</sup> A preliminary examination was scheduled for February 15, 2013.

The preliminary examination was held on that date and Defendant was bound over to circuit court as charged.<sup>5</sup> A discussion regarding the amount of Defendant's bond was held on the record and the district court, in denying the request for a reduced bond, noted that “[Defendant's] a fourth habitual offender.”<sup>6</sup> The district court judge set the circuit court arraignment for February 27, 2013.<sup>7</sup> **Before leaving the district court that day, Mr. Curi and Defendant signed a written waiver of circuit court**

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<sup>1</sup> Attachment 1.

<sup>2</sup> See District Court ROA, Attachment 2.

<sup>3</sup> Attachment 3, p 3.

<sup>4</sup> Attachment 3, p 4; Attachment 2, p 2.

<sup>5</sup> Attachment 4; Attachment 2, p 2.

<sup>6</sup> Preliminary Examination Tr, p 30.

<sup>7</sup> Attachment 4.

arraignment which acknowledged they had received a copy of the felony complaint<sup>8</sup> (which contained the habitual offender notice).<sup>9</sup>

On the arraignment date, February 27, 2013, Plaintiff filed in the circuit court the felony information which included the same habitual offender, fourth offense notice.<sup>10</sup> The felony information was identical to the felony complaint that Defendant received in district court, except with a different title.<sup>11</sup> The circuit court set the initial pretrial conference for March 27, 2013.<sup>12</sup> At the pretrial conference (which was held off the record), the attorneys for the parties signed the pretrial conference statement which noted that Defendant was charged as a fourth habitual offender.<sup>13</sup> Plaintiff sent Mr. Curi a copy of the felony information via email on April 24, 2013.<sup>14</sup>

On May 10, 2013, Defendant filed a motion to dismiss the habitual offender notice<sup>15</sup> asserting that it was not timely filed<sup>16</sup> or served. Plaintiff filed a response stating that Defendant had repeatedly been informed that Plaintiff intended to seek an enhanced sentence beginning with his arraignment in district court.<sup>17</sup> A hearing was held on May 29, 2013. The circuit court, Judge Rosemarie Aquilina, granted the motion because the felony information was not timely served on Mr. Curi.<sup>18</sup> An order to that

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<sup>8</sup> It appears from the waiver form that Mr. Curi crossed out the word "information" and wrote the word "complaint" when signing the waiver.

<sup>9</sup> Attachment 5.

<sup>10</sup> Attachment 6; Attachment 11, p 2.

<sup>11</sup> Compare Attachment 1 with Attachment 6.

<sup>12</sup> Attachment 11, p 2.

<sup>13</sup> Attachment 12.

<sup>14</sup> Attachment 7, exhibit C.

<sup>15</sup> Attachment 7.

<sup>16</sup> As noted, the felony information was filed on the date of the circuit court arraignment, February 27, 2013. Defendant on appeal abandoned the argument that the information was not timely filed. Instead, Defendant merely asserted that it was not timely served.

<sup>17</sup> Attachment 8.

<sup>18</sup> Attachment 9, pp 11-13.

effect was entered on June 13, 2013.<sup>19</sup> Plaintiff appealed by application for leave from the order.

The Court of Appeals granted Plaintiff's application and the parties filed briefs. Following oral argument, the Court of Appeals reversed Judge Aquilina's order dismissing the habitual offender notice. The majority held that Plaintiff's failure to timely serve Defendant with a copy of the felony information was harmless error.<sup>20</sup> The dissent agreed with the rationale of the majority, however, it felt compelled to follow this Court's order in *People v Cobley*, 463 Mich 893 (2000). Defendant appeals from the Court of Appeals decision by application for leave to appeal.

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<sup>19</sup> Attachment 10.

<sup>20</sup> Attachment 13.

## ARGUMENT

I. THE TRIAL COURT ERRED IN DISMISSING THE HABITUAL OFFENDER NOTICE BECAUSE: (1) DEFENDANT WAS ARRAIGNED ON THE COMPLAINT AND WARRANT WHICH CONTAINED THE HABITUAL OFFENDER NOTICE AND HE WAS SERVED WITH A COPY PRIOR TO THE PRELIMINARY EXAMINATION, (2) THE FELONY INFORMATION CONTAINING THE HABITUAL OFFENDER NOTICE WAS TIMELY FILED AND (3) THE FAILURE TO TIMELY SERVE DEFENDANT'S ATTORNEY WITH A COPY OF THE FELONY INFORMATION WAS HARMLESS ERROR.

### Issue Preservation

Defendant moved to dismiss the habitual offender notice on the grounds that it was not timely filed or served. Plaintiff opposed the motion to dismiss the habitual offender notice.<sup>21</sup> Therefore, this issue is preserved for appellate review.

### Standard of Review

Whether the prosecutor has complied with the statutory requirements for habitual offenders is a question of law which this Court reviews de novo. *People v Sierb*, 456 Mich 519, 522 (1998).

### People's Argument

#### A. History of Habitual Offender Notice Requirement

Today, the procedural rules for charging a defendant as a habitual offender are governed by statute. Initially, however, our courts required the prosecutor to "promptly" file a supplemental information containing the habitual offender notice. See e.g., *People v Marshall*, 41 Mich App 66, 73 (1972). This Court in *People v Shelton*, 412 Mich 565, 569 (1982) later held that "a supplemental information is filed 'promptly' if it is filed not

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<sup>21</sup> See attachments 8 and 9.

more than 14 days after the defendant is arraigned in circuit court (or has waived arraignment) on the information charging the underlying felony, or before trial if the defendant is tried within that 14-day period.”

The Legislature amended the habitual offender statutes in 1994. Under this amendment, the prosecutor was no longer required to file a supplemental information charging the defendant as a habitual offender (only a written notice was required), and the time for filing was extended from 14 days to 21 days. *People v Morales*, 240 Mich App 571, 583 (2000).<sup>22</sup> It is this amended version that governs the present case.

### **B. The Habitual Offender Statutes**

Section 13 of the habitual offender statutes, MCL 769.13, provides the procedure for charging a defendant as a habitual offender. The section states, in relevant part:

(1) In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21 days after the defendant’s arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.

(2) A notice of intent to seek an enhanced sentence filed under subsection (1) shall list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement. The notice shall be filed with the court and served upon the defendant or his or her attorney within the time provided in subsection (1). The notice may be personally served upon the defendant or his or her attorney at the arraignment on the information charging the underlying offense, or may be served in the manner provided by law or court rule for service of written pleadings. The prosecuting attorney shall file a written proof of service with the clerk of the court.

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<sup>22</sup> “The expansion of the time allotted from fourteen to twenty-one days signifies a desire to balance the credible concern of prosecutors that their ability to charge a defendant as an habitual offender not be undercut by too short a period, with the equally credible concern of defendants that they be given adequate notice to meet the charges against them.” *Morales*, 240 Mich App at 584.

The “goal in interpreting a statute ‘is to ascertain and give effect to the intent of the Legislature. The touchstone of legislative intent is the statute’s language. If the statute’s language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written.’” *People v Hardy*, 494 Mich 430, 439 (2013), quoting *People v Gardner*, 482 Mich 41, 50 (2008). The purpose of the habitual offender notice is to ensure that a defendant receives notice at an early stage in the proceedings that he could be sentenced as a habitual offender. *People v Shelton*, 412 Mich 565, 569 (1982); *Morales, supra* at 582; *People v Manning*, 163 Mich App 641, 644 (1987).

MCL 769.13(1) states that “the prosecuting attorney may seek to enhance the sentence of the defendant . . . by filing a written notice of his or her intent to do so . . . .” The notice can be (and commonly is) contained in the felony information, but that is not required by the statute.<sup>23</sup> As noted above, Plaintiff filed the notice twice; in the complaint in district court and in the information in circuit court.

Next, MCL 769.13(1) requires Plaintiff to file the notice with the court “within 21 days after the defendant’s arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.” In this case, Plaintiff filed the notice (as contained in the complaint) in district court prior to the preliminary examination and again filed the same notice (as contained in the information) on the day of Defendant’s circuit court arraignment. Therefore, Plaintiff more than complied with the filing requirements of subsection (1).

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<sup>23</sup> *Morales, supra* at 583.

Next, subsection (2) requires that the notice be “served upon the defendant or his or her attorney within the time provided in subsection (1).” The time period prescribed by subsection (1) is “within 21 days after the defendant’s arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.” In this case, Defendant waived the arraignment. Since the information was filed on the date of the arraignment, Plaintiff had 21 days from that point to serve Defendant or Mr. Curi with the notice. As noted, Plaintiff served Mr. Curi with the information (containing the second notice) well after the 21-day period. However, Plaintiff had, by that point, already served Defendant with the written notice in district court. Thus, the question here is whether Plaintiff should be penalized when it served Defendant with the notice **before** it was required to do so by the statute.<sup>24</sup>

The Court of Appeals has said that MCL 769.13(1) provides a “bright-line test” for whether a prosecutor has “promptly” **filed** notice of intent to enhance a defendant’s sentence as a habitual offender. See *Morales, supra* at 575-576; *People v Ellis*, 224 Mich App 752, 755 (1997). However, the Court of Appeals has also held that a prosecutor may amend the notice to correct errors after the expiration of the 21-day period as long as the amendment does not “increase the potential sentence consequences.” *People v Hornsby*, 251 Mich App 462, 472 (2002); *Ellis, supra* at 756-757.

In the present case, Plaintiff provided Defendant with **written notice** of its intent to seek an enhanced sentence **before** his case reached circuit court. Plaintiff also timely filed the notice (within the information) in circuit court. The notice filed in circuit

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<sup>24</sup> The statute contains no penalty for not serving the defendant or his attorney within the 21-day period.

court was a "carbon copy" of the notice served on Defendant in district court. In other words, Plaintiff did not alter the notice in any way that would increase the potential sentence consequences to Defendant. Since defendant received written notice at the earliest possible stage in the proceedings he cannot (and does not) claim that he was prejudiced by Mr. Curi receiving a copy of the felony information after the 21-day period.<sup>25</sup> Therefore, Plaintiff should be deemed to have complied with the intent of MCL 769.13 when it provided notice to Defendant. To hold otherwise would ignore the purpose of the notice provision and elevate form over substance.

### C. *People v Cobley*

Defendant asserted in the trial court, and the trial court relied upon, our Supreme Court's order in *People v Cobley*, 463 Mich 893 (2000). In that case, the prosecutor at the circuit court arraignment **verbally** notified the defendant for the first time that he intended to file a supplemental information charging the defendant has an habitual offender. The prosecutor filed the supplemental information timely, however, he failed to serve the defendant with a copy within the time required by MCL 769.13. The Court of Appeals found that the error was harmless because the defendant had actual knowledge of the prosecutor's intent and because the supplemental information was timely filed.<sup>26</sup>

This Court reversed that decision and remanded for resentencing without the habitual offender notice "because the prosecutor has not proven that the **notice of sentence enhancement was served on defendant within 21 days** after the defendant was arraigned." *Id.* (emphasis added).

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<sup>25</sup> See *People v Walker*, 234 Mich App 299, 314-315 (1999).

<sup>26</sup> *People v Cobley*, unpublished opinion per curiam of the Court of Appeals, decided April 20, 1999 (Docket No. 204155) (See Attachment 7, exhibit D).

Plaintiff asserts that the facts in the present case are distinguishable from those in *Cobley* and that the failure to serve Mr. Curi with a copy of the felony information within the 21-day period was harmless error. The present case is distinguishable from *Cobley* because the defendant in *Cobley* was not served with written notice that he was being charged as an habitual offender until more than 21 days after the circuit court arraignment.

Since this Court issued its *Cobley* order, the Court of Appeals has repeatedly found that service defects regarding habitual offender notices can be harmless error. As an example, the defendant in *People v Hardwick*,<sup>27</sup> argued that his habitual offender sentence must be vacated because he was never "served" with a copy of the felony information containing the habitual offender notice. The Court of Appeals rejected that argument finding that the complaint and warrant, on which the defendant was arraigned in district court, contained the habitual offender notice, as did the felony information that was timely filed in circuit court. The Court of Appeals stated, "[u]nder these circumstances, we decline to vacate defendant's habitual offender sentence." Slip op, p 2.

Similarly, the defendant in *People v Bouie*,<sup>28</sup> argued that his habitual offender sentence must be vacated because the prosecutor did not timely file notice of intent to seek an enhanced sentence. The Court of Appeals rejected that argument finding that the complaint and warrant, (on which the defendant was arraigned in district court) contained the habitual offender notice. The Court of Appeals also noted that the

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<sup>27</sup> *People v Hardwick*, Memorandum opinion of the Court of Appeals, decided August 9, 2002 (Docket No. 231393) (Attachment 13).

<sup>28</sup> *People v Bouie*, Memorandum opinion of the Court of Appeals, decided October 11, 2002 (Docket No. 232963) (Attachment 14).

defendant waived circuit court arraignment by signing a form which acknowledged that he had received a copy of the felony information (which also contained the habitual offender notice).<sup>29</sup>

In the present case, the procedural history is not in question. As noted above, the habitual offender notice was placed in the felony complaint that was filed to initiate the case. Defendant was arraigned on that complaint and the district court informed him on the record that he was charged as an habitual offender. Defendant was bound over to circuit court following a preliminary examination and he and Mr. Curi signed a written waiver of circuit court arraignment which stated that they had received a copy of the felony complaint (which contained the habitual offender notice). Moreover, the district court stated on the record that Defendant was charged as an habitual fourth offender. Plaintiff timely filed with the circuit court the felony information (which was nothing more than the complaint with a different title) on the date of the circuit court arraignment.

In light of this procedural history, any failure on Plaintiff's part to comply with the habitual offender statute must be considered harmless error. Defendant received a copy of the complaint containing the habitual offender notice at the outset of the case and a felony information containing the same notice was timely filed. This important fact makes this case distinguishable from the facts in *Cobley*. Defendant should not be permitted to avoid the full consequences of his criminal history and his actions in this case simply because a copy of the felony information was not timely sent to his

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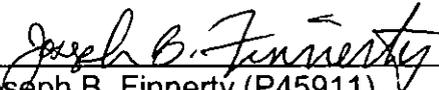
<sup>29</sup> See also *People v Johnson*, 495 Mich 919 (2013) applying the "miscarriage of justice" standard under MCL 769.26 and the "consistent with substantial justice" standard under MCR 2.613(A) to a claim of non-compliance with MCL 769.13. (Attachment 16).

## RELIEF REQUESTED

WHEREFORE, The People request that this Honorable Court deny Defendant's application for leave to appeal.

Respectfully submitted,

STUART J. DUNNINGS III  
INGHAM COUNTY PROSECUTOR

  
\_\_\_\_\_  
Joseph B. Finnerty (P45911)  
Chief, Appellate Division  
303 W. Kalamazoo St., 4th Floor  
Lansing, Michigan 48933

Dated: 9/30/14

## CERTIFICATE OF SERVICE

On September 30, 2014, I served a copy of the People's Answer to Application for Leave to Appeal by first class mail addressed to Defendant's appellate counsel:

Joseph D. Curi  
2875 Northwind Drive,  
Suite 137  
East Lansing, MI 48823

I declare that the statements above are true to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Lisa Renee Davis

CTN: 33-13000949-01 TMCC1

STATE OF MICHIGAN 54A JUDICIAL DISTRICT 30L JUDICIAL CIRCUIT	COMPLAINT FELONY	CASE NO.: DISTRICT: CIRCUIT: 13-00576
District Court ORI: MI330075J	Circuit Court ORI: MI330055J	
124 W. MICHIGAN AVE. LANSING, MI 48933 517-483-4433313 W. Kalamazoo Lansing, MI 48901 517-483-6500		

THE PEOPLE OF THE STATE OF MICHIGAN	Defendant's name and address V FATEEN ROHN MUHAMMAD 4304 GUILFORD GRATIOT, MI 48059 Sex: M Race: Black	Victim or complainant KRYSTAL MUHAMMED Complaining Witness OFC WENDY PRINCE
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Co-defendant(s)	Date: On or about 02/05/2013
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City/Twp./Village CITY OF LANSING	County in Michigan INGHAM	Defendant TCN K813070193W	Defendant CTN 33-13000949-01	Defendant SID 1372717A	Defendant DOB 01/19/1967
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Police agency report no. 33LLA 130205001211	Charge SEE BELOW	DLN Type:	Vehicle Type	Defendant DLN M530244744052
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**Witnesses**

KRYSTAL MUHAMMED                      OFC WENDY PRINCE                      OFC RACHEL BAHL  
OFC PENNI ELTON                      MAIL CARRIER

**STATE OF MICHIGAN, COUNTY OF INGHAM**

The complaining witness says that on or about 02/05/2013 at 337 E Edgewood #5, City of Lansing, Ingham County, Michigan the defendant contrary to law:

**COUNT 1: HOME INVASION - 1ST DEGREE**

did enter without permission a dwelling located at 337 East Edgewood, #5, and, while entering, present in, or exiting did commit an assault, and while entering, present in, or exiting the dwelling Krystal Muhammed, was lawfully present therein; contrary to MCL 750.110a(2). [750.110A2]

FELONY: 20 Years and/or \$5,000.00

**COUNT 2: ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN MURDER**

did make an assault upon Krystal Muhammed with intent to do great bodily harm less than the crime of murder; contrary to MCL 750.84. [750.84].

FELONY: 10 Years or \$5,000.00; DNA to be taken upon arrest.

**HABITUAL OFFENDER - FOURTH OFFENSE NOTICE**

Take notice that the defendant was previously convicted of three or more felonies or attempts to commit felonies in that on or about 2/25/2009, he or she was convicted of the offense of Deliver/Manufacture Narcotics Less Than 50 Grams in violation of MCL 333.74012A4; in the 30th Circuit Court for Lansing, State of Michigan;

And on or about 12/05/2007, he or she was convicted of the offense of Breaking and Entering a Building with Intent in violation of MCL 750.110; in the 30th Circuit Court for Lansing, State of Michigan;

And on or about 08/04/1994, he or she was convicted of the offense of Assault with a Dangerous Weapon in violation of MCL 750.82; in the Detroit Records Court Court for Detroit, State of Michigan;

Therefore, defendant is subject to the penalties provided by MCL 769.12. [769.12]  
PENALTY: Life if primary offense has penalty of 5 Years or more; 15 Years or less if primary offense has penalty under 5 Years. The maximum penalty cannot be less than the maximum term for a first conviction.

Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling samples.

The complaining witness asks that the defendant be apprehended and dealt with according to law.

(Peace Officers Only) I declare that the statements above are true to the best of my information, knowledge and belief.

Warrant authorized on

by:

*Molly H. Greenwalt* 2/6/2013 11:32:35 AM

MOLLY H. GREENWALT (P73583)  
ASSISTANT PROSECUTING ATTORNEY

*Wendy Prince*  
Complaining Witness Signature

Subscribed and sworn to before me on FEB 06 2013  
Date

*[Signature]*  
Judge/Magistrate/Clerk

Bar no.

**CERTIFIED COPY**  
**30TH CIRCUIT COURT**

JUN 13 2013

I hereby certify that this document is a true and correct copy of the original on file with this court.

*[Signature]* Deputy Clerk

STATE OF MICHIGAN 54A JUDICIAL DISTRICT ORI330075J	REGISTER OF ACTIONS	CASE NO: 13-00576 D01 FY STATUS: CLSD 02/15/13
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JUDGE OF RECORD: ALDERSON, LOUISE, P-40151  
JUDGE: ALDERSON, LOUISE, P-40151

STATE OF MICHIGAN v

MUHAMMAD/FATEEN/ROHN  
4304 GUILFORD  
FORT GRATIOT MI 48059

CTN: 331300094901  
TCN: K813070193W  
SID: 1372717A  
ENTRY DATE: 02/06/13  
OFFENSE DATE: 02/05/13

DOB: 01/19/1967 SEX: M RACE: B DLN: MI M530244744052 CDL: U  
VEH YR: VEH MAKE: VIN: PAPER PLATE:

DEFENSE ATTORNEY ADDRESS BAR NO.  
CURI, JOSEPH D., P-47811  
2875 NORTHWIND DR Telephone No.  
STE 137  
EAST LANSING MI 48823 (517) 333-9905

OFFICER: PRINCE/WENDY DEPT: LANSING POLICE DEPARTMENT  
OFFICER: BAHL/RACHEL DEPT: LANSING POLICE DEPARTMENT  
PROSECUTOR: DUNNINGS, STUART J., P-31089  
VICTIM/DESC: MUHAMMED/KRYSTAL/

COUNT 1 C/M/F: F 750110A2 PACC#750.110A2  
HOME INVASION-1ST DEGREE  
ARRAIGNMENT DATE: 02/06/13 PLEA: PLEA N-GLTY PLEA DATE: 02/06/13  
FINDINGS: EX COND B/O DISPOSITION DATE: 02/15/13

SENTENCING DATE:  
FINE COST ST.COST CON MISC. REST TOT FINE TOT DUE  
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00  
JAIL SENTENCE: PROBATION:  
VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

BOND HISTORY:  
25,000.00 CASH OR SURETY BOND SET

COUNT 2 C/M/F: F 75084 PACC#750.84  
ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN MURDER  
ARRAIGNMENT DATE: 02/06/13 PLEA: PLEA N-GLTY PLEA DATE:  
FINDINGS: EX COND B/O DISPOSITION DATE: 02/15/13

SENTENCING DATE:  
FINE COST ST.COST CON MISC. REST TOT FINE TOT DUE  
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00  
JAIL SENTENCE: PROBATION:  
VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
02/05/13		
1	ORIGINAL CHARGE HOME INV-1ST	WJH
2	ORIGINAL CHARGE ASSAULT/HARM	WJH
	MISCELLANEOUS ACTION ALL COUNTS	WJH
	PROS DUNNINGS, STUART J.,	P-31089 WJH
	LLA130205001211	WJH
02/06/13		

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	FILING DATE 020613	WJH
1	AUTHORIZATION OF COMPLAINT DATE	WJH
	PROS. GREENWALT, MOLLY HEN	P-73583 WJH
	COMPLAINT ISSUANCE DATE	WJH
	JDG DELUCA, FRANK J.,	P-12656 WJH
	MISCELLANEOUS ACTION ALL COUNTS	WJH
	JAIL FILE	WJH
	MISCELLANEOUS ACTION ALL COUNTS	WJH
	PRE-EXAM CONFERENCE 021213 145P ALDERSON, LOUISE,	P-40151 WJH
	MISCELLANEOUS ACTION ALL COUNTS	WJH
	SCHEDULED FOR PRELIMINARY EXAMINATION	
	021513 900A ALDERSON, LOUISE,	P-40151 WJH
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	WJH
1	PRETRIAL RELEASE/CUSTODY GENERATED-NO CUSTODY	
	HOME INV-1ST	GRW
	PREV. 4304 GUILFORD	WJH
	ADDR: GRATIOT MI 48059	WJH
	ARRAIGNMENT HELD HOME INV-1ST	WJH
	PLEAD NOT GUILTY	WJH
	CASH OR SURETY	WJH
	BOND SET \$ 25000.00	WJH
	DEFENDANT ARRAIGNED BY JUDGE DELUCA	WJH
	APPLICATION FOR COURT APPOINTED ATTORNEY FILED	WJH
	NO CONTACT WITH VICTIM, DIRECTLY OR INDIRECTLY	WJH
	NO USE OF ALCOHOL OR CONTROLLED SUBSTANCES WITHOUT A PRESCRIPTION	WJH
	NOT POSSESS A FIREARM OR OTHER DANGEROUS WEAPON	WJH
	NO OST.	WJH
1	BAIL BOND GENERATED HOME INV-1ST	WJH
02/08/13		
1	MISCELLANEOUS ACTION HOME INV-1ST	SDT
	ORDER FOR COURT APPOINTED ATTORNEY GRANTED	SDT
02/12/13		
	MISCELLANEOUS ACTION ALL COUNTS	DRZ
	ATT CURI, JOSEPH D.,	P-47811 DRZ
	APPEARANCE BY AN ATTORNEY FILED	DRZ
	(JUDGE ALDERSON) CONT TO EXAM	DRZ
1	BAIL BOND GENERATED HOME INV-1ST	DRZ
02/15/13		
	MISCELLANEOUS ACTION ALL COUNTS	WJH
	NOTICES/PENALTIES ELIGIBLE	WJH
	EXAMINATION HELD ALL COUNTS	WJH
	JDG ALDERSON, LOUISE,	P-40151 WJH
	EXAM CONDUCTED ; DEFENDANT BOUND OVER	WJH
	BOCC ON BOTH COUNTS. 2-27-13. BOND CONT	WJH
	ENTRY MADE TO CRIMINAL HISTORY RECORD	WJH
	ON RECORD - COURT RECORDER TAMI MARSH, CER #5271	WJH
	CASE CLOSED	WJH
1	BAIL BOND GENERATED HOME INV-1ST	WJH

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STATE OF MICHIGAN

IN THE 54-A JUDICIAL DISTRICT COURT FOR THE CITY OF LANSING

THE PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 13-00576-FY

FATEEN R. MUHAMMAD,

Defendant.

\_\_\_\_\_ /

ARRAIGNMENT

BEFORE THE HONORABLE FRANK J. DELUCA, DISTRICT JUDGE

Lansing, Michigan - Wednesday, February 6, 2013

Courtroom No. 4

RECORDED BY:

Julia M. Cherry, CER-5287  
Certified Electronic Recorder  
(517) 483-4412

TABLE OF CONTENTS

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WITNESSES

None

EXHIBITS:

None

1                   Lansing, Michigan

2                   Wednesday, February 6, 2013 - at 3:24 p.m.

3                   THE COURT: Fateen Muhammad.

4                   THE DEFENDANT: Good morning, sir.

5                   THE COURT: Hi, Mr. Muhammad. How are you?

6                   THE DEFENDANT: I was peaceful until I got  
7 arrested yesterday.

8                   THE COURT: I--I didn't expect to see you 'cause  
9 I thought you were in Fort Gratiot, and you were coming  
10 back.

11                   THE DEFENDANT: I did go to Fort Gratiot, and I  
12 came back here to do some work. And my wife asked for  
13 some help, and I went to help her and--

14                   THE COURT: 13-00576, and this is a charge, sir,  
15 that says that on or about the 5<sup>th</sup> day of February, of  
16 2013, at or near Edgewood, 3300 block, that you committed  
17 the offense of home invasion. That's a 20 year felony.

18                   And in count two--that's home invasion first degree--  
19 count two is assault with intent to do great bodily harm.  
20 Each of those has a habitual notice. The penalties could  
21 be made greater than 20 years and 10 years respectively.

22                   And, sir, in regard to these charges, you're  
23 entitled to have a preliminary examination now scheduled  
24 before Judge Alderson on the 15<sup>th</sup> day of February with a  
25 pre-exam conference on the 12<sup>th</sup> day of February. And

1 those are times when you must be present. You're  
2 entitled to be represented by a lawyer. And if you  
3 couldn't afford one, the Court would consider appointing  
4 one for you at public expense. Are you asking for a  
5 lawyer at public expense?

6 THE DEFENDANT: Yes, sir. Do I get to choose  
7 one?

8 THE COURT: No, you don't get to choose. You--  
9 yes, you do. You can choose whatever lawyer you want if  
10 you hire your own; if you hire your own.

11 THE DEFENDANT: Okay.

12 THE COURT: If not, then you get the one that we  
13 appoint to you.

14 THE DEFENDANT: Then I'll take a court appointed  
15 one today.

16 THE COURT: All right. 4-3-0-4 Guilford, Fort  
17 Gratiot, Michigan 48059?

18 THE DEFENDANT: Yes, sir. And I came down here  
19 to court report when I got a bond. I came down here and  
20 made the report in front of you. So I'm not goin'  
21 anywhere. I--and I can be on the train this evening  
22 'cause I have a dog and a cat I have to feed. And I have  
23 to exchange my bond money for work.

24 THE COURT: You're bond is \$25,000.00 cash or  
25 surety. No out of state travel, no weapons, no alcohol

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or drugs and no contact whatsoever with the victim.  
There's a PPO in existence, sir. Now there's two court  
orders. No contact. Any contact of any kind will cause  
your bond to be revoked. Do you understand that?

THE DEFENDANT: Yes, sir. There will be no  
contact.

THE COURT: All right, thank you, Mr. Muhammad.  
That's all on the record.

THE DEFENDANT: Thank you.

THE COURT: Uh-hum.

THE DEFENDANT: Thank you, sir.

THE COURT: Uh-hum.

(At 3:28 p.m., proceedings concluded)

STATE OF MICHIGAN )  
COUNTY OF INGHAM )

I certify that this transcript, consisting of five pages,  
is a complete, true, and correct transcript of the proceedings  
taken in this case on Wednesday, February 6, 2013.

Dated: June 10, 2013

*Julia M. Cherry*  
Julia M. Cherry CER-5287  
54A District Court  
124 West Michigan Avenue  
Lansing, MI 48933  
(517) 483-4412

STATE OF MICHIGAN 54A JUDICIAL DISTRICT 30L JUDICIAL CIRCUIT	ADULT BIND OVER	CASE NO.: DISTRICT: CIRCUIT: <u>13-00574</u>
--	--------------------	--

District Court ORI: MI330075J      Circuit Court ORI: MI330055J  
 124 W. MICHIGAN AVE. LANSING, MI 48933      313 W. Kalamazoo, Lansing, MI 48901 517-483-6500  
 517-483-4433

THE PEOPLE OF THE STATE OF MICHIGAN	Defendant's name and address V FATEEN ROHN MUHAMMAD <i>Aquilina</i> 4304 GUILFORD GRATIOT, MI 48059 Sex: M Race: Black <u>13-161-FH</u>	Victim or complainant KRYSTAL MUHAMMED Complaining Witness OFC WENDY PRINCE
--	---	--

Co-defendant(s) \_\_\_\_\_ Date: On or about 02/05/2013

City/Twp./Village CITY OF LANSING	County in Michigan Ingham	Defendant TCN K813070193W	Defendant CTN 33-13000949-01	Defendant SID 1372717A	Defendant DOB 01/19/1967
Police agency report no. 33LLA 130205001211	Charge SEE BELOW	DLN Type:	Vehicle Type	Defendant DLN M530244744052	

Date: 2/15/13 District Judge: Louise Anderson Bar no. 40151

Reporter/Recorder <u>Tami Bennett</u>	Cert. no. <u>5271</u>	Represented by counsel no. <u>Joseph Cuci</u>	Bar <u>47811</u>
--	--------------------------	--	---------------------

**EXAMINATION WAIVER**

- I, the defendant, understand:
  - I have a right to employ an attorney.
  - I may request a court appointed attorney if I am financially unable to employ one.
  - I have a right to a preliminary examination where it must be shown that a crime was committed and probable cause exists to charge me with the crime.
- I voluntarily waive my right to a preliminary examination and understand that I will be bound over to circuit court on the charges in the complaint and warrant (or as amended).

Defendant attorney \_\_\_\_\_ Bar no. \_\_\_\_\_  
 Defendant

**ADULT BIND OVER**

3. Examination has been waived.
4. Examination was held and it was found that probable cause exists to believe both that an offense not cognizable by the district court has been committed and that the defendant committed the offense.
5. The defendant is bound over to circuit court to appear on 2/27/13 at 1:30 m.  
 Date Time
- on the charge(s) in the complaint.
- on the amended charge(s) of \_\_\_\_\_
- MCL/PACC Code \_\_\_\_\_

6. Bond is set in the amount of \$500. Type of bond: CK  Posted  Pro  
 Date FEB 15 2013 Judge Anderson Bar no. \_\_\_\_\_

MAY 30 2013  
 I hereby certify that this document is a true and correct copy of the original on file with this court.  
Elizabeth Roberts  
 Deputy Clerk

**C.R. BOND** 2-5-14  
 ATTACHMENT 4

Approved, SCAG

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	WAIVER OF ARRAIGNMENT AND ELECTION TO STAND MUTE OR ENTER NOT GUILTY PLEA	CASE NO. <b>13-576-FY</b> <b>13-161-FH</b>
---	---	--

ORI MI-	Court address	Court telephone no.
------------	---------------	---------------------

THE PEOPLE OF THE STATE OF MICHIGAN

Defendant's name, address, and telephone no.  
**Fateen Muhammad**

CTN/TCN	SID	DOB
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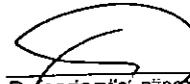
The defendant and the attorney for the defendant acknowledge that

**- Felony Complaint**

1. we have received a copy of the information and/or supplemental information filed in this case.
2. the defendant has read the information(s), or had it read or explained to him/her.
3. we each understand the substance of the charge(s).
4. the defendant waives arraignment in open court.

5. the defendant  pleads not guilty to the charge(s).  
plea of not guilty.

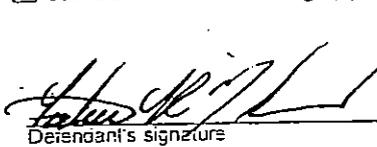
stands mute to the charge(s) and requests the court to enter a

  
Defendant's attorney signature

**P-47811**  
Bar no.

**2875 Northwind Dr., Ste 137**  
Address

**EAST LANSING, MI 48223 353-9905**  
City, state, zip Telephone no.

  
Defendant's signature

Address

City, state, zip Telephone no.

Name of person with whom defendant resides, and relationship

Defendant's employer

**ENTRY OF PLEA**

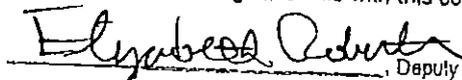
A plea of not guilty is entered on behalf of the defendant. Bond/Bail is continued.

**CERTIFIED COPY**  
**30TH CIRCUIT COURT**

Date \_\_\_\_\_ Bar no. \_\_\_\_\_

MAY 30 2013

I hereby certify that this document is a true and correct copy of the original on file with this court.

  
Deputy Clerk



Therefore, defendant is subject to the penalties provided by MCL 769.12. [769.12]  
PENALTY: Life if primary offense has penalty of 5 Years or more, 15 Years or less if primary offense has penalty under 5 Years. The maximum penalty cannot be less than the maximum term for a first conviction.

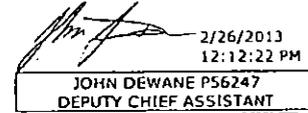
Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling samples.

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney

By:

Stuart Dunnings, III P31089



**CERTIFIED COPY**  
**30TH CIRCUIT COURT**

MAY 30 2013

I hereby certify that this document is a true and correct copy of the original on file with this court.

Elizabeth Roberts Deputy Clerk

STATE OF MICHIGAN  
IN THE 30<sup>th</sup> JUDICIAL CIRCUIT

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

FATEEN MUHAMMAD,

Defendant.

---

Case No. 13-161-FH

Hon. Rosemarie E. Aquilina

Ingham County Prosecuting Attorney  
Stuart Dunning, III (P31089)  
303 W Kalamazoo Street  
Lansing, Michigan 48933  
(517) 483-6108

The Curi Law Office, P.L.L.C.  
Attorney for Defendant  
Joseph D. Curi (P47811)  
2875 Northwind Drive, Suite 137  
East Lansing, Michigan 48823  
(517) 333-9905

---

**DEFENDANT'S MOTION TO DISMISS**  
**HABITUAL OFFENDER COUNT**

NOW COMES Defendant, FATEEN MUHAMMAD, through THE CURI LAW OFFICE, P.L.L.C., by and through Joseph D. Curi, attorney at law, and in support of his motion, states as follows:

1. This motion is brought pursuant to MCL 769.13 and Michigan case law.
2. The crux of this motion is to have this Court strike the Habitual Offender

Count in the Felony Information, since the notice to seek an enhanced sentenced was not timely filed or served as is required pursuant to MCL 767.13 (See Felony Information attached as Exhibit A).

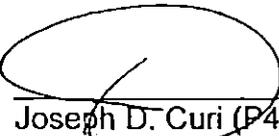
The Curi Law Office, PLLC  
2875 Northwind Drive  
Suite 137  
East Lansing, MI 48823  
(517) 333-9903

WHEREFORE, for all of the reasons stated in this motion, Defendant respectfully requests that this Court strike the Habitual Offender Notice from the Felony Information.

Date: May 22, 2013

Respectfully submitted,

The Curi Law Office, P.L.L.C.

  
\_\_\_\_\_  
Joseph D. Curi (P47811)  
Attorney for Defendant  
2875 Northwind Drive, Suite 137  
East Lansing, Michigan 48823  
(517) 333-9905

**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS  
HABITUAL OFFENDER COUNT**

**Facts**

According to the police report, on February 2, 2013, Defendant was arrested. Following a February 15, 2013 Preliminary Examination, Defendant was bound over to Ingham County Circuit Court on felony charges of Home Invasion First Degree, contrary to MCL 750.110a(2) and Assault with Intent to do Great Bodily Harm Less than Murder, contrary to MCL 750.84 and Habitual Offender – Fourth Offense Notice (See Felony Information attached as Exhibit A). Defendant waived Arraignment (See Waiver of Arraignment attached as Exhibit B).

A Pre-Trial was conducted in this Court on March 27, 2013. The prosecution did not provide Defendant or Defendant's counsel with a copy of the Felony Information at the Pre-Trial. The prosecuting attorney forwarded a copy of the Felony Information to

The Curi Law Office, PLLC  
2875 Northwind Drive  
Suite 137  
East Lansing, MI 48823  
(517) 333-9905

Defense counsel on April 24, 2013 (See e-mail attached as Exhibit C). Based on the date stamp, the Felony Information was filed with this Court on February 27, 2013.

### LEGAL ARGUMENT

**I. SINCE THE HABITUAL OFFENDER NOTICE WAS NOT TIMELY SERVED AND FILED PURSUANT TO MCL 769.13, IT MUST BE STRICKEN.**

The controlling statute regarding the filing and serving of Habitual Offender Notices is MCL 769.13. MCL 769.13(1) and (2) state as follows:

**"§ 769.13. Notice of intent to seek enhanced sentence; filing by prosecuting attorney; challenge to accuracy or constitutional validity; evidence of existence of prior conviction; determination by court; burden of proof.**

Sec. 13. (1) In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, *within 21 days after the filing of the information charging the underlying offense.*

(2) A notice of intent to seek an enhanced sentence filed under subsection (1) shall list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement. The notice shall be filed with the court *and served upon the defendant or his or her attorney within the time provided in subsection (1).* The notice may be personally served upon the defendant or his or her attorney at the arraignment on the information charging the underlying offense, or may be served in the manner provided by law or court rule for service of written pleadings. The prosecuting attorney shall file a written proof of service with the clerk of the court."

(Emphasis added).

\* \* \*

The Court in People v Ellis, 224 Mich App 752; 569 NW2d 917 (1997) addressed the issue of timely filing and serving an Habitual Offender Notice:

"If a prosecutor wishes to file a supplemental information alleging that a defendant is an habitual offender, he must do so "promptly." People v Fountain, 407 Mich. 96, 98; 282 N.W.2d 168 (1979). In defining "promptly," our Supreme Court has stated:

The purpose of requiring a prosecutor to proceed "promptly" to file the supplemental information is to provide the accused with notice, at an early stage in the proceedings, of the potential consequences should the accused be convicted of the underlying offense. We conclude that a standard which would find a filing on the day of trial to suffice is an inadequate one. We recognize that any "rule" which we might establish is subject to the criticism that it is arbitrary. However, we believe that the imposition of a "rule" is preferable to the ad hoc decision-making which has been the practice heretofore.

Accordingly, we hold that a supplemental information is filed "promptly" if it is filed not more than 14 days after the defendant is arraigned in circuit court (or has waived arraignment) on the information charging the underlying felony, or before trial if the defendant is tried within that 14-day period. We believe that such a rule allows the prosecutor sufficient time to make a decision concerning supplementation while at the same time providing notice at an early stage of the proceedings to the defendant of the potential consequences of conviction of the underlying felony. [*People v Shelton*, 412 Mich. 565, 569; 315 N.W.2d 537 (1982).]

The Legislature has seen fit to enlarge the time within which a prosecutor may file an habitual offender information to twenty-one days:

(1) In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21 days after the defendant's 21 days after the filing of the information charging the underlying offense.

(2) A notice of intent to seek an enhanced sentence filed under subsection (1) shall list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement. The notice shall be filed with the court and served upon the defendant or his or her attorney within the time provided in subsection (1). [MCL 769.13; MSA 28.1085, as amended by 1994 Pa. 110.]

As this Court has recently held, this statute reflects a bright-line test for determining whether a prosecutor has filed a supplemental information "promptly." *People Bollinger*, 224 Mich. App. 491, 492; 569 N.W.2d 646 (1997)."

The Curr Law Office, PLLC  
2875 Northwood Drive  
Suite 137  
East Lansing, MI 48823  
(517) 333-9905

Ellis at 754-755.

\* \* \*

In this case, the following time line applies:

DATE	EVENT
02/05/13	Defendant arrested.
02/15/13	Preliminary Examination held. Defendant bound over to Circuit Court. Defendant waived arraignment.
02/27/13	Felony Information filed with Court.
03/27/13	Circuit Court Pre-Trial.
04/24/13	Prosecution served Defense counsel with Felony Information.

Given the above-referenced time line, it is clear that the prosecution did not serve the defense with a copy of the sentence enhancement request pursuant to MCL 769.13.

Given this violation of MCL 769.13, the proper remedy is to strike the sentence enhancement. This is true whether or not the untimely notice prejudiced Defendant. See People v Cobley, 463 Mich 893; 618 NW2d 768 (2000). (The following are attached as Exhibit D – People v Cobley, 463 Mich 893; 618 NW2d 768 (2000) and the unpublished opinion in People v Cobley, 1999 Mich App Lexis 1666).

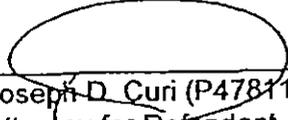
#### REQUESTED RELIEF

WHEREFORE, for all of the reasons stated in this motion, Defendant respectfully requests that this Court strike the Habitual Offender Notice from the Felony Information.

Date: May 22, 2013

Respectfully submitted,

The Curi Law Office, P.L.L.C.

  
 \_\_\_\_\_  
 Joseph D. Curi (P47811)  
 Attorney for Defendant  
 2875 Northwind Drive, Suite 137  
 East Lansing, Michigan 48823  
 (517) 333-9905

The Curi Law Office, PLLC  
 2875 Northwind Drive  
 Suite 137  
 East Lansing, MI 48823  
 (517) 333-9905

# EXHIBIT A

CTN 33-13000949-01 TM C11

STATE OF MICHIGAN 54A JUDICIAL DISTRICT 30L JUDICIAL CIRCUIT	INFORMATION FELONY	CASE NO.: DISTRICT: CIRCUIT: 13-000161-F1
--	-----------------------	---

District Court ORI MI330075J 124 W. MICHIGAN AVE. LANSING, MI 48933 517-483-4433	Circuit Court ORI MI330055J 313 W. Kalamazoo, Lansing, MI 48901 517-483-6500
--	--

THE PEOPLE OF THE STATE OF MICHIGAN	Defendant's name and address V FATEEN ROHN MUHAMMAD 4304 GUILFORD GRATIOT, MI 48059 Sex: M Race: Black	Victim or complainant KRYSTAL MUHAMMED Complaining Witness OFC WENDY PRINCE
-------------------------------------	--	--

Co-defendant(s)	Date On or about 02/05/2013
-----------------	--------------------------------

City/Twp./Village CITY OF LANSING	County in Michigan Ingham	Defendant TCN K813070193W	Defendant CTN 33-13000949-01	Defendant SID 1372717A	Defendant DOB 01/19/1967
--------------------------------------	------------------------------	------------------------------	---------------------------------	---------------------------	-----------------------------

Police agency report no. 33LLA 130205001211	Charge SEE BELOW	DLN Type	Vehicle Type	Defendant DLN M530244744052
--	---------------------	----------	--------------	--------------------------------

Witnesses KRYSTAL MUHAMMED OFC PENNI ELTON	OFC WENDY PRINCE MAIL CARRIER	OFC RACHEL BAHL
--	----------------------------------	-----------------

STATE OF MICHIGAN, COUNTY OF INGHAM  
IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this County appears before the court and informs the court that on or about 02/05/2013 at 337 E Edgewood #5, the defendant:

COUNT 1: HOME INVASION - 1ST DEGREE  
did enter without permission a dwelling located at 337 East Edgewood, #5, and, while entering, present in, or exiting did commit an assault, and while entering, present in, or exiting the dwelling Krystal Muhammed, was lawfully present therein; contrary to MCL 750 110a(2). [750.110A2]  
FELONY 20 Years and/or \$5,000 00

COUNT 2: ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN MURDER  
did make an assault upon Krystal Muhammed with intent to do great bodily harm less than the crime of murder; contrary to MCL 750 84. [750.84].  
FELONY: 10 Years or \$5,000.00; DNA to be taken upon arrest.

HABITUAL OFFENDER - FOURTH OFFENSE NOTICE  
Take notice that the defendant was previously convicted of three or more felonies or attempts to commit felonies in that on or about 2/25/2009, he or she was convicted of the offense of Deliver/Manufacture Narcotics Less Than 50 Grams in violation of MCL 333 74012A4; in the 30th Circuit Court for Lansing, State of Michigan; And on or about 12/05/2007, he or she was convicted of the offense of Breaking and Entering a Building with Intent in violation of MCL 750.110, in the 30th Circuit Court for Lansing, State of Michigan; And on or about 08/04/1994, he or she was convicted of the offense of Assault with a Dangerous Weapon in violation of MCL 750.82; in the Detroit Records Court Court for Detroit, State of Michigan,

FILE  
FEB 27 2013  
CLERK OF DISTRICT COURT  
LANSING, MI

STATE OF MICHIGAN  
JUDICIAL CIRCUIT  
COUNTY

WAIVER OF ARRAIGNMENT AND  
ELECTION TO STAND MUTE OR  
ENTER NOT GUILTY PLEA

CASE NO

13-576-FY

ORI  
MI-

Court address

Court telephone no

THE PEOPLE OF THE STATE OF MICHIGAN

Defendant's name address and telephone no  
*Fateen Muhammad*  
CTNTRY SID DOB

The defendant and the attorney for the defendant acknowledge that

*Felony Complaint*

- 1 we have received a copy of the ~~information and/or supplemental information~~ filed in this case
- 2 the defendant has read the information(s), or had it read or explained to him/her
- 3 we each understand the substance of the charge(s)
- 4 the defendant waives arraignment in open court

5 the defendant  pleads not guilty to the charge(s)  
plea of not guilty

stands mute to the charge(s) and requests the court to enter a

Defendant's attorney signature

*P-47811*

Bar no

*2875 Northwind Dr., Ste 137*  
Address

*EAST LANSING, MI 48203 333-9905*  
City state, zip Telephone no

Defendant's signature

Address

City, state zip

Telephone no

Name of person with whom defendant resides, and relationship

Defendant's employer

ENTRY OF PLEA

A plea of not guilty is entered on behalf of the defendant Bond/Bail is continued

Date

Judge

Bar no

# EXHIBIT C

---

"Roth, Jonathan" <pa\_roth@ingham.org>   
To Joseph <curilawoffice@tds.net>  
fateen muhammad

April 24, 2013 10:22 AM

1 Attachment, 68 KB

please see attached for the felony information

Jonathan C. Roth  
Ingham County Prosecutor's Office  
303 W. Kalamazoo St.  
Lansing, MI 48933  
(517) 483-6108



MUHAMMA\_3.pdf (68 KB)

# EXHIBIT D

---

[Switch Client](#) | [Preferences](#) | [Help](#) | [Sign Out](#)[My Lexis™](#)[Search](#)[Get a Document](#)[Shepard's®](#)[More](#)[History](#)[Alerts](#)FOCUS™ Terms  Search Within   [Advanced...](#)[View Tutorial](#)Source: [My Sources](#) > [Michigan](#) > [Find Cases](#) > [MI State Cases, Combined](#) Terms: **people v coble** ([Suggest Terms for My Search](#) | [Feedback on Your Search](#)) Select for FOCUS™ or Delivery*1999 Mich. App. LEXIS 1666, \****PEOPLE OF THE STATE OF MICHIGAN**, Plaintiff-Appellee, v **RYAN PATRICK COBLEY**, Defendant-Appellant.

No. 204155

COURT OF APPEALS OF MICHIGAN

1999 Mich. App. LEXIS 1666

April 20, 1999, Decided

**NOTICE:** [\*1] IN ACCORDANCE WITH THE MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.**PRIOR HISTORY:** Shiawassee Circuit Court. LC No. 96-007655 FH.**DISPOSITION:** Affirmed.**CASE SUMMARY****PROCEDURAL POSTURE:** Defendant appealed the judgment of the Shiawassee Circuit Court (Michigan), which was entered on a jury's verdict that convicted defendant of two counts of felonious assault, malicious destruction of property over \$ 100, and escape from lawful custody in violation of Mich. Comp. Laws §§ 750.82, 750.377a, 750.197a. Defendant was sentenced as a fourth habitual offender, pursuant to Mich. Comp. Laws § 769.12, to concurrent prison terms.**OVERVIEW:** Defendant essentially committed acts of terrorism against his victims. The trial court's judgment, which the court affirmed, convicted defendant of felonious assault, malicious destruction of property, and escape from lawful custody. The court held that, although the prosecutor failed to serve notice of his intent to seek an enhanced sentence against defendant as an habitual offender, such error was harmless because defendant had actual notice of the filing of the habitual information well before trial. Further, he did not suffer prejudice by the lack of service. The court determined that the trial court correctly permitted the prosecutor to amend the supplemental information, to reflect the correct prior conviction of attempted breaking and entering from breaking and entering, because the amendment did not increase the severity of the habitual information charge. The court concluded that the trial court imposed a sentence that was proportionate to the offense and the offender given defendant's criminal history and the intolerable nature of his conduct toward his victims.

**OUTCOME:** The court affirmed the trial court's judgment that convicted defendant of felonious assault, malicious destruction of property, and escape from lawful custody.

**CORE TERMS:** habitual offender, supplemental, prosecutor, sentence, notice, sentencing, sentencing guidelines', prosecutor's failure, serve notice, prior convictions, imprisonment, habitual, amend, destruction of property, enhanced sentence, actual notice, defense counsel, breaking and entering, disproportionate, prejudiced, convicted, malicious, sentenced, correctly, offender, assault, contest

## LEXISNEXIS® HEADNOTES

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Criminal Law & Procedure > Sentencing > Guidelines > Adjustments & Enhancements > Criminal History > Prior Misdemeanors 

**HN1**  The proof of service requirement in Mich. Comp. Laws § 769.13(2) is designed to ensure that a defendant promptly receives notice of the potential consequences of an habitual offender charge should he be convicted of the underlying offense. Thus, where there is no dispute that a defendant is actually aware of the prosecutor's intent to file the habitual information, that defendant is not prejudiced by the prosecutor's noncompliance with § 769.13(2). More Like This Headnote

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**HN2**  A defendant's right to adequate notice of the charges against him upon which he is to defend is guaranteed by the Due Process Clause of U.S. Const. amend. XIV. However, prejudice is essentially a prerequisite to any claim of inadequate notice. More Like This Headnote

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Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Time Limitations 

Criminal Law & Procedure > Sentencing > Guidelines > Adjustments & Enhancements > Criminal History > General Overview 

**HN3**  The prosecution may not amend an otherwise timely supplemental information outside the 21 day period that is set forth in Mich. Comp. Laws § 769.13(1) to allege additional prior convictions that will, in effect, increase the level of the supplemental charge. However, this rationale is inapplicable to a situation where the prosecutor merely seeks to correct an error, and the correction does not elevate the level of the supplemental charge. More Like This Headnote

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Criminal Law & Procedure > Sentencing > Proportionality 

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview 

**HN4** When a defendant is sentenced as an habitual offender, the sentencing guidelines do not apply and may not be considered on appeal in determining the appropriate sentence. Instead, an appellate court's review is limited to whether the trial court has abused its discretion in imposing defendant's sentence. A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. Thus, an habitual offender's sentence must comply with the principle of proportionality. [More Like This Headnote](#)

**JUDGES:** Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

## OPINION

### PER CURIAM.

Following a jury trial, defendant was convicted of two counts of felonious assault, MCL 750.82; MSA 28.277, malicious destruction of property over \$ 100, MCL 750.377a; MSA 28.609(1), and escape from lawful custody, MCL 750.197a; MSA 28.394(1). As a fourth habitual offender, defendant was subject to an enhanced penalty pursuant to MCL 769.12; MSA 28.1084. The trial court sentenced defendant to concurrent terms of ten to fifteen years' imprisonment for the assault convictions, ten to fifteen years' imprisonment for the malicious destruction of property conviction, and 260 days' imprisonment for the escape conviction. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erred in sentencing him as an habitual offender because the prosecutor failed to serve notice of his [\*2] intent to seek an enhanced sentence on defendant, as required by MCL 769.13; MSA 28.1085. We conclude that although the prosecutor's failure to serve notice upon defendant was technically a violation of the statute, such error was harmless because defendant had actual notice of this filing well before trial, and he did not suffer any prejudice by the lack of service.

It is undisputed that the prosecutor filed timely notice of his intent to seek an enhanced sentence based upon defendant's habitual offender status. In addition, the record indicates that the prosecutor informed the court, defendant and defense counsel at the arraignment that he "will be filing a supplemental information alleging him as a fourth time habitual offender." In fact, defense counsel did not contest that he received actual notice of the prosecutor's intent to file the supplemental information well in advance of trial, nor did he contest that the habitual offender charge was a factor that was used in ongoing plea negotiations. **HN1** The proof of service requirement in MCL 769.13(2); MSA 28.1085(2) is designed to ensure that a defendant promptly receives notice of the [\*3] potential consequences of an habitual offender charge should he be convicted of the underlying offense. *People v Ellis*, 224 Mich App 752, 754; 569 NW2d 917 (1997). Thus, where there is no dispute that defendant was actually aware of the prosecutor's intent to file the habitual information, we conclude that defendant was not prejudiced by the prosecutor's noncompliance with the statute. <sup>1</sup>

## FOOTNOTES

<sup>1</sup> Defendant cites *People v Bollinger*, 224 Mich App 491; 569 NW2d 646 (1997), to support his claim that the trial court erred in sentencing him as an habitual offender. We find that *Bollinger* is inapposite, however, because that case dealt with a prosecutor's failure to file the supplemental charge within the statutory period, and did not address the consequences where the prosecutor fails to serve notice of the supplemental charge on the defendant, which is the situation presented here.

In a related argument, defendant contends that the prosecutor's failure [\*4] to serve him with notice of the charge violated his due process right to be informed of the charges against him. We disagree.

**HN2** A defendant's right to adequate notice of the charges against him upon which he is to defend is guaranteed by the Due Process Clause of the Fourteenth Amendment. *People v Darden*, 230 Mich App 597, 600; 585 NW2d 27 (1998). However, "prejudice is essentially a prerequisite to any claim of inadequate notice." *Id.* at 602, n 6, citing *People v Traugher*, 432 Mich 208, 215; 439 NW2d 231 (1989) ("The dispositive question is whether the defendant knew what acts he was being tried for so he could adequately put forth a defense. Put another way, was the defendant prejudiced by the information[?]"). Here, defendant was aware of the charges against him, and had sufficient time and ability to fully defend against the supplemental information. *People v Walker*, Mich App ; NW2d (1999). Therefore, defendant's due process argument lacks merit.

Next, defendant contends that the trial court erred in allowing the prosecutor to amend the supplemental habitual information [\*5] at sentencing to correct one of defendant's prior convictions from breaking and entering to attempted breaking and entering. We find no error. In *Ellis*, *supra* at 755-757, this Court held that **HN3** the prosecution may not amend an otherwise timely supplemental information outside the twenty-one day period set forth in MCL 769.13(1); MSA 28.1085(1) to allege additional prior convictions that would, in effect, increase the level of the supplemental charge. However, the rationale employed in *Ellis* is inapplicable to a situation where the prosecutor merely seeks to correct an error, and the correction does not elevate the level of the supplemental charge. *Id.* at 757, n 2, citing *People v Manning*, 163 Mich App 641; 415 NW2d 1 (1987). We find *Ellis* to be correctly decided and decline defendant's invitation to reconsider that holding. Accordingly, because the amendment, albeit untimely, did not increase the severity of the habitual information charge, we conclude that the trial court correctly permitted the prosecutor to amend the supplemental information to reflect the correct prior conviction.

Finally, [\*6] defendant contends that the trial court incorrectly calculated his sentencing guidelines' range and imposed a disproportionate sentence. We disagree. **HN4** Defendant was sentenced as an habitual offender; hence, the sentencing guidelines do not apply, *People v Cervantes*, 448 Mich 620, 625-626; 532 NW2d 831 (1995); *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996), and may not be considered on appeal in determining the appropriate sentence, *People v Edgett*, 220 Mich App 686, 694; 560 NW2d 360 (1996). Instead, this Court's review is limited to whether the trial court abused its discretion in imposing defendant's sentence. *Cervantes*, *supra* at 627; *People v Elliott*, 215 Mich App 259, 261; 544 NW2d 748 (1996). A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635; 461 NW2d 1 (1990). Thus, an habitual offender's sentence must comply with the principle of proportionality. [\*7] *Id.* at 650.

Initially, we note that because the sentencing guidelines do not apply to habitual offenders, *Cervantes*, *supra* at 630, any error in calculating defendant's sentencing score is inconsequential. Moreover, after a thorough review of the record, we conclude that, contrary to defendant's contention, the trial court sufficiently articulated the reasons for defendant's sentence, focusing particularly on defendant's criminal history and the intolerable nature of defendant's conduct which amounted to an act of terrorism against the victims, *People v Poole*, 186 Mich App 213, 214-215; 463 NW2d 478 (1990), and imposed a sentence that was proportionate to the offense and the offender, *Milbourn*, *supra* at 634-635.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Mark J. Cavanagh

/s/ Brian K. Zahra

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STATE OF MICHIGAN

IN THE 30th CIRCUIT COURT FOR THE COUNTY OF INGHAM

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff.

Docket No. 13-161-FH

Hon. Rosemarie Aquilina

v.

FATTEN ROHN MUHAMMAD,

Defendant.

---

Andrew M. Stevens (P73680)  
Assistant Prosecuting Attorney  
Ingham County Prosecuting Attorney  
303 W. Kalamazoo Street  
Lansing, MI 48933

Joseph D. Curi (P47811)  
Attorney for Defendant Muhammad  
2875 Northwind Drive, Suite 137  
East Lansing, MI 48823

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**PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS HABITUAL  
OFFENDER NOTICE**

NOW COME the People of the State of Michigan, by and through Andrew M. Stevens, Assistant Prosecuting Attorney for the County of Ingham, asking this Honorable Court to DENY the Defendants' Motion to Dismiss Habitual Offender Notice.

1. In docket number 13-161-FH, Fateen Muhammed, Defendant, is charged in a two-count Felony Information: (1) Home Invasion, 1st Degree and (2) Assault with Intent to do Great Bodily Harm Less than Murder (Assault GBH).
2. Defendant is also charged as a Habitual Offender-Fourth Offense Notice.

3. On February 6, 2013, the People of the State of Michigan authorized a two-count Felony Warrant and Complaint: (1) Home Invasion, 1st Degree and (2) Assault GBH as a Habitual Offender Fourth Offense Notice.
4. On February 6, 2013, Defendant was arraigned on the Felony Warrant and Complaint in the 54-A District Court by Judge Frank J. DeLuca.
5. On February 15, 2013, a preliminary examination was held before Judge Louise Alderson. After testimony from Ms. Krystal Muhammed, Defendant was bound over to this Honorable Court.
6. At the conclusion of the preliminary examination, neither party moved to amend the Felony complaint.
7. On February 26, 2013, Defendant executed and filed a written waiver of Circuit Court arraignment.
8. Defendant, through his attorney, modified the SCOA-approved waiver of arraignment form. Specifically, in paragraph 1, Defendant crossed out "information and/or supplemental information." Defendant, through his attorney, hand wrote the words "Felony Complaint." (See Def's Attached Exhibit B.)
9. On February 27, 2013, Defendant was formally arraigned before this Honorable Court. At the arraignment, the People filed a Felony Information – an exact replica of the Felony Complaint.
10. On March 27, 2013, a Circuit Court pre-trial was held before this Honorable Court. During that pre-trial conference, Defendant and his attorney, acknowledged complete discovery pursuant to MCR 6.201.

11. Defendant now seeks to have the Habitual Offender notice dismissed as a violation of MCL 769.13.
12. A habitual offender notice provides “the accused with notice, at an early stage in the proceedings, of the potential consequences should the accused be convicted of the underlying offense.” *People v Shelton*, 412 Mich 565, 569 (1982).
13. Defendant argues that the Habitual Offender Notice in the Felony Information should be dismissed because he, or his attorney, did not receive a Felony Information within twenty-one days of Circuit Court arraignment.
14. Given the factual history of this case, Michigan law states that Defendant’s argument is without merit. For example, in *People v Whitfield*, unpublished opinion per curiam of the Court of Appeals, issued June 3, 2010 (Docket No. 289673), p 4, the defendant argued “that his sentence for CCW should not have been enhanced because the plaintiff failed to file a notice of enhancement within 21 days of arraignment.” The Court of Appeals denied the defendant’s argument explaining that “[e]ach complaint and information in the *lower court* file includes the habitual offender notice.” *Id.*
15. Likewise, in *People v Cowans*, unpublished opinion per curiam of the Court of Appeals, issued October 28, 2008 (Docket No. 279247), p 4, the defendant argued “the prosecutor did not file notice of intent to seek an enhanced sentence in a timely manner [requiring] the enhanced sentence that was imposed [to] be vacated.” Again, the Court of Appeals denied the defendant’s argument. The Court of Appeals noted that “[t]he Warrant, Complaint, and Information all expressly state that defendant was charged as ‘Habitual Offender-Fourth Offense Notice.’” Additionally, the Court of Appeals held that the defendant was aware of the enhanced sentence because the

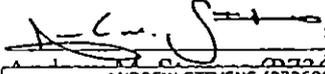
Habitual Offender Notice was included in the Warrant and Complaint that was read during District Court arraignment. *Cowans, supra* at 4. Finally, “[b]ecause [the] defendant was fully aware of the prosecutor’s intent to proceed against him as a habitual offender . . . the failure, if any, by the prosecutor . . . is harmless.” *Id.*

16. In this case, Defendant was fully aware the People intend to proceed against him as a habitual offender. First, the Habitual Offender Notice was present on the Warrant and Complaint when Defendant was arraigned by Judge DeLuca. Second and notably, Defendant acknowledged receipt of the Felony Complaint when he signed the Waiver of Circuit Court Arraignment. Moreover, when Defendant signed the Wavier of Circuit Court Arraignment, he acknowledged an understanding of the substance of the charges.

WHEREFORE, for the above-stated reasons, the People respectfully request this Honorable Court DENY Defendant’s Motion to Dismiss Habitual Offender Notice.

Dated: \_\_\_\_\_

Respectfully Submitted,

  
5/28/2013 5:25:48 PM  
ANDREW STEVENS (P73680)  
ASSISTANT PROSECUTING ATTORNEY

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

PEOPLE OF THE STATE OF MICHIGAN,	:
	:
Plaintiff,	:
	:
-vs-	: File No.
	: 13-161-FH
FATEEN ROHN MUHAMMAD,	:
	:
Defendant.	:
	:

MOTION TO DISMISS HABITUAL

BEFORE THE HONORABLE ROSEMARIE E. AQUILINA

Lansing, Michigan - May 29, 2013

APPEARANCES:

For the People: Ingham County Prosecutor  
ANDREW M. STEVENS (P73680)  
303 West Kalamazoo  
Lansing, MI 48933

For the Defendant: JOSEPH D. CURI (P47811)  
2875 Northwind Drive  
Suite 137  
East Lansing, MI 48823

Reported by: Genevieve A. Hamlin, CSR-3218

30TH JUDICIAL CIRCUIT COURT  
313 West Kalamazoo Street, Lansing, MI 48933

1 STATE OF MICHIGAN  
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM  
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PEOPLE OF THE STATE OF MICHIGAN,  
 Plaintiff,  
 -vs-  
 FATEEN ROHMI MUHAMMAD,  
 Defendant.

File No.  
 13-161-FH

MOTION TO DISMISS HABITUAL  
 BEFORE THE HONORABLE ROSMARIE E. AQUILINA  
 Lansing, Michigan - May 29, 2013

APPEARANCES:

For the People: Ingham County Prosecutor  
 ANDREW M. STEVENS (P73680)  
 303 West Kalamazoo  
 Lansing, MI 48933

For the Defendant: JOSEPH D. CURI (P47813)  
 2875 Northwind Drive  
 Suite 137  
 East Lansing, MI 48823

Reported by: Genevieve A. Hamlin, CSR-321E

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1 Lansing, Michigan  
 2 May 29, 2013  
 3 12:33 p.m.  
 4 R E C O R D  
 5 THE COURT: This is docket 13-161-FH,  
 6 People of the State of Michigan versus Fateen  
 7 Muhammad. Counsel.  
 8 MR. CURI: Your Honor, Joseph Curi here on  
 9 behalf of Fateen Muhammad. This is the time and  
 10 place set for defendant's motion to dismiss the  
 11 habitual count.  
 12 THE COURT: All right. And the record  
 13 should reflect that your client is seated at counsel  
 14 table.  
 15 MR. CURI: Correct.  
 16 THE COURT: Sir, you look like you're  
 17 having trouble seeing me. Are you okay?  
 18 THE DEFENDANT: Yes, ma'am. I wear  
 19 glasses, too. I just can't see. It's a little  
 20 bright in here compared to the county jail.  
 21 THE COURT: You, what?  
 22 THE WITNESS: It's a little bright in here  
 23 compared to where I usually be.  
 24 THE COURT: Okay. And, sir, could you  
 25 raise your right hand?

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1 I N D E X  
 2 WITNESS: PAGE  
 3 None  
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 10 EXHIBITS:  
 11 None  
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1 Do you swear or affirm the testimony you  
 2 are about to give will be the truth, the whole truth,  
 3 and nothing but the truth under penalty of perjury?  
 4 THE DEFENDANT: Yes, ma'am.  
 5 THE COURT: Thank you. You may put your  
 6 hand down. I don't anticipate you're going to say a  
 7 whole lot, but just in case, since we are talking, I  
 8 always swear everybody. This is a motion that your  
 9 attorney is bringing, but just in case I have to ask  
 10 you a couple questions, you've been sworn now, okay?  
 11 THE DEFENDANT: Thank you.  
 12 THE COURT: Have a seat, sir. Okay.  
 13 Counsel, you may proceed.  
 14 MR. CURI: Thank you, Your Honor. Your  
 15 Honor, this motion is brought under Michigan case law  
 16 MCL 769.13. I don't think any of the facts are in  
 17 dispute on this motion.  
 18 Essentially, as stated in the attached  
 19 Supreme Court order -- I should say, opinion dated  
 20 October 24, 2000, the Court is pretty clear that the  
 21 prosecutor cannot show that they not only filed but  
 22 served the defendant with the habitual notice. It's  
 23 clear.  
 24 The unpublished opinions that were attached  
 25 by the prosecutor only deal with filing. They don't

4

1 deal with serving. This opinion from the Supreme  
2 Court deals with serving, which was not done.  
3 There's no requirement that prejudices be had by  
4 defendant. And the case that I cited indicates that  
5 it's a bright line rule, which means it's  
6 unambiguous. They have to do it. They didn't do it,  
7 and there's no argument, so I think based on the law  
8 as it stands today, since they didn't -- there's no  
9 proof that they served because they didn't timely,  
10 that that needs to be dismissed under the case law  
11 and the statute. Thank you.

12 MR. STEVENS: Facts aren't in dispute.  
13 However, Mr. Curi fails to recognize that this case  
14 law is incomplete. As I indicated in my response,  
15 since the Cobley case, which is the only case he  
16 attached, which is a 2000 case, there have been --  
17 and I cited at least two instances where a habitual  
18 offender notice was not filed or served within 21  
19 days except that it was attached either on the felony  
20 complaint, the warrant, and information that was  
21 started in district court, and because they were  
22 present in district court, he was provided his  
23 notice.

24 That's the exact same situation we have  
25 here. When he was arraigned on the complaint in

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1 district court Judge DeLuca, knowing Judge DeLuca to  
2 be the chief judge and having watched him do felony  
3 arraignments, read that habitual offender notice. He  
4 was arraigned on that felony complaint. No changes  
5 were made to the felony complaint in district court  
6 after the preliminary exam. That was then filed --  
7 the information was then filed in circuit court.  
8 Even on the pretrial statement he was provided notice  
9 that he was a habitual offender, and Mr. Curi signed  
10 it.

11 Additionally, I would note that he attached  
12 an exhibit that shows he waived arraignment but he  
13 modified what is otherwise acceptable as a SCAO  
14 recognized document, so if he's modifying his waiver,  
15 then I'm not sure this is an actual waiver of  
16 arraignment, so this is an absolutely absurd result,  
17 absurd motion to bring, knowing that his habitual  
18 offender notice was attached to every piece of paper  
19 from the beginning inception of this case. He was  
20 well aware of it. The case law says knowing he was  
21 aware of it from district court through circuit  
22 court, there is no violation. If any violation, it's  
23 harmless error. And, as I indicated, the waiver of  
24 arraignment shows not only that he received the  
25 felony complaint, but I question whether this is a

6

1 valid waiver if he's going to modify the waiver, the  
2 SCAO recognized document for his own liking. I  
3 certainly don't know the answer to that question, but  
4 this is merely an attempt to manipulate the  
5 paperwork, the document to serve his own purpose, and  
6 there's no way the People would even know that he's  
7 modified the SCAO -- we don't receive a copy of this,  
8 so I would ask that you deny this motion. Again,  
9 this is based on case law but Mr. Curi's case law is  
10 incomplete, and I have provided the court with at  
11 least two examples where the Court of Appeals has  
12 said that the argument that he's making is meritless,  
13 so for that reason I'd ask that you deny the motion.

14 THE COURT: Well, I have a question for you  
15 in that regard, and the question really revolves  
16 around notice versus actual service, because I think  
17 the Supreme Court talks about having that actual  
18 notice of sentence enhancement being actually served,  
19 and there's a big difference between having it read  
20 and actual service, and the defendant has to be  
21 served on it, I think, in accordance with the Cobley  
22 case, and there's a difference there, and I'm looking  
23 to that distinction. Can you address that or --

24 MR. STEVENS: Certainly.

25 THE COURT: Okay.

7

1 MR. STEVENS: In the cases I cited,  
2 specifically the Cowans case, in that case the  
3 prosecutor did not file an information within 21  
4 days. The Court of Appeals said because the habitual  
5 notice was included and the defendant was advised of  
6 the habitual notice in the warrant, the complaint,  
7 and ultimately in the felony information, that was  
8 the notice that he needed, and that's why the Court  
9 of Appeals said in the Cowans case the argument that  
10 that defendant was making, the same one that Mr. Curi  
11 is making on behalf of Mr. Muhammad, is warrantless.  
12 He was advised of it and knew of it at the beginning  
13 of the case, just like Mr. Muhammad was. He was  
14 served with all that paperwork. He acknowledges  
15 receipt of that paperwork in his modified waiver of  
16 arraignment, in his pretrial statement, during his  
17 district court arraignment, so he received all of  
18 that.

19 The fact that, again, the actual  
20 information was not provided within 21 days is, if  
21 anything, a harmless error. I hope that that  
22 addressed Your Honor's question.

23 THE COURT: Let me hear the answer.

24 MR. CURI: Your Honor, I think in the  
25 Cowans case that the prosecutor is relying on, not

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1 me -- of course, now I am, of course. I don't think  
 2 I need it for purpose of my motion -- the Cowans  
 3 says, the court indicated in part that the -- the  
 4 court concluded a lack of proof of service in the  
 5 file was harmless error because the defendant did not  
 6 argue that he had not received notice of intent to  
 7 seek enhancement but simply argued that the proof of  
 8 service was not in the file in the lower court. I'm  
 9 arguing -- and there's no factual dispute, we did not  
 10 receive notice within 21 days. That corresponds with  
 11 the Supreme Court rule.

12 And, Your Honor, in addressing the SCAO  
 13 forms, the well recognized SCAO forms, if Your Honor  
 14 will look at those, those indicate that we have  
 15 received a copy of the felony information at that  
 16 time...I have never received a copy of the felony  
 17 information after preliminary examination. If I  
 18 signed that, I think that would be perjury or it  
 19 would certainly be misrepresentation of what I  
 20 received. At that time I received a complaint.  
 21 Thank you.

22 MR. STEVENS: Then Mr. Curi is free not to  
 23 waive arraignment if he hasn't received it.

24 THE COURT: Mr. Curi, you are saying that  
 25 your client did not have actual and timely notice of

1 the enhancement?

2 MR. CURRI: There's no factual dispute.  
 3 Under case law they define that as 21 days from the  
 4 arraignment, that's how it's defined. If Mr.  
 5 Steven's argument is accurate, then there's no need  
 6 for having 21 in the statute whatsoever. It would be  
 7 harmless, Your Honor. It would absolutely be  
 8 harmless in every case they bring up and I think  
 9 that's why the Supreme Court says we're not going to  
 10 address this case except for this one issue, we're  
 11 going to remand it down to this one issue, and I  
 12 think they've spoken.

13 MR. STEVENS: That's not what the 21 days  
 14 is for. In fact, the Copley case and the cases that  
 15 deal specifically with this issue address more  
 16 specifically supplemental informations. When there  
 17 are changes to the document or, for example, out of  
 18 state convictions are located, there needs to be a  
 19 cut off, and as the case law said, the reason for the  
 20 cut off is to provide the defendant prompt notice of  
 21 his consequences. He knew his consequences from the  
 22 inception of this case, so this idea that he had no  
 23 notice is just absolutely absurd on behalf of Mr.  
 24 Curi and his client. They knew from the beginning.

25 MR. CURRI: Your Honor, we're not arguing we

1 didn't receive service. That's not what I'm arguing.  
 2 I'm arguing that it was not within the statute, so --  
 3 I didn't make the rule.

4 THE COURT: I get it. You didn't make the  
 5 rule. I don't like the rule. And I have to say that  
 6 I'm with the People on this, but I can't rule in  
 7 favor of the People on this because of the case law.  
 8 I have to say that defendant clearly knows he has a  
 9 hab four. On the other hand, the rules are the  
 10 rules, and we have a constitution for a reason, and  
 11 we are America, and we're going to follow the rules,  
 12 and I don't like what I'm about to rule, but the  
 13 Supreme Court has spoken, and it is very clear, and,  
 14 Mr. Curi, what you say makes sense, and I'm not happy  
 15 about it, but it is what it is.

16 MR. CURRI: Sure.

17 THE COURT: Okay? I have to say, not  
 18 happy, but I'm ruling in your favor, and here's why,  
 19 so the record is clear so that I can be appealed, we  
 20 have, as the People have stated -- although  
 21 unpublished, we do have People versus Cowans,  
 22 C-o-w-a-n-s, and that's a 2008 case, and it clearly  
 23 states that MCL 769.13 provides the procedure for a  
 24 prosecutor to follow in order to seek an enhanced  
 25 sentence against a defendant based on prior felony

1 convictions. MCL 769.13(1) states that the  
 2 prosecutor must file written notice of the  
 3 enhancement within 21 days after defendant is  
 4 arraigned on the Information. This statute creates a  
 5 bright line test to determine whether notice is  
 6 provided within the proper time limit; People versus  
 7 Ellis, 224 Mich App 752.

8 MCL 769.13(2) states that the prosecutor  
 9 must also file written proof of service of this  
 10 notice to seek enhancement. However, this court has  
 11 held that the lack of proof of service in the lower  
 12 court file is harmless if the defendant had actual  
 13 and timely notice of the enhancement, and they quote  
 14 People versus Walker, 234 Mich App 299, 1999.

15 When we get to People versus Copley,  
 16 C-o-b-l-e-y, which is a Supreme Court case, 463  
 17 Michigan 893, October 24, 2000, case, that case talks  
 18 about a defendant being resentenced because the  
 19 prosecutor has not proven that the notice of sentence  
 20 enhancement was served on defendant within 21 days  
 21 after defendant was arraigned, and this case is  
 22 completely on point with what happened here. The  
 23 prosecutor essentially has 21 days to file written  
 24 notice of the enhancement. So, Mr. Curi, despite me  
 25 being troubled by this --

STATE OF MICHIGAN  
IN THE 30<sup>th</sup> JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

v

FATEEN MUHAMMAD,  
Defendant.

Case No. 13-161-FH

Hon. Rosemarie E. Aquilina

**RECEIVED**

JUN 18 2013

Ingham County Prosecuting Attorney  
Stuart Dunnings, III (P31089)  
303 W Kalamazoo Street  
Lansing, Michigan 48933  
(517) 483-6108

The Curi Law Office, P.L.L.C.  
Attorney for Defendant  
Joseph D. Curi (P47811)  
2875 Northwind Drive, Suite 137  
East Lansing, Michigan 48823  
(517) 333-9905

ORDER  
GRANTING DEFENDANT'S MOTION TO DISMISS  
HABITUAL OFFENDER COUNT

At a session of said Court, held in the Courthouse  
in the City of Lansing, County of Ingham  
on the 13<sup>th</sup> day of June, 2013

PRESENT: THE HONORABLE ROSEMARIE E. AQUILINA,  
CIRCUIT COURT JUDGE

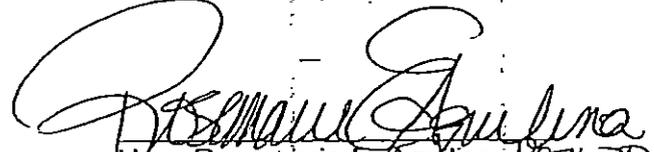
The Curi Law Office, PLLC  
2875 Northwind Drive  
Suite 137  
East Lansing, MI 48823  
(517) 333-9905

This Court having reviewed Defendant's Motion to Dismiss Habitual Offender Count and the People's Response in opposition to the motion, and oral argument from defense counsel and the People, and after considering the above and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED;

Defendant's Motion to Dismiss Habitual Offender Count is GRANTED and the Habitual Offender Count is hereby dismissed for the reasons stated on the record.

Dated: 13 June 13

  
Hon. Rosemarie E. Aquilina: P37670  
Circuit Court Judge,  
Ingham County

The Curi Law Office, PLLC  
2875 Northwind Drive  
Suite 137  
East Lansing, MI 48823  
(517) 333-9905

C:\lose

Search Criteria

%Open 13-000161-FH-C30 People vs MUHAMMAD, FATEEN ROHN

%Save Docket Entry > Begin Date > SortAscending  
 Images All Dockets. > End Date >

%Print Participant >  
 Display Exclude Non Display Dockets  
 Option

- 1 Events
- 2 Notes
- 3 Scan
- 4 Long Display
- 5 In Custody
- 6 Parties
- 7 Image
- 8 Forms
- 9 Print Docket
- 0 Portrait, Print
- 1 Reorder Dockets
- 2 File Tracking
- 1 No Motions
- 2 System Notification
- 3 Docket Image Link
- 4 Docket Calculate Process
- 5 Global Cost Dismiss
- 6 View Document
- 7 Options

Search Results			Amt Owed/ Amt Dism/Credit	Amount Due
Docket Date	Reference	Description		
2/20/2013		DISTRICT COURT BINDOVER RECEIVED COMPLIANCE WITH FINGERPRINT REQUIREMENT	0.00	0.00
2/22/2013		ARREST BOND	0.00	0.00
		Arrest Bond Added to Case with: Action Code: HOME INVASION 1ST DEGREE Arrest Date: 02/05/2013 Bond Status: C30 BOND NOT POSTED Status Date: 02/22/2013 Blanket Bond: No Okay to Apply: No Bond Type: CR CASH/SURETY Bond Amount: 25000		
2/22/2013		HEARING SET: Event: ARRAIGNMENT Date: 02/27/2013 Time: 9:00 am Judge: AQUILINA, ROSEMARIE E. Location: COURTROOM 5 - VETERANS MEMORIAL	0.00	0.00
2/22/2013		Result: WRITTEN WAIVER FILED CONDITIONAL BOND RELEASE ORDER - NO CONTACT W/ KRYSTAL MUHAMMED. DEF. CANNOT BE WITHIN 500FT OF THE VICTIM'S LOCATION; INCLUDING HER RESIDENCE, WORK, OR SCHOOL	0.00	0.00
2/26/2013		WRITTEN WAIVER OF ARRAIGNMENT The following event: ARRAIGNMENT scheduled for 02/27/2013 at 9:00 am has been resulted as follows:	0.00	0.00
		Result: WRITTEN WAIVER FILED Judge: AQUILINA, ROSEMARIE E. Location: COURTROOM 5 - VETERANS MEMORIAL Result Staff: Staff: COURT REPORTER: HAMLIN, JEAN ANN Certification Number: 3218		

ATTACHMENT 11

3/18/2013

HEARING SET:  
Event: CRIMINAL PRETRIAL CONFERENCE  
Date: 03/27/2013 Time: 8:30 am  
Judge: AQUILINA, ROSEMARIE E. Location:  
COURTROOM 5 - VETERANS MEMORIAL

0.00

0.00

3/18/2013

Result: HELD BUT NOT ON RECORD  
ORDER SETTING CRIMINAL PRETRIAL CONFERENCE FOR  
03/27/13 @ 8:30AM, DEF MUST BE PRESENT

0.00

0.00

3/27/2013

CRIMINAL PRE-TRIAL CONFERENCE ORDER

0.00

0.00

3/27/2013

TRANSCRIPT OF PROCEEDINGS 02/15/13PELIMINARY  
EXAMINATION BEFORE JUDGE LOUISE ALDERSON  
(DISTRICT COURT JUDGE)

0.00

0.00

3/28/2013

HELD BUT NOT ON THE RECORD  
The following event: CRIMINAL PRETRIAL  
CONFERENCE scheduled for 03/27/2013 at 8:30 am  
has been resulted as follows:

0.00

0.00

4/22/2013

Result: HELD BUT NOT ON RECORD  
Judge: AQUILINA, ROSEMARIE E. Location:  
COURTROOM 5 - VETERANS MEMORIAL  
Result Staff:  
Staff: COURT REPORTER: HAMLIN, JEAN ANN  
Certification Number: 3218  
HEARING SET:  
Event: JURY TRIAL CRIMINAL  
Date: 06/03/2013 Time: 9:00 am  
Judge: AQUILINA, ROSEMARIE E. Location:  
COURTROOM 5 - VETERANS MEMORIAL

0.00

0.00

4/24/2013

Result: C30 ADJOURNED  
MISCELLANEOUS MOTION FILED BY DEF IN PRO PER

0.00

0.00

5/10/2013

HEARING SET:  
Event: MOTION TO DISMISS  
Date: 05/29/2013 Time: 11:30 am  
Judge: AQUILINA, ROSEMARIE E. Location:  
COURTROOM 5 - VETERANS MEMORIAL

0.00

0.00

5/22/2013

Result: GRANTED  
DEF'S MOTION TO DISMISS HABITUAL OFFENDER COUNT;  
NOTICE OF HEARING; POS --Attorney: CURI, JOSEPH

0.00

0.00

5/28/2013	PEOPLE'S RESPONSE TO DF'S MOTION TO DISMISS HABITUAL OFFENDER NOTICE W/PS	0.00	0.00
5/28/2013	TRANSCRIPT OF PROCEEDINGS (MOTION TO DISMISS HABITUAL) B/F JUDGE AQUILINA) ON 052913 - REPORTED BY GENEVIEVE HAMLIN CSR3218	0.00	0.00
5/30/2013	GRANTED ON THE RECORD The following event: MOTION TO DISMISS scheduled for 05/29/2013 at 11:30 am has been resulted as follows:  Result: GRANTED Judge: AQUILINA, ROSEMARIE E. Location: COURTROOM 5 - VETERANS MEMORIAL Result Staff: Staff: COURT REPORTER: HAMLIN, JEAN ANN Certification Number: 3218	0.00	0.00
5/30/2013	HEARING SET: Event: MOTION TO SUPPRESS Date: 06/20/2013 Time: 1:30 am Judge: AQUILINA, ROSEMARIE E. Location: COURTROOM 5 - VETERANS MEMORIAL	0.00	0.00
5/30/2013	Result: C30 ADJOURNED NOTICE OF FILING THAT ON 053013 CORRECT TRANSCRIPT OF HEARING ON 052913	0.00	0.00
6/3/2013	HEARING ADJOURNED The following event: JURY TRIAL CRIMINAL scheduled for 06/03/2013 at 9:00 am has been resulted as follows:  Result: C30 ADJOURNED Judge: AQUILINA, ROSEMARIE E. Location: COURTROOM 5 - VETERANS MEMORIAL Result Staff: Staff: COURT REPORTER: HAMLIN, JEAN ANN Certification Number: 3218	0.00	0.00
6/3/2013	PEOPLE'S TRIAL WITNESS LIST DISCLOSURE DEMANDS W/CRT OF SRV	0.00	0.00
6/10/2013	NOTICE OF SUBMISSION 7-DAY ORDER W/PS	0.00	0.00
6/11/2013	TRANSCRIPT OF PROCEEDINGS (ARRAIGNMENT): JUDGE'S DELUCA B- RECORDED BY JULIA CHERRY, CER	0.00	0.00

6/13/2013	DF'S MOTION TO SUPPRESS AND FUNDING FOR A MEDICAL INCLUDING X-RAYS - BRIEF IN SUPPORT - NOTICE OF HEARING (HRG ON 062013 @ 1:30 PM) W/PS	0.00	0.00	EM
6/13/2013	ORDER GRANTING DF'S MOTION TO DISMISS HABITUAL OFFENDER COUNT	0.00	0.00	EM
6/18/2013	PROOF OF SERVICE ON 061813 A COPY OF ORDER GRANTING DF'S MOTION TO DISMISS HABITUAL BY MAIL UPON ATTY FOR PL	0.00	0.00	EM
6/20/2013	HEARING ADJOURNED The following event: MOTION TO SUPPRESS scheduled for 06/20/2013 at 1:30 am has been resulted as follows:	0.00	0.00	EM
6/20/2013	Result: C30 ADJOURNED Judge: AQUILINA, ROSEMARIE E.      Location: COURTROOM 5 - VETERANS MEMORIAL Result Staff: Staff: COURT REPORTER: HAMLIN, JEAN ANN Certification Number: 3218 HEARING SET:	0.00	0.00	EM
6/20/2013	The following event: MOTION TO SUPPRESS scheduled for 06/20/2013 at 1:30 am. has been rescheduled as follows:  Event: MOTION TO SUPPRESS Date: 07/18/2013      Time: 4:00 pm Judge: AQUILINA, ROSEMARIE E.      Location: COURTROOM 5 - VETERANS MEMORIAL HEARING SET: Event: JURY TRIAL CRIMINAL Date: 08/05/2013      Time: 9:00 am Judge: AQUILINA, ROSEMARIE E.      Location: COURTROOM 5 - VETERANS MEMORIAL	0.00	0.00	EM

CRIMINAL PRE-TRIAL CONFERENCE ORDER

PEOPLE OF THE STATE OF MICHIGAN,

Docket No: 13-161-fl

v

Honorable Rosemarie E. Aquilina

fateen muhammad

Charges: h1, gbh, hab4

Prosecution Checklist:

- YES/NO Additions/deletions to the witness list on the Information who will be called at trial?  
If yes, explain: all mentioned in police report, mailman #4
- YES/NO Discovery pursuant to MCR 6.201 and/or Brady complete? If no, explain: \_\_\_\_\_
- YES/NO Intent to use MRE 609 convictions? If yes, specify: \_\_\_\_\_
- YES/NO Intent to use MRE 404(b) evidence? If yes, specify: \_\_\_\_\_
- YES/NO Physical exhibits, if any, are they available for inspection upon request?  
If no, specify: \_\_\_\_\_

Plea offer by People: pt 1, dismiss habs + gbh

Defense Checklist:

- YES/NO Are Competency and/or Criminal Responsibility at issue in this case?  
If yes, specify: \_\_\_\_\_
- YES/NO Have notices of defenses been served?  
If yes, specify: \_\_\_\_\_

SCHEDULING INFORMATION/CUT-OFF DATES:

- YES/NO Special accommodations are needed.  
If yes, specify: \_\_\_\_\_
- Trial Type:  Jury or Bench Anticipated length of trial (days) 1/2 hr
- Special Jury Instructions prepared and agreed to by: \_\_\_\_\_
- Defendant is in custody:  YES/NO Unusual legal issues: \_\_\_\_\_
- Cut-off date for Motions: 2 wks before trial Cut-off date for plea: 2 wks before trial  
docket docket

ACCEPTANCE BY THE PARTIES: A Pre-Trial Conference having been held, the parties accept and agree to the information and cut-off dates listed above.

Assistant Prosecutor

Defendant/Attorney for Defendant

ORDER

The Court takes notice of the Pre-Trial Conference information above and Orders that the information and dates listed under Scheduling Information/Cut-Off Dates shall be amended only by Order of the Court for good cause shown.

NO PLEAS TO REDUCED CHARGES WILL BE ACCEPTED AFTER THE PLEA CUT-OFF DATE.

IT IS SO ORDERED.

Dated: 27 March 13

Rosemarie E. Aquilina  
Honorable Rosemarie E. Aquilina, Circuit Court Judge

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONY D. HARDWICK,

Defendant-Appellant.

---

UNPUBLISHED

August 9, 2002

No. 231393

Wayne Circuit Court

LC No. 99-012454

Before: Hood, P.J., and Sawyer and Zahra, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of larceny from a person, MCL 750.357. The trial court sentenced him to three to ten years' imprisonment and then vacated that sentence and sentenced defendant as a fourth felony offender, MCL 769.12, to five to ten years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that his habitual offender sentence must be set aside for lack of appropriate notice. Whether the prosecutor satisfied the statutory requirements regarding enhanced sentencing for habitual offenders is a question of law that this Court reviews de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

MCL 769.13(1) provides that a prosecutor may seek enhancement of a defendant's sentence as an habitual offender by filing a written notice of intent to do so within twenty-one days after the defendant's arraignment on the information or the filing of the information. Subsection (2) provides that the notice of intent to seek an enhanced sentence "shall be filed with the court and served upon the defendant or his or her attorney within the time provided in subsection (1)," and requires the prosecutor to file a written proof of service.

In this case, the prosecutor first indicated his intent to seek an enhanced sentence within the initial complaint and warrant by including an "Habitual Offender – Fourth Offense Notice" enumerating three of defendant's seven prior felony convictions beneath the original armed robbery charge. The district court register of actions shows that he was arraigned on "all counts" and the return to circuit court includes defendant's waiver of preliminary examination with a statement that "I understand that I will be bound over to Circuit Court on the charges in the complaint and warrant," followed by his signature and that of his attorney. The bind over, part of the same document, similarly shows that he was bound over on both charges. The information

filed in the circuit court also included a notice of intent to seek enhancement of defendant's sentence as a fourth felony offender.

Because the notice of intent was filed as part of the information, it was timely filed under MCL 769.13. Although defendant claims that he was never served with a copy of the information and notice, the lower court file establishes that defendant and his attorney had actual notice of the intent to seek enhancement as a fourth felony offender from the day the complaint and warrant were issued. Under these circumstances, we decline to vacate defendant's habitual offender sentence.

Defendant also suggests that his habitual offender sentence must be set aside because the prosecutor never filed a proof of service as required by MCL 769.13(2). Again, however, the record makes it apparent that defendant had actual notice that the prosecutor intended to seek sentence enhancement. The failure to file a proof of service was therefore harmless. *People v Walker*, 234 Mich App 299, 314; 593 NW2d 673 (1999).

Affirmed.

/s/ Harold Hood  
/s/ David H. Sawyer  
/s/ Brian K. Zahra

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE CANTRAL BOUIE, a/k/a  
JERMAINE CANTRELL BLACK,

Defendant-Appellant.

---

UNPUBLISHED

October 11, 2002

No. 232963

Kent Circuit Court

LC No. 00-003904-FC

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right his enhanced sentence as a second-offense habitual offender, MCL 769.10, following his jury trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. We affirm.

Defendant argues that the trial court erred in sentencing him as a second-offense habitual offender because the prosecutor failed to timely file a notice of intent to seek sentence enhancement. We disagree. This Court reviews de novo as a question of law the issue whether the prosecutor satisfied the statutory requirements regarding enhanced sentencing for habitual offenders. See *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

MCL 769.13(1) provides that a prosecutor may seek an enhanced sentence by filing a written notice of intent to do so within twenty-one days after arraignment or, if arraignment is waived, within twenty-one days after filing the information charging the underlying offense. Defendant claims that such notice was not filed. However, the prosecutor's habitual notice was included in the felony complaint and the felony warrant, both of which stated:

Take notice that the defendant, JERMAINE CANTRAL BOUIE, was previously convicted of a felony or an attempt to commit a felony in that on or about 10/29/97, he or she was convicted in the CIRCUIT Court for the COUNTY OF KENT, State of MICHIGAN, for the offense of R & C O/100, File No. 97-09396-FH, Therefore, defendant is subject to the penalties provided by MCL 769.10; MSA 28.1082. [769.10] PENALTY: LIFE

Thereafter, defendant waived circuit court arraignment and acknowledged by his signature that he received and read the information and understood the substance of the charges. The

information filed in the circuit court included the same notice of intent to seek enhancement that was contained in the complaint and warrant. See *People v Morales*, 240 Mich App 571, 583; 618 NW2d 10 (2000) (“the prosecutor is no longer required to file a supplemental information”). Consequently, the prosecutor complied with the notice requirements of MCL 769.13(1) and defendant’s claim is without merit.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Mark J. Cavanagh

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FATEEN ROHN MUHAMMAD,

Defendant-Appellee.

---

UNPUBLISHED

July 29, 2014

No. 317054

Ingham Circuit Court

LC No. 13-000161-FH

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

In this interlocutory appeal, the prosecution appeals by leave granted the trial court's order dismissing a habitual offender notice for failure to timely serve the notice on defendant. Because we hold that the harmless error rule applies to errors in the application of MCL 769.13(2), we reverse.

Defendant was charged with first-degree home invasion, MCL 750.110a(2), and assault with intent to do great bodily harm less than murder, MCL 750.84. The felony warrant and felony complaint, both dated February 6, 2013, included a fourth habitual offender notice. At arraignment, the district court noted for the record that each of the charges carried a habitual notice and that the "penalties could be made greater than 20 years and 10 years respectively." Subsequently, defendant and his attorney signed a written waiver of circuit court arraignment which acknowledged that they had received a copy of the "Felony complaint." At the preliminary examination, the court noted that defendant was a "fourth habitual offender." On February 27, 2013, the felony information, which included a fourth habitual offender notice, was filed. On March 27, 2013, a pretrial conference was conducted in the circuit court, and defendant's attorney signed the pretrial conference order, which included an indication that if defendant pleaded to count one of the complaint, the prosecution would dismiss the habitual offender notice and the second count of the complaint.

Defendant asserted that neither he nor his attorney received a copy of the felony information when it was filed on February 27. There is no proof of service of notice of fourth habitual offender in the lower court file. Instead, on April 24, 2013, the prosecutor forwarded a copy of the felony information to defendant. Thereafter, on May 22, 2013, defendant filed a motion to dismiss the habitual offender count because the information was "not timely filed or

served” pursuant to MCL 769.13. Relying on *People v Cobby*, 463 Mich 893; 618 NW2d 768 (2000), the trial court agreed with defendant and dismissed the habitual offender count.

On appeal, the prosecutor argues that the failure to serve notice within the time limit was harmless error because defendant had actual notice that the prosecutor intended to seek an enhanced sentence. The prosecutor’s argument raises an issue of statutory interpretation, which this Court reviews de novo. *People v Hornsby*, 251 Mich App 462, 469; 650 NW2d 700 (2002).

Pursuant to MCL 769.13(1), “the prosecuting attorney may seek to enhance the sentence of the defendant . . . by filing a written notice of his or her intent to do so within 21 days after the defendant’s arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.” Further, MCL 769.13(2) states that “[t]he notice *shall* be filed with the court and served upon the defendant or his or her attorney within” the 21-day time limit. (Emphasis added.) It is not disputed that the prosecution failed to serve notice of intent to enhance sentence on defendant or his attorney within the statutory time limit.

Clear and unambiguous language in a statute must be enforced as written. *People v Dowdy*, 489 Mich 373, 379; 802 NW2d 239 (2011). “[S]tatutory language should be construed reasonably, keeping in mind the purpose of the statute.” *People v Droog*, 282 Mich App 68, 70; 761 NW2d 822 (2009). This Court has held that the purpose of MCL 769.13 is to ensure that a defendant receives notice at an early stage in the proceedings that he could be sentenced as a habitual offender. *People v Morales*, 240 Mich App 571, 582; 618 NW2d 10 (2000).

Here, the statutory language states unambiguously that the prosecutor “shall” file notice of intent to enhance a defendant’s sentence within 21 days after the information charging the underlying offense is filed. MCL 769.13. The word “shall” is used to designate a mandatory provision. *People v Francisco*, 474 Mich 82, 87; 711 NW2d 44 (2006). Accordingly, pursuant to the plain language of the statute, the prosecution is required to serve notice of intent to enhance sentence on the defendant or the defendant’s attorney. The statute does not state what the penalty is for failure to comply with its mandates.

Defendant relies on, and the trial court was persuaded by, our Supreme Court’s order in *Cobby*. The order states:

In lieu of granting leave to appeal, the case is remanded to the trial court. MCR 7.302(F)(1). On remand, the defendant’s sentence, as a fourth habitual offender, is to be vacated and the defendant resentenced because the prosecutor has not proven that the notice of sentence enhancement was served on defendant within twenty-one days after the defendant was arraigned. In all other respects the application for leave to appeal is denied. [*Cobby*, 463 Mich at 893.]

An order of the Supreme Court is binding precedent when the rationale can be understood. *People v Edgett*, 220 Mich App 686, 693 n 6; 560 NW2d 360 (1996). In this case, the Supreme Court’s order clearly applies the harmless error provisions in MCL 769.26 and MCR 2.613(A) to reach its result.

In *Cobley*, the Supreme Court clearly stated that the defendant needed to be resentenced “because the prosecutor has not proven that the notice of sentence enhancement was *served* on defendant within twenty-one days after the defendant was arraigned.” *Cobley*, 463 Mich at 893 (emphasis added). Accordingly, at least part of the rationale of the Court can easily be understood, i.e., because the prosecution could not prove that notice of intent to seek sentence enhancement was served within the time limit, the defendant’s sentence could not be enhanced. However, nothing in the Supreme Court’s order indicates whether a harmless error analysis can be applied to violations of MCL 769.13.

The harmless error rule is codified both in statute and court rule. MCR 2.613(A) provides:

An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

Similarly, MCL 769.26 provides:

No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for *error as to any matter of pleading or procedure*, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice. [Emphasis added.]

The statute and the court rule are different articulations of the same idea. *People v Williams*, 483 Mich 226, 232; 769 NW2d 605 (2009). An “error is not grounds for reversal unless, after an examination of the entire case, it affirmatively appears that it is more probable than not that the error was outcome determinative.” *Id.* at 243. It is axiomatic that the filing and serving of a criminal information is a matter of criminal procedure. Accordingly, unless “it shall affirmatively appear” that an error in the filing and serving of a criminal information “has resulted in a miscarriage of justice,” or “unless refusal to take this action appears to the court inconsistent with substantial justice,” an accompanying judgment or verdict should not be set aside or reversed. Here, because the lower court record clearly shows that defendant had actual notice that the prosecution intended to seek an enhanced sentence, the prosecution’s error in not serving the habitual offender notice cannot fairly be considered outcome determinative.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray  
/s/ Peter D. O’Connell

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FATEEN ROHN MUHAMMAD,

Defendant-Appellee.

---

UNPUBLISHED

July 29, 2014

No. 317054

Ingham Circuit Court

LC No. 13-000161-FH

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

BORRELLO, J., (*dissenting*).

In this interlocutory appeal, the prosecution appeals by leave granted the trial court's order dismissing a habitual offender notice for failure to timely serve the notice on defendant. My colleagues in the majority would hold that the harmless error rule, codified in statute, MCL 769.26 and court rule, MCR 2.613(A) applies to errors in the application of MCL 769.13(2). Accordingly, they would we reverse. While I find no fault in the reasoning behind their application of the afore-cited harmless error rule to MCL 769.13(2), I respectfully dissent because I believe we, like the trial court, are bound by our Supreme Court's order in *People v Cobley*, 463 Mich 893; 618 NW2d 768 (2000).

This Court, in *People v Cobley*, unpublished opinion per curiam of the Court of Appeals, issued April 20, 1999 (Docket No. 204155) had a virtually identical factual scenario as is presented in this case. In *Cobley*, this Court made the following specific findings and conclusions of law relevant to this issue:

We conclude that although the prosecutor's failure to serve notice upon defendant was technically a violation of the statute, such error was harmless because defendant had actual notice of this filing well before trial, and he did not suffer any prejudice by the lack of service.

It is undisputed that the prosecutor filed timely notice of his intent to seek an enhanced sentence based upon defendant's habitual offender status. In addition, the record indicates that the prosecutor informed the court, defendant and defense counsel at the arraignment that he "will be filing a supplemental information alleging him as a fourth time habitual offender." In fact, defense counsel did not contest that he received actual notice of the prosecutor's intent to file the supplemental information well in advance of trial, nor did he contest that

the habitual offender charge was a factor that was used in ongoing plea negotiations. The proof of service requirement in MCL 769.13(2) . . . is designed to ensure that a defendant promptly receives notice of the potential consequences of an habitual offender charge should he be convicted of the underlying offense. . . . Thus, where there is no dispute that defendant was actually aware of the prosecutor's intent to file the habitual information, we conclude that defendant was not prejudiced by the prosecutor's noncompliance with the statute. [*Cobley*, unpub. op at 1-2 (citations and footnote omitted.)]

In lieu of granting leave to appeal, our Supreme Court remanded the matter to the trial court instructing the trial court that the defendant's fourth habitual offender status was vacated "because the prosecutor has not proven that the notice of sentence enhancement was served on defendant within twenty-one days after the defendant was arraigned." *Cobley*, 463 Mich at 893. As stated by the majority, an order of our Supreme Court is binding precedent when the rationale can be understood. *People v Edgett*, 220 Mich App 686, n 6; 560 NW2d 360 (1996). Clearly, this Court in *Cobley* based its affirmance of the defendant's fourth habitual status on the harmless error rule. MCL 769.26. Our Supreme Court rejected application of the harmless error rule to violations of MCL 769.13(2) when the prosecutor cannot prove that the notice of sentence enhancement was served on the defendant within the statutory timeframe. Most assuredly in *Cobley*, had our Supreme Court been of the opinion that a violation of MCL 769.13(2) was subject to the harmless error rule, it would have so stated. Instead, the Court reversed this Court's decision, which was based on the very same rationale the majority relies on in this case.

This issue arose again in the case of *People v Johnson*, unpublished opinion per curiam of the Court of Appeals, issued June 12, 2012 (Docket No. 304273). In *Johnson*, this Court found that the prosecution timely filed the original information on September 28, 2006. The trial court arraigned the defendant on October 13, 2006 and on February 23, 2007, the prosecutor filed a motion seeking to amend the supplemental information based on a realization that the dates and convictions listed pertaining to sentencing enhancement were incorrect. This Court, citing its prior decision in *People v Walker*, 234 Mich App 299, 314; 593 NW2d 673 (1999), held as follows:

Similar to the factual circumstances of *Walker*, [the defendant] makes no claim that he did not receive the notice of intent to enhance but simply contends that the [order permitting amendment of the supplemental information] was not filed with the lower court. If true, this in no way prejudiced defendant's ability to respond to the habitual offender charge. Specifically, a prosecutor's failure to strictly follow the statute does not necessarily offend due process, if in fact a defendant has received actual notice. [*Johnson*, unpub op at 8 (quotation marks and citations omitted).]

The defendant in *Johnson* applied for leave to appeal in our Supreme Court, which held:

On order of the Court, leave to appeal having been granted, and the briefs and oral arguments of the parties having been considered by the Court, we AFFIRM the result reached in the June 21, 2012 judgment of the Court of Appeals. Defendant was given timely notice of his enhancement level and had sufficient prior convictions to support a fourth habitual enhancement. Relief is

barred by MCL 769.26 because there was no miscarriage of justice when the trial court allowed the prosecution to amend the notice to correct the convictions or when it sentenced defendant as a fourth habitual offender. In addition, affirming defendant's sentence as a fourth habitual offender is not inconsistent with substantial justice. MCR 2.613(A). [*People v Johnson*, 495 Mich 919; 840 NW2d 373 (2013).]

While our Supreme Court affirmed this Court's result in *Johnson*, it specifically stated as one of its reasons for so finding was that "[d]efendant was given timely notice of his enhancement level . . . ." Such was not the case here. The prosecution admits, and the majority concedes, that defendant was not given timely notice pursuant to MCL 769.13(2). Therefore, while I have no quarrel with the majority's application of the harmless error rule to situations such as this where defendant had notice of the prosecutor's intent to file the enhancement, and where it appears the district court informed defendant that he would be facing enhanced charges, because there was no timely notice in this case, it is analogous to *Coble* and not *Johnson*, and I believe we are bound by our Supreme Court to affirm the trial court's ruling.

/s/ Stephen L. Borrello

# Order

Michigan Supreme Court  
Lansing, Michigan

December 26, 2013

Robert P. Young, Jr.,  
Chief Justice

145477

Michael F. Cavanagh  
Stephen J. Markman  
Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 145477  
COA: 304273  
Monroe CC: 06-035599-FH

ALFONZO ANTWON JOHNSON,  
Defendant-Appellant.

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On order of the Court, leave to appeal having been granted, and the briefs and oral arguments of the parties having been considered by the Court, we AFFIRM the result reached in the June 21, 2012 judgment of the Court of Appeals. Defendant was given timely notice of his enhancement level and had sufficient prior convictions to support a fourth habitual enhancement. Relief is barred by MCL 769.26 because there was no miscarriage of justice when the trial court allowed the prosecution to amend the notice to correct the convictions or when it sentenced defendant as a fourth habitual offender. In addition, affirming defendant's sentence as a fourth habitual offender is not inconsistent with substantial justice. MCR 2.613(A). With regard to defendant's remaining issues, we are not persuaded that they should be reviewed by this Court.



(1223)

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 26, 2013

ATTACHMENT 16

**STUART J. DUNNINGS III**  
**INGHAM COUNTY PROSECUTING ATTORNEY**

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303 West Kalamazoo Street, Lansing, Michigan 48933  
Phone: (517) 483-6108 Fax: (517) 483-6397



September 30, 2014

**LISA McCORMICK**  
Chief Assistant Prosecutor

Clerk of the Court  
Michigan Supreme Court  
PO Box 30052  
Lansing, MI 48909

**JOHN J. DEWANE**  
Deputy Chief Assistant Prosecutor

Re: *People v Fateen Muhammad*  
Supreme Court No: 150119  
Court of Appeals No: 317054  
Lower Court No: 13-161-FH

To Whom It May Concern:

Enclosed, please find the People's answer to the application for leave to appeal which was filed in your court.

Should you have any questions, please feel free to contact this office.

Very truly yours,

Lisa Renee Davis  
Appellate legal assistant

enclosures

cc: Defendant/Defense Counsel

