

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellee

-vs-

**CHARLES JEROME DOUGLAS**

Defendant-Appellant.

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**Supreme Court No. \_\_\_\_\_**

**Court of Appeals No. 315027**

**Lower Court No. 12-10051-01**

**WAYNE COUNTY PROSECUTOR**  
Attorney for Plaintiff-Appellee

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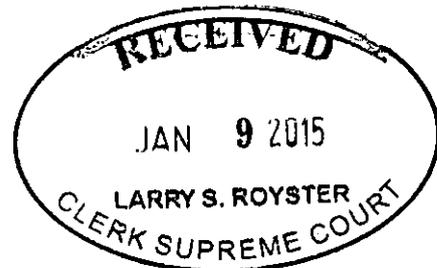
**PETER JON VAN HOEK (P26615)**  
Attorney for Defendant-Appellant

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NOTICE OF HEARING  
APPLICATION FOR LEAVE TO APPEAL  
PROOF OF SERVICE

**STATE APPELLATE DEFENDER OFFICE**

**BY: PETER JON VAN HOEK (P26615)**  
Assistant Defender  
3300 Penobscot Building  
645 Griswold  
Detroit, Michigan 48226  
(313) 256-9833



## **JUDGMENT APPEALED FROM AND RELIEF SOUGHT**

Mr. Douglas was convicted of carrying a concealed weapon, felon in possession of a firearm, and felony-firearm (second offense), in Wayne County Circuit Court, the Honorable Ulysses W. Boykin presiding at his jury trial. Mr. Douglas was sentenced to a term of five years in prison, to be followed by terms of 2 to 10 years in prison. Defendant appealed as of right from the conviction and sentence.

On August 7, 2014, the Court of Appeals issued an unpublished, per curiam opinion affirming the convictions and sentences. See Appendix A. Mr. Douglas timely sought reconsideration of that decision on August 28, 2014. On November 14, 2014, the Court of Appeals denied the motion for reconsideration. See Appendix B.

The decision of the Court of Appeals is clearly erroneous and will cause manifest injustice to Mr. Douglas, the appeal concerns legal principles of major importance to the state's jurisprudence, and the opinion conflicts with decisions of this Court and of other panels of the Court of Appeals. MCR 7.302 (B).

This Court should grant leave to appeal, or peremptorily reverse the decision of the Court of Appeals, in particular its decision that Mr. Douglas is not entitled to a resentencing despite the fact the trial court erroneously scored him with 10 points under OV 13, and thus considered an inaccurately scored and higher guidelines range than was supported by the uncontested facts of the case.

The Court of Appeals' decision that no resentencing is required is directly contrary to the controlling precedent in this matter –this Court's opinion in *People v Francisco*, 474 Mich 82 (2006) – and should be overturned on review by this Court.

Mr. Douglas was assessed 10 points under OV 13. That scoring would only be permissible if his criminal record shows he has three or more convictions for “crimes against a person or property” within 5 years of the date of the sentencing offenses. MCL 777.43(1)(d).

As this Court of Appeals clearly recognized, this scoring was plain error, as Mr. Douglas has **no** convictions for either crimes against a person or against property during the relevant five year time period, including all three of the present convictions. See Appendix A at 3. As the Court also recognized, that erroneous scoring raised Mr. Douglas’ guidelines range to the D-II grid for Class E felonies, while had OV 13 be correctly scored at 0 points, he would have fallen within the D-I range. Appendix A at 4.

Despite this erroneous scoring of the guidelines, which resulted in an inaccurate range for the minimum sentence being considered by the trial judge, the Court of Appeals refused to remand the matter for a resentencing. Each of the reasons expressed by the Court for denying resentencing are directly contrary to Michigan law, as expressed primarily in *Francisco, supra*, a case specifically cited in the Court of Appeals’ opinion. Accordingly, the decision should be reversed, and the matter remanded for resentencing.

First, the Court of Appeals held Mr. Douglas cannot establish that the scoring error resulted in prejudice or “otherwise affected his substantial rights.” Appendix A at 4. To the contrary, this Court in *Francisco* held that consideration of an inaccurate guidelines range is manifestly and statutorily a violation of a defendant’s substantial right to be sentenced **only** upon accurate information:

A defendant is entitled to be sentenced by a trial court on the basis of accurate information. MCL 769.34(10) states, “[i]f a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not

remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." (Emphasis added.) In other words, if a minimum sentence falls within the appropriate guidelines range, a defendant is not entitled to be resentenced **unless there has been a scoring error or inaccurate information has been relied upon.**

\* \* \*

MCL 769.34(10) makes clear that the Legislature intended to have defendants sentenced according to accurately scored guidelines and in reliance on accurate information (although this Court might have presumed the same even absent such express language). Moreover, we have held that "a sentence is invalid if it is based on inaccurate information." *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). In this case, there was a scoring error, the scoring error altered the appropriate guidelines range, and defendant preserved the issue at sentencing. **It would be in derogation of the law, and fundamentally unfair**, to deny a defendant in the instant circumstance the opportunity to be resentenced on the basis of accurate information. A defendant is entitled to be sentenced in accord with the law, and is entitled to be sentenced by a judge who is acting in conformity with such law. 474 Mich at 88-91. (Emphasis added). (Footnotes omitted).

The *Francisco* opinion makes it clear that any defendant sentenced on the basis of a consideration of inaccurate information, such as an improperly scored guidelines range, suffers prejudice which affects his or her substantial rights: "Even if MCL 769.34(10) does not, as suggested by the dissent, require a remand, a remand is required by MCR 2.613(A), which provides that an error does not justify disturbing a judgment 'unless refusal to take this action appears to the court inconsistent with substantial justice.' **It is difficult to imagine something more 'inconsistent with substantial justice' than requiring a defendant to serve a sentence that is based upon inaccurate information.**" 474 Mich at 89, fn.6. (Emphasis added).

Next, the Court of Appeals held Mr. Douglas was not prejudiced because the actual minimum sentence imposed in his case – 24 months – fell within both the inaccurate range under D-II as well as the correct range under D-I. Appendix A at 4. Thus, the Court reasoned, there is

no indication the trial judge would have set a lower minimum sentence had the correct, lower range been considered. Again, the *Francisco* opinion is directly on point, and directly contrary to the Court of Appeals' ruling. In *Francisco*, the erroneous scoring was on the same Offense Variable as in the case at bar – OV 13. This Court found the error in the scoring of that variable raised Mr. Francisco's guidelines range from the correct range of 78 to 195 months to a higher range of 87 to 217 months. 474 Mich at 88. Just as in the case at bar, the actual minimum sentence imposed at the initial sentencing – 102 months – fell within both the accurate and inaccurate range. Despite that fact, this Court remanded for a resentencing, and expressly refused to infer that the trial judge would have imposed the same minimum sentence had the judge considered the accurate range, or would not change that minimum sentence on remand:

As explained by the United States Court of Appeals for the Third Circuit, “[a] defendant has a right to a sentence that not only falls within a legally permissible range, but that was imposed pursuant to correctly applied law” and “imposition of a sentence selected from the wrong range is likely to impair a defendant's right to a fair sentence ....” *United States v Knight*, 266 F3d 203, 210 (CA 3, 2001). And, as explained by the United States Court of Appeals for the Sixth Circuit: “If the range the court used resulted from an incorrect application of the guidelines, an after-the-fact determination that the sentence actually imposed happened to be within the proper range does not cure the court's error. The actual sentence imposed in such a case is not material because it is the district court's application of the guidelines to arrive at the sentencing range that is at issue, not that court's discretionary choice of sentence within that range.” [ *United States v Lavoie*, 19 F3d 1102, 1104 (CA 6, 1994).] 474 Mich at 90, fn. 10.

\* \* \*

While the difference between the mistaken and the correct guidelines ranges is relatively small, the fundamental problem nonetheless is illustrated. The actual sentence suggests an intention by the trial court to sentence defendant near the bottom of the appropriate guidelines range—specifically, fifteen months or 17 percent above the 87-month minimum. Had the trial court been acting on the basis of the correct guidelines range, however, we simply do not know whether it

would have been prepared to sentence defendant to a term 24 months or 30 percent above the new 78-month minimum. Indeed, appellate correction of an erroneously calculated guidelines range will always present this dilemma, i.e., the defendant will have been given a sentence which stands differently in relationship to the correct guidelines range than may have been the trial court's intention. Thus, requiring resentencing in such circumstances not only respects the defendant's right to be sentenced on the basis of the law, but it also respects the trial court's interest in having defendant serve the sentence that it truly intends. 474 Mich at 91-92. (Footnotes omitted).

The *Francisco* Court directly rejected any reliance on a "harmless error" rule where the actual minimum sentence imposed falls with the correctly scored, lower range of the guidelines, or where the error is argued as "*de minimus*," since it may have only resulted in a minimum sentence a few months longer than had the trial court considered the accurate guidelines range. 474 Mich at 91, 92, fns 10, 13.

Finally, the Court of Appeals held that since Mr. Douglas did not challenge the scoring of the guidelines either at the initial sentencing, in a motion for resentencing, or in a motion to remand, the issue was not preserved for appellate review. Appendix A at 4. Accordingly, despite the prior finding of plain error in the scoring of OV 13, the Court did not remand for resentencing, quoting from the *Francisco* opinion that in the absence of a timely preservation of the issue, a defendant "cannot raise the error on appeal except where otherwise appropriate, as in a claim of ineffective assistance of counsel." Appendix A at 4, citing to 474 Mich at 89, fn. 8. While Mr. Douglas does not dispute that the plain scoring error of OV 13 was not raised at the sentencing, in a motion for resentencing, or by way of a motion to remand, the Court of Appeals ignored that he directly claimed, in his timely Brief on Appeal, that his trial counsel's failure to

recognize that OV 13 was misscored and raise that error to the trial court denied Mr. Douglas his Sixth Amendment right to the effective assistance of counsel:

Even though trial counsel for Mr. Douglas did not object to the misscoring of the guidelines, review of the scoring error, and remand for a resentencing, is proper in that the failure of trial counsel to recognize that error and object was constitutionally ineffective assistance, in violation of his Sixth Amendment right, and permits this Court to order sentencing relief in the absence of a timely objection. *Strickland v Washington*, [466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984)],*supra*; *People v Harmon*, 248 Mich App 522 (2001); US Const, Amend VI.

Brief on Appeal at 12-13. Accordingly, under *Francisco* it was and is “appropriate” for Mr. Douglas to raise the scoring and guidelines range issue by way of the constitutional ineffective assistance of trial counsel claim.

All three of the reasons the Court of Appeals refused to remand for resentencing, despite the plain error in the scoring of OV 13 and the trial court’s express consideration of the inaccurately calculated guidelines range, are directly contrary to the controlling precedent of *Francisco, supra*. In fact, this case is remarkably similar to the situation in *Francisco* itself, where this Court did remand for resentencing. This Court should either grant leave to appeal to reassert the principles in support of the *Francisco* decision, or preemptorily overturn the denial of relief to Mr. Douglas, and remand the case to the trial court for resentencing.

Mr. Douglas also raised an issue in his appeal of right concerning whether he was denied his Sixth Amendment right to effective assistance of counsel due to his trial attorney’s failure to argue to the jury the clear discrepancies between the testimony of the two primary prosecution witnesses – the two Detroit Police officers who arrested him and found a handgun which he allegedly had discarded while being chased. For the reasons expressed in the attached brief in

support, this issue raises sufficient and independent grounds for this Court to grant leave to appeal or reverse Mr. Douglas' convictions.

In addition, Mr. Douglas filed a pro per Standard 4 Supplemental Brief, raising additional issues in the Court of Appeals, which issues that Court decided against him. See Appendix A. A copy of his Standard 4 brief is attached in support of this Application, and he asks this Court to consider whether any of the issues he has raised present sufficient grounds for this Court to grant him leave to appeal.

Defendant moves this Honorable Court to either grant this application for leave to appeal or any appropriate preemptory relief.

Respectfully submitted,

**STATE APPELLATE DEFENDER OFFICE**

BY:



**PETER JON VAN HOEK (P26615)**

**Assistant Defender**

3300 Penobscot Building

645 Griswold

Detroit, Michigan 48226

(313) 256-9833

Date: January 8, 2015

**APPENDIX A**

26579-L  
PvH

STATE OF MICHIGAN  
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
August 7, 2014

v.

CHARLES JEROME DOUGLAS,  
Defendant-Appellant.

No. 315027  
Wayne Circuit Court

DC No. 12-01905-11  
**RECEIVED**

AUG 11 2014

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

APPELLATE DEFENDER OFFICE

PER CURIAM.

Defendant appeals by right his jury-trial convictions of possession of a firearm by a felon (felon-in-possession), MCL 750.224f, carrying a concealed weapon (CCW), MCL 750.227, and possession of firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 2 to 10 years in prison for the felon-in-possession and CCW convictions, and five years in prison for the felony-firearm conviction. We affirm.

On October 9, 2012, at about 12:00 a.m., Detroit Police Officers Ibrahimovic and Lewis were on patrol in the area of 19410 St. Marys Street in Detroit. When the officers heard gunshots, they canvassed the area and saw defendant walking in the middle of the street. When defendant began running, Ibrahimovic and Lewis chased him on foot to the rear of a home on St. Marys Street. Ibrahimovic saw defendant pull out a silver handgun and toss it over a six-foot wooden fence. While Ibrahimovic retrieved the handgun, Lewis and Detroit Police Department (DPD) Sergeant Michael Osman apprehended defendant. DPD Sergeant Todd Eby sent the gun to the Michigan State Police (MSP) crime lab for testing, but because the gun "was stuck in back-log" at the lab due to higher-priority requests from homicide cases, it was not available for defendant's trial.

Defendant first argues that his trial attorney rendered ineffective assistance of counsel when she did not mention a particular discrepancy in the officers' testimony during cross-examination or make reference to it during her closing argument. We disagree.

To preserve a claim of ineffective assistance of counsel, the defendant must move, in the trial court, for a new trial or an evidentiary hearing under *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). *People v Payne*, 285 Mich App 181, 188; 774 NW2d 714 (2009). Defendant did not move for a new trial or seek a *Ginther* hearing in the trial court. Therefore,

defendant's claim of ineffective assistance of counsel is not preserved for appeal. "Unpreserved issues concerning ineffective assistance of counsel are reviewed for errors apparent on the record." *People v Lockett*, 295 Mich App 165, 186; 814 NW2d 295 (2012).

Criminal defendants have a right to the effective assistance of counsel under the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20; *United States v Cronin*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984); *People v Vaughn*, 491 Mich 642, 669; 821 NW2d 288 (2012). To establish that a defendant's trial counsel was ineffective, a defendant must show that (1) counsel's performance was below an objective standard of reasonableness under prevailing professional norms and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668, 688; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *Lockett*, 295 Mich App at 187. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *Vaughn*, 491 Mich at 670. Moreover, there is a strong presumption that counsel's assistance constitutes sound trial strategy. *People v Armstrong*, 490 Mich 281, 290; 806 NW2d 676 (2011). Decisions regarding what evidence to present and which issues to raise during closing argument are presumed to be matters of trial strategy. *People v Russell*, 297 Mich App 707, 716; 825 NW2d 623 (2012).

Defendant argues that, because there was no physical evidence introduced at trial in the form of the gun that he was charged with possessing, the jury was left to consider only the credibility of the officers. He asserts that his attorney was ineffective because she failed to cross-examine Ibrahimovic and Lewis about a singular discrepancy in their testimony or refer to it during her closing argument. This alleged "glaring discrepancy" involves Ibrahimovic's testimony that, as he and Lewis initially pulled up near defendant, when Ibrahimovic asked defendant whether he had heard any shots fired in the area, defendant looked at Ibrahimovic and "began running westbound between the houses." In contrast, Lewis later testified that defendant was "running eastbound."

The record shows that Ibrahimovic was otherwise subjected to cross-examination on various points by defendant's lawyer. During one such exchange, defendant's lawyer successfully impeached Ibrahimovic's credibility by pointing out an overt inconsistency between his direct testimony at trial and his earlier, preliminary examination testimony, regarding whether defendant was wearing a coat on the night of the incident. Defense counsel also challenged Ibrahimovic's ability to observe in the midnight lighting conditions, and attempted to impeach Ibrahimovic's testimony concerning whether he actually saw the gun under defendant's clothing during the short chase. Lewis was likewise subjected to cross-examination by defendant's lawyer, who challenged Lewis's perception of events and failure to interview the homeowner on the adjoining property where the gun was found. Defense counsel thus had a presumptively sound strategy to seek to undermine the credibility of Ibrahimovic and Lewis.

The record further shows that, in her closing argument, defense counsel challenged the credibility of Ibrahimovic, Lewis, and Osman when she asked rhetorically, "Can we really count on what they said?" In light of the officers' otherwise nearly consistent testimony, however, it was sound trial strategy for defense counsel to focus her closing argument on the lack of physical evidence, including the prosecution's failure to produce the gun, any fingerprints, or the lack of a complete investigation that might have included an interview with the neighbor. *Russell*, 297

Mich App at 716. This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight. *Payne*, 285 Mich App at 190. We perceive no errors on the existing record. See *Lockett*, 295 Mich App at 187. Defendant has failed to establish a reasonable probability that the outcome of his trial would have been different in the absence of counsel's allegedly deficient performance.

Defendant next argues that the trial court improperly assessed 10 points when scoring offense variable (OV) 13. We agree that the trial court erred, but conclude that defendant is not entitled to resentencing.

To be preserved for appellate review, a challenge to the scoring of the sentencing guidelines must have been raised at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in this Court. MCL 769.34(10); MCR 6.429(C); *People v Jones*, 297 Mich App 80, 83; 823 NW2d 312 (2012). Because defendant did not so challenge the scoring of OV 13, this issue is not preserved for appeal. However, this Court may review an unpreserved scoring issue for plain error affecting defendant's substantial rights. *People v Loper*, 299 Mich App 451, 457; 830 NW2d 836 (2013).

OV 13 addresses a continuing pattern of criminal behavior. MCL 777.43; *People v Gibbs*, 299 Mich App 473, 487; 830 NW2d 821 (2013). Under MCL 777.43(1)(d), the trial court may assess 10 points for OV 13 if "the offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property or a violation of MCL 333.7401(2)(a)(i) to (iii) or section MCL 333.7403(2)(a)(i) to (iii) of the Public Health Code . . ." Under MCL 777.43(1)(g) the trial court must assess zero points for OV 13 if "no pattern of felonious criminal activity existed."

When scoring OV 13, all crimes within a five-year period, including the sentencing offense, must be counted, regardless of whether the offense resulted in a conviction. MCL 777.43(2)(a); *People v Earl*, 297 Mich App 104, 110; 822 NW2d 271 (2012). But only those crimes that occurred within the five-year period encompassing the sentencing offense may be considered. *People v Francisco*, 474 Mich 82, 86; 711 NW2d 44 (2006). The circuit court's findings of fact must be supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013).

Defendant was assessed 10 points for OV 13. Taken together with defendant's other Prior Record Variable (PRV) and OV scores, this placed him in cell D-II on the sentencing grid for Class E felonies, with a recommended minimum sentence range of 7 to 46 months. MCL 777.66; see also MCL 777.21(3)(c). However, defendant's Presentence Investigation Report (PSIR) reveals that, beyond the current offenses, he had no felony convictions within the five years immediately preceding the instant offenses that could properly be scored under OV 13. Further, the sentencing offense of felon-in-possession is classified as a crime against public safety, as is the offense of CCW, and the sentencing guidelines do not apply to the offense of felony-firearm. MCL 777.16m. Because defendant's instant convictions of felon-in-possession and CCW were for crimes against public safety, and his prior convictions were outside the five-year period immediately preceding the sentencing offense, no points should have been assessed for OV 13.

A reduction in points from 10 to zero for OV 13 would change defendant's recommended minimum sentence range. Had the trial court properly assessed zero points for OV 13 in this case, defendant would have been placed in cell D-I rather than cell D-II on the sentencing grid for Class E felonies. This would have resulted in a recommended minimum sentence range of 5 to 46 months instead of 7 to 46 months. MCL 777.66; see also MCL 777.21(3)(c). In general, a defendant is entitled to resentencing on the basis of a scoring error if the error changes the recommended minimum sentence range under the legislative guidelines. *Francisco*, 474 Mich at 89 n 8.

In this case, however, the trial court's scoring error does not warrant resentencing. Defendant cannot establish that the trial court's unpreserved scoring error resulted in prejudice or otherwise affected his substantial rights. Defendant received a minimum sentence of 24 months—well within the correct minimum sentence range of 5 to 46 months. Moreover, there is no indication that the trial court would have imposed a shorter minimum sentence had the guidelines been scored correctly. *Id.* "A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals." MCL 769.34(10). If a defendant has failed to preserve his challenge to the trial court's scoring decision, and his sentence is within the appropriate guidelines range, "the defendant cannot raise the error on appeal except where otherwise appropriate, as in a claim of ineffective assistance of counsel." *Francisco*, 474 Mich at 89 n 8. We therefore conclude that defendant is not entitled to be resentenced. *Id.*

In a supplemental brief filed *in propria persona*, defendant argues that because no physical evidence was presented to the jury at trial, there was insufficient evidence to establish that he possessed the gun and to convict him of the charged offenses. We disagree.

"Criminal defendants do not need to take any special steps to preserve a challenge to the sufficiency of the evidence." *People v Cain*, 238 Mich App 95, 116-117; 605 NW2d 28 (1999). In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). We review the evidence *de novo* in a light most favorable to the prosecutor to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012); *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010).

We do not interfere with the factfinder's role in determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). Questions of credibility are left to the trier of fact. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). "Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of a crime." *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

The elements of felon-in-possession are: (1) the defendant possessed a firearm, (2) the defendant was previously convicted of a felony, and (3) the defendant's right to possess a firearm has not been restored. MCL 750.224f; see also *People v Perkins*, 473 Mich 626, 630-631; 703 NW2d 448 (2005). The elements of felony-firearm are: (1) the defendant possessed a firearm, (2) during the commission of, or attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). To prove the offense of CCW, the prosecution must show that the defendant knowingly possessed a concealed weapon without a license. MCL 750.227; see also *People v Hernandez-Garcia*, 477 Mich 1039, 1040 n 1 (2007). Possession of a firearm can be actual or constructive, and can be shown by direct or circumstantial evidence. *People v Johnson*, 293 Mich App 79, 83; 808 NW2d 815 (2011).

The evidence supporting defendant's convictions of felon-in-possession, CCW, and felony-firearm came from the testimony of Ibrahimovic, Lewis, and Osman. Ibrahimovic and Lewis testified that they saw defendant flee, grab his waistband, run up a driveway off St. Marys Street, reach into his waistband, pull out a gun, and throw it over a nearby fence. All three officers testified that the gun they saw defendant throw was recovered from the area of the fence. Osman corroborated the testimony of Ibrahimovic and Lewis in this regard. The jury, as the trier of fact, found the three police eyewitnesses credible and chose to believe their testimony. See *Harrison*, 283 Mich App at 378.

In addition, there was other circumstantial evidence of defendant's guilt of the crimes charged. All three police witnesses testified that defendant "took off running" upon seeing them and being asked about the gunfire. Flight can constitute evidence of a defendant's consciousness of guilt. *People v Unger*, 278 Mich App 210, 226; 749 NW2d 272 (2008). Further, Lewis testified that when he searched defendant incident to his arrest, he found a plastic baggie with five live rounds of ammunition that matched the round Lewis found in the gun. Defendant's possession of ammunition matching the round taken from the gun that he was seen throwing, and later recovered by the police, was circumstantial evidence that defendant had possessed the gun. See *United States v Prudhome*, 13 F3d 147, 149 (CA 5, 1994) (holding that a reasonable jury could have inferred that the defendant knowingly possessed the firearm in question from the fact that the defendant "had three rounds of matching ammunition in his waist pouch"). We conclude that the prosecution presented sufficient evidence to support defendant's convictions of felon-in-possession, CCW, and felony-firearm.

Defendant next argues that the prosecutor committed misconduct by failing to produce the firearm at trial and provide it to the defense. Again, we disagree.

To preserve an issue of prosecutorial misconduct, a defendant must contemporaneously object and request a curative instruction. *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010); *Unger*, 278 Mich App at 235. No contemporaneous objection was made to the prosecutor's failure to produce the actual firearm at trial. Therefore, this issue is not preserved. *Id.* Our review is thus limited to ascertaining whether there was plain error that affected the defendant's substantial rights. *Id.*; see also *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007). Prosecutorial misconduct issues are decided on a case-by-case basis, and the reviewing court must examine the record in context. *People v Mann*, 288 Mich App 114, 119; 792 NW2d 53 (2010).

The prosecution's suppression of evidence favorable to the accused violates due process when the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. *People v Banks*, 249 Mich App 247, 254-255; 642 NW2d 351 (2002); see also *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963).

Defendant contends that the failure produce the actual firearm at trial constituted prosecutorial misconduct. The record shows that the pistol was sent to the MSP crime lab for testing, but that it "was stuck in back-log" and not available to be produced at defendant's trial. The prosecution's failure to produce the gun cannot fairly be called "suppression" of that evidence. Moreover, even if the gun had been produced, it could hardly be considered "favorable to the accused." *Banks*, 249 Mich App at 254-255. Indeed, the physical evidence would have further corroborated the testimony of the police witnesses. We cannot conclude that the prosecutor's failure to produce the actual firearm at trial violated defendant's right to due process. *Id.*

In addition, we note that defense counsel made no contemporaneous objection to the prosecutor's failure to produce the firearm at trial; nor did defense counsel ask for a curative instruction. See *Bennett*, 290 Mich App at 475. Such a curative instruction could have alleviated any prejudice here. *Unger*, 278 Mich App at 235. The prosecutor's failure to produce the firearm at trial did not rise to the level of outcome-determinative plain error. See *id.*

Affirmed.

/s/ Kathleen Jansen  
/s/ Henry William Saad  
/s/ Pat M. Donofrio

**APPENDIX B**

26579 T  
PVH

Court of Appeals, State of Michigan

ORDER

People of Michigan v Charles Jerome Douglas

Docket No. 315027

LC No. 12-010051-FH

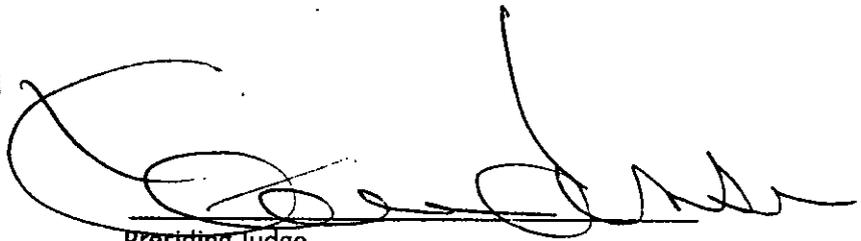
Kathleen Jansen  
Presiding Judge

Henry William Saad

Pat M. Donofrio  
Judges

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The Court orders that the motion for reconsideration is DENIED.



Presiding Judge

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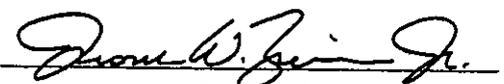
APPELLATE DEFENDER OFFICE



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 14 2014

Date



Chief Clerk

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Charles Jerome Douglas

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## **STATEMENT OF JURISDICTION**

Defendant-Appellant was convicted in the Wayne County Circuit Court by jury trial, and a Judgment of Sentence was entered on February 7, 2013. A Claim of Appeal was filed on February 25, 2013, by the trial court pursuant to the indigent defendant's request for the appointment of appellate counsel dated February 20, 2013, as authorized by MCR 6.425(F)(3). This Court has jurisdiction in this appeal as of right provided for by Mich Const 1963, art 1, §20, pursuant to MCL 600.308(1); MCL 770.3; MCR 7.203(A), MCR 7.204(A)(2).

## **STATEMENT OF QUESTIONS PRESENTED**

- I. WAS MR. DOUGLAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE HIS TRIAL ATTORNEY FAILED TO ADEQUATELY IMPEACH THE CREDIBILITIES OF THE TWO MAJOR PROSECUTION WITNESSES BY FAILING TO ARGUE TO THE JURY ABOUT A MANIFEST DISCREPANCY BETWEEN THEIR TESTIMONIES?**

Trial Court made no answer.  
Defendant-Appellant answers, "Yes".

- II. IS MR. DOUGLAS ENTITLED TO A RESENTENCING WHERE HE WAS ERRONEOUSLY SCORED WITH TEN POINTS UNDER OFFENSE VARIABLE 13, AND THAT SCORING PLACED HIM INTO AN INCORRECT RANGE FOR THE MINIMUM SENTENCE UNDER THE SENTENCING GUIDELINES?**

Trial Court made no answer.  
Defendant-Appellant answers, "Yes".

## STATEMENT OF FACTS

Defendant-Appellant Charles Jerome Douglas was convicted, at a jury trial in Wayne County Circuit Court, the Hon. Ulysses W. Boykin presiding, of one count of carrying a concealed weapon, MCL 750.227; one count of being a felon in possession of a weapon, MCL 750.224f; and one count of possession of a firearm in the commission of a felony (felon in possession), MCL 750.227b. The trial occurred on January 16-17, 2013. On February 7, 2013, Judge Boykin sentenced Mr. Douglas, as a fourth felony offender, to a prison term of five years (second felony-firearm conviction), with a concurrent prison term of two to ten years and a consecutive term of two to ten years. He now appeals as of right.

The trial essentially consisted of testimony from several Detroit Police officers asserting they saw Mr. Douglas in possession of a handgun, which he allegedly sought to dispose of during a foot chase with the officers. The handgun itself was not admitted into evidence during the trial, despite allegedly having been recovered by the police and sent for testing. The defense theory in the case was that Mr. Douglas did not possess any weapon prior to his arrest, and that the officers were either lying about seeing him with a gun or mistaken.

Officers Alen Ibrahimovic and Calvin Lewis testified that on October 9, 2012, at around midnight, they were patrolling in the area of St. Mary's Street in Detroit when they heard gunshots. (II, 20-22, 44-45).<sup>1</sup> They were in a fully marked police car. (II, 23). As they drove northbound in the direction from which the shots seemed to have been fired, they saw a man later identified as Mr. Douglas walking in the middle of the street. (II, 24, 45-46). According to the officers, they pulled up near Mr. Douglas, intending to ask him if he had heard or seen anything

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<sup>1</sup> Officer Ibrahimovic needed to be shown his police report by the prosecutor in order to recall the time when the alleged incident occurred. (II, 21-22). For the purposes of this brief, the voir dire transcript on the morning of January 16, 2013, will be referred to as volume I, the afternoon session on January 16 as volume II, and the transcript for January 17 as volume III.

concerning the gunshots, but as they neared him he looked at the police car, grabbed toward his right side, and ran off. (II, 24-25, 46-47)

According to Officer Abrahamovic, Mr. Douglas ran westbound between two houses on the block. (II, 25). The officer believed Mr. Douglas's grabbing towards his side was an indication that Mr. Douglas had a gun under his clothing, so the officer exited the vehicle and began to pursue Mr. Douglas on foot. (II, 25-26). The witness stated that when Mr. Douglas got to the rear of the residence at 19411 St. Mary's he pulled a handgun from beneath his clothing and threw it over a six foot high wooden fence into the neighboring back yard. (II, 27-28). Officer Abrahamovic testified he and his partner then seized Mr. Douglas and arrested him, and he then climbed over the fence and retrieved a silver handgun from the backyard of 19410 St. Mary's. (II, 28-29). He later placed that gun into evidence. (II, 29-30). Mr. Douglas did not produce any valid concealed weapons license for the officers.

Officer Lewis testified that when Mr. Douglas ran off, he ran eastbound into the rear of 19410 St. Mary's. (II, 47). He got out of the car and began to pursue Mr. Douglas on foot, along with Officer Ibrahimovic and Sgt. Osman, who arrived just after them in a separate squad car. (II, 48). According to Officer Lewis, he saw Mr. Douglas pull a chrome handgun with a black handle out from under his clothing and throw it over a fence into the backyard of 19411 Mansfield. (II, 49). After Mr. Douglas' arrest, the officer climbed up on a rock and looked over the fence, using his flashlight, and saw a handgun lying on the other side, in a driveway. (II, 50). After Mr. Douglas was arrested, a plastic baggie containing five live rounds of ammunition was found in his jacket pocket. (II, 51).

On cross-examination, Officer Ibrahimovic stated that Mr. Douglas was not wearing a coat when he was arrested. (II, 33). When shown his transcribed testimony from the preliminary

examination, he admitted that at that proceeding he had testified Mr. Douglas was wearing a coat. (II, 34-35). Neither officer knew if any fingerprints were found on the gun seized that night. (II, 38, 55). Officer Lewis estimated the foot chase took around two to three minutes. (II, 54). No one questioned the owner of the home from whose backyard the gun was seized. (II, 56).

Sgt. Michael Osman testified, as a defense witness, he was following the squad car being driven by Officer Lewis, and saw Mr. Douglas in the middle of the street. (II,70). He saw Mr. Douglas run away from Officer Lewis' car, holding his right side, and saw him throw a handgun over the fence into the backyard of the house behind the residence on St. Mary's. (II, 70). He drove his squad car into the driveway into which Mr. Douglas had run prior to parking and getting out to join in the foot pursuit. According to the officer, after being arrested Mr. Douglas told him he had thrown "only weed." (II, 74).

Sgt. Todd Eby, the officer in charge of the case, testified the handgun, a .380 caliber Cobra, had a defaced serial number. (II, 59). He sent the gun to the Michigan State Police lab to see if they could run any kind of trace on the weapon. (II, 59). When he checked with the State Police crime lab the night prior to this trial, he was told the gun was still in a backlog to be tested, and had not been returned to Wayne County for the trial. (II, 61-62).

The parties stipulated that Mr. Douglas has previously been convicted of a felony, and has not had his right to legally possess a firearm reinstated. (II, 63).

After the prosecution rested, Mr. Douglas initially stated for the record that he wanted to testify in his own behalf. (II, 65-67). At the beginning of the next day of trial, Mr. Douglas stated he had changed his mind and no longer wanted to testify. (III, 3-5). The defense then

rested. Following the closing arguments and the final instructions, the jury deliberated and entered guilty verdicts on all three charges in the case. (III, 55-56).

On August 7, 2014, the Michigan Court of Appeals affirmed Mr. Douglas' convictions and sentences, and on November 14, 2014, the Court of Appeals denied reconsideration of that opinion.

**I. MR. DOUGLAS WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE HIS TRIAL ATTORNEY FAILED TO ADEQUATELY IMPEACH THE CREDIBILITIES OF THE TWO MAJOR PROSECUTION WITNESSES BY FAILING TO ARGUE TO THE JURY ABOUT A MANIFEST DISCREPANCY BETWEEN THEIR TESTIMONIES.**

**Standard of Review:**

The appropriate appellate standard of review for claims of constitutionally ineffective counsel is *de novo*. See *People v Pickens*, 446 Mich 298 (1994).

**Argument:**

It is obvious from any reading of the record in this matter that the testimonial credibility of Officers Alen Ibrahimovic and Calvin Lewis was the key factual issue faced by Mr. Douglas' jurors. They each alleged to seeing Mr. Douglas throw a handgun over the fence into a backyard as they were pursuing him on foot after he fled from their marked squad car as they approached him to ask if he had heard or seen gunshots being fired in the area. Even though the police witnesses asserted that they retrieved a handgun from the backyard beyond the fence, no handgun was admitted into evidence during the trial, as the police claimed it was still in the possession of the State Police waiting to be evaluated. Due to the failure of the prosecution to produce the alleged gun,<sup>2</sup> the jury was unable to compare its appearance to the testimony of the officers (who asserted it was silver or chrome with a black handle), and there was no evidence presented tying that gun to Mr. Douglas prior to this date or whether any identifiable fingerprints were found on the gun. Accordingly, in the absence of any physical evidence corroborating the

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<sup>2</sup> The prosecution also claimed that five bullets were found in Mr. Douglas' possession at the time of his arrest, but those alleged bullets were also not produced or admitted into evidence during the trial.

officers' testimony, the jury was left to consider only their credibility as the focus of the prosecution's case.

That credibility was called into question by a glaring discrepancy between the testimony of Officer Ibrahimovic and Officer Lewis. In his direct testimony, Officer Ibrahimovic stated that the officers were driving northbound on St. Mary's when they spotted Mr. Douglas walking down the middle of the street. According to the witness, as they pulled up towards Mr. Douglas, purportedly to ask him if he had seen or heard anything in connection with the gunshots the officers had heard, he looked in their direction and started running away from the marked squad car. Officer Ibrahimovic testified that Mr. Douglas ran in a westbound direction:

A He looked in my direction, and aggressively grabbed the right side of his waistband area and began running **westbound** between the houses.

Q Okay. Now, when you say he looked in your direction, were you able to see his face?

A Yes.

Q And how were you able to see his face? It was after midnight, correct?

A That's correct.

Q Is there any lighting around?

A I had my department flashlight that I flashed at him.

Q Okay. And you said you were about to ask him if he heard where the gunshots came from?

A Yes, that is correct.

Q Okay?

A He grabbed the right side area aggressively, like (indicating) --

MR. DAVIS: For the record, the witness is indicating around the waistband area.

THE COURT: The record shall so reflect.

Q (By Mr. Davis) Okay?

A And began running **westbound** between the houses.

(II, 25). (Emphasis added).

When he testified, however, Officer Lewis, while generally consistent with Officer Ibrahimvic's version of the incident, stated in direct examination that Mr. Douglas ran in an eastward direction:

Q Okay. So, you pulled up alongside the Defendant?

A Yes. I pulled up alongside of Defendant on the passenger side of the vehicle. I'm the driver of the vehicle, but I pulled alongside of the Defendant with the passenger side exposed, with my partner exposed to the Defendant.

Q When you said exposed, you mean closest to?

A Closest to.

Q What happened?

A I observed the Defendant turn back, and he looked in the direction of our scout car. The Defendant then turned and took flight, which is running just north -- was **eastbound**, holding his waistband. He's running up the driveway to the rear of 19410 St. Marys.

(II, 47). (Emphasis added).

The officers were driving northbound at the time Mr. Douglas ran from them<sup>3</sup>, so this direct, 180-degree discrepancy cannot be explained by any claim the officers were unaware of the relevant directions.

In her cross-examination of the two officers, trial counsel did not mention this direct discrepancy, nor did she make any reference to it during her closing argument to the jury. (III, 20-26). In her closing argument she stressed that neither the gun nor the bullets were produced in evidence to corroborate the assertions of the officers that Mr. Douglas in fact had possessed and attempted to discard a weapon, but she never sought to further question their credibilities by reference to the manifest inconsistency between their allegations as to the direction Mr. Douglas ran.

Defense counsel's failure to use this discrepancy to impeach the testimony of the officers satisfied the Sixth Amendment standard of *Strickland v Washington*, 466 US 668; 104 S Ct 2052;

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<sup>3</sup> (II, 45-46).

80 L Ed 2d 674 (1984), because counsel's error fell below an objective standard of reasonableness, and counsel's deficient performance so prejudiced Mr. Douglas as to deny him a fair trial. *Id.* at 687-88; see also *People v Carbin*, 463 Mich 590, 600 (2001); US Const, Amend VI.

While Michigan courts apply a strong presumption that a defense counsel's actions constitute sound trial strategy (See, e.g., *People v Gonzalez*, 468 Mich 636, 645 (2003)), the conduct of defense counsel in this case, however, cannot possibly be labeled a reasonable "strategic choice." There was no possible advantage to Mr. Douglas's defense at trial in failing to argue to the jury that the officers' testimonies were in conflict, as the defense theory was that the officers were either lying or mistaken that he possessed a handgun.

The conduct of Mr. Douglas' trial counsel is similar to the representation of counsel found ineffective in *People v Dixon*, 263 Mich App 393 (2004), where counsel failed to lay the foundation for the admission of a tape recording of the complainant's 911 call. Even though the substantive content of that call reached the jury, the Court of Appeals held that actually hearing the complainant's calm voice during the call was necessary to undermine her credibility. *Id.* at 397-98. Based on the failure to lay the foundation for admitting the recording of that call and other conduct, defense counsel in *Dixon* was found to be constitutionally deficient. *Id.* at 400. As the Court recognized, "[d]efense counsel's failure to have admitted evidence critical to the issue of credibility of the complainant was likely outcome determinative." 263 Mich App at 398.

In reversing a trial conviction for criminal sexual conduct due to the constitutionally ineffective assistance of trial counsel, the unanimous Michigan Supreme Court in *People v Armstrong*, 490 Mich 281 (2011), first discussed the two-prong *Strickland* standard for a Sixth Amendment claim:

A defendant must meet two requirements to warrant a new trial because of the ineffective assistance of trial counsel. First, the defendant must show that counsel's performance fell below an objective standard of reasonableness. In doing so, the defendant must overcome the strong presumption that counsel's assistance constituted sound trial strategy. Second, the defendant must show that, but for counsel's deficient performance, a different result would have been reasonably probable.

490 Mich at 289-290. (Footnotes omitted).

The Supreme Court in *Armstrong* held the defendant's trial counsel was ineffective for failing to have phone records introduced into evidence that would have seriously impeached the credibility of the complainant's testimonial assertion that she never spoke on the phone or called the accused after the date of the second alleged assault. At a *Ginther*<sup>4</sup> hearing on remand, the trial attorney testified he believed the telephone records were crucial to the defense case, in light of the one-on-one credibility scenario of the trial, and that his failure to have those records admitted was not a strategic decision. The Court held that failure fell below the objective standard of reasonable assistance of counsel, and that the error was sufficiently prejudicial, in the context of the case, to demand reversal and a new trial:

Any attorney acting reasonably would have moved for the records' admission, particularly when, as here, attacking the complainant's credibility offered the most promising defense strategy.

\* \* \*

The attacks on the complainant's credibility at trial were inconclusive, providing mere "he said, she said" testimony contradicting the complainant's version of the events. The other credibility attacks revealed that the complainant had falsely accused her stepfather of rape on a prior occasion and that she habitually lied. Although unquestionably significant, such attacks had less of a tendency to undermine the complainant's credibility than the cell phone records, which would have provided documentary proof strongly suggesting that the complainant lied to **this** jury regarding her actions in connection with the alleged rapes in **this** case.

\* \* \*

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<sup>4</sup> *People v Ginther*, 390 Mich 436 (1973).

Notwithstanding that the cell phone records revealed defendant's frequent communication with a teenage girl, any attorney acting reasonably would have moved for the records' admission given that they offered powerful evidence of the complainant's lying to the jury in a case that essentially boiled down to whether the complainant's allegations of rape were true.

490 Mich at 290-291, 291-292, 293-294. (Emphasis in original).

In the case at bar, any attorney acting reasonably would have recognized the inconsistency between Officer Ibrahimovic's and Officer Lewis' testimony, and stressed that inconsistency as raising a reasonable doubt as to the reliability of their assertions. While this failure may have been harmless had the prosecution introduced physical evidence to corroborate the charges, in this trial the prosecution relied exclusively on the testimonial credibility of these two key witnesses. For that reason, a failure to impeach them with the conflict in their testimony was significant, and probably would have led to a different result had the impeachment occurred.

In this matter, the ineffectiveness of trial counsel is evident on the existing record. As there could be no reasonable strategic basis for the failure of trial counsel to recognize and emphasize the discrepancy to the jury, there is no need for a remand for a *Ginther* hearing in this matter. See, for example, *People v Armandarez*, 188 Mich App 61 (1991).

This Court should find that Mr. Douglas' Sixth Amendment right to effective assistance of counsel was violated in this case, reverse his convictions, and remand the matter for a new trial.

**II. MR. DOUGLAS IS ENTITLED TO A RESENTENCING WHERE HE WAS ERRONEOUSLY SCORED WITH TEN POINTS UNDER OFFENSE VARIABLE 13, AND THAT SCORING PLACED HIM INTO AN INCORRECT RANGE FOR THE MINIMUM SENTENCE UNDER THE SENTENCING GUIDELINES.**

**Standard of Review:**

The Court of Appeals reviews *de novo* whether the trial court properly interpreted and applied the sentencing guidelines to the facts. *People v Cannon*, 481 Mich 152, 156 (2008). It reviews the trial court's findings underlying a particular score for clear error. *People v Osantowski*, 481 Mich 103, 111 (2008). These factual findings must be supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438 (2013).

**Argument:**

Mr. Douglas was convicted in this matter for felony-firearm (second offense), carrying a concealed weapon, and felon in possession of a weapon. At his sentencing, the trial court scored him for the felon in possession of a weapon conviction, as that was the predicate felony for the felony-firearm conviction. See Appendix A – copy of Information.

In the scoring of the guidelines, Mr. Douglas was assessed under the Offense Variables with points in only OV 13. He was assessed ten points under that variable. See Appendix B – copy of Sentencing Information Report. Combined with his Prior Record Variable score of 45 points, placing him into the D category, his score of ten OV points put him into the II level, resulting in a recommended range for the minimum sentence, as a fourth habitual offender, of 7 to 46 months. See Appendix B.

A review of the presentence report prepared in this case clearly shows that Mr. Douglas was inaccurately scored with 10 points under OV 13. That level of scoring is permitted only if the defendant has, within a five year period counting the sentencing offense, either “a pattern of

felonious criminal activity involving a combination of 3 or more crimes against a person or property of a violation of MCL 333.7401(2)(a)(i)-(iii) or MCL 333.7403(2)(a)(i)-(iii)” or “a pattern of felonious criminal activity involving 3 or more violations of MCL 333.7401(2)(a)(i)-(iii) or MCL 7403(2)(a)(i)-(iii).” MCL 777.43(1)(d); MCL 777.43(1)(e).

Mr. Douglas’s prior criminal record, as set forth in the presentence report,<sup>5</sup> shows that he has only one felony conviction in the five year period encompassing the commission date of the instant offenses (October 9, 2012), which could qualify under either provision of OV 13. The sentencing offense of felon in possession is classified as a crime against public safety, as is the carrying a concealed weapon conviction. Felony-firearm convictions are not classified under the guidelines. Mr. Douglas has no other felony conviction within five years of October, 2013. He has a delivery of marijuana conviction committed on September 3, 2007, which is more than five years prior to the offense date in the case at bar. Even if that conviction could qualify under OV 13, it is the only conviction within these categories.

The elimination of the 10 points under OV 13 would result in Mr. Douglas being scored in level I for Offense Variables. Combined with his PRV level of D, the correct range for the sentencing should have been 5 to 46 months for this Class E, fourth habitual offender conviction. Because the trial court used an incorrect guidelines range in this matter, Mr. Douglas is entitled to a resentencing on the Felon in Possession conviction (the five year term for the second Felony-Firearm conviction was mandatory), even though the 24 month minimum sentence imposed in the case falls within the correct, lower range. *People v Francisco*, 474 Mich 82 (2006).

Even though trial counsel for Mr. Douglas did not object to the misscoring of the guidelines, review of the scoring error, and remand for a resentencing, is proper in that the

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<sup>5</sup> That report is being furnished to this Court under separate cover.

failure of trial counsel to recognize that error and object was constitutionally ineffective assistance, in violation of his Sixth Amendment right, and permits this Court to order sentencing relief in the absence of a timely objection. *Strickland v Washington, supra; People v Harmon*, 248 Mich App 522 (2001); US Const, Amend VI.

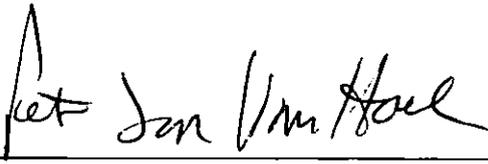
If the convictions are otherwise affirmed, this Court should remand the matter to the trial court for resentencing on the felon in possession conviction.

**SUMMARY AND RELIEF**

**WHEREFORE**, for the foregoing reasons, Defendant-Appellant asks that this Honorable Court grant him leave to appeal, or reverse his convictions and remand for a new trial, or, at a minimum, remand the matter for resentencing.

Respectfully submitted,

**STATE APPELLATE DEFENDER OFFICE**

BY: 

**PETER JON VAN HOEK (P26615)**

Assistant Defender

3300 Penobscot Building

645 Griswold

Detroit, Michigan 48226

(313) 256-9833

Dated: January 8, 2015..

## **APPENDIX A**

36TH DISTRICT COURT DETROIT  
3rd Judicial Circuit

INFORMATION  
FELONY

The People of the State of Michigan

vs

CHARLES JEROME DOUGLAS 82-12721361-01

**Offense Information**

**Police Agency / Report No.**

82CIS 1210090006

**Date of Offense**

10/09/2012 CDG

**Place of Offense**

19410 ST MARYS, DETROIT

**Complainant or Victim**

P.O. IBRAHIMOVIC ALLEN

**Complaining Witness**

INFO AND BELIEF

**STATE OF MICHIGAN, COUNTY OF WAYNE**

**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 the date and at the location described above, the Defendant(s):

**COUNT 1: WEAPONS - FIREARMS - POSSESSION BY FELON**

did possess , or carry a firearm when ineligible to do so because he or she had been convicted of DELIVERY / MANUFACTURE MARIJUANA, a specified felony, and the requirements for regaining eligibility had not been met; contrary to MCL 750.224f. [750.224F]

FELONY: 5 Years and/or \$5,000.00; Mandatory forfeiture of weapon or device [See MCL 750.239]

**COUNT 2: WEAPONS - CARRYING CONCEALED**

did carry a dangerous weapon, to-wit: HANDGUN, concealed on or about his or her person; contrary to MCL 750.227. [750.227]

FELONY: 5 Years or \$2,500.00; Mandatory forfeiture of weapon or device [See MCL 750.239]

**COUNT 3: WEAPONS - FELONY FIREARM**

did carry or have in his/her possession a firearm, to-wit: HANDGUN, at the time he/she committed or attempted to commit a felony, to-wit: FELON IN POSSESSION OF FIREARM; contrary to MCL 750.227b. [750.227B-A]

FELONY: 2 Years consecutively with and preceding any term of imprisonment imposed for the felony or attempted felony conviction; Mandatory forfeiture of weapon or device [See MCL 750.239]

**did SECOND OFFENSE NOTICE**

Although the People are not required to notify the court or defendant of prior convictions that may result in an enhanced sentence, we are voluntarily informing the court that according to our current information, the defendant was previously convicted of violating MCL 750.227b on or about 7/21/05, and therefore, upon conviction, may be subject to an enhanced sentence under MCL 750.227b. [750.227B-B]

FELONY: 5 Years consecutively with and preceding any term of imprisonment imposed for the felony or attempted felony conviction; Mandatory forfeiture of weapon or device [See MCL 750.239]

**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 4/29/99, he or she was convicted of the offense of DELIVERY / MANUFACTURE MARIJUANA in violation of 333.74012D3; in the 3RD CIRCUIT Court for WAYNE COUNTY, State of MI;

And on or about 7/21/05, he or she was convicted of the offense of FELONY FIREARM in violation of 750.227B-A; in the 3RD CIRCUIT Court for WAYNE COUNTY, State of MI;

And on or about 9/26/07, he or she was convicted of the offense of DELIVERY OF MANUFACTURE MARIJUANA in violation of 333.74012D3; in the 3RD CIRCUIT Court for WAYNE COUNTY, State of MI;

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.

Kym Worthy  
P38875  
Prosecuting Attorney

By:   
Bar Number

10/10/2012  
Date

## **APPENDIX B**

SENTENCING INFORMATION REPORT

Offender: Douglas, Charles Jerome SSN: [REDACTED] Workload: 1929 Docket Number: 12010051-01-FH  
Judge: The Honorable Ulysses W. Boykin Bar No.: P11082 Circuit No.: 03 County: 82

Conviction Information

Conviction PACC: 750.224F Offense Title: Weapons - Firearms - Possession by Felon  
Crime Group: Public Safety Offense Date: 10/09/2012  
Crime Class: Class E Conviction Count: 1 of 3 Scored as of: 10/09/2012  
Statutory Max: 60 Habitual: No Attempted: No

Prior Record Variable Score

PRV1: 0 PRV2: 30 PRV3: 0 PRV4: 0 PRV5: 5 PRV6: 0 PRV7: 10  
Total PRV: 45  
PRV Level: D

Offense Variable

OV1: 0 OV3: 0 OV4: 0 OV9: 0 OV10: 0 OV12: 0 OV13: 10  
OV14: 0 OV16: 0 OV18: 0 OV19: 0 OV20: 0  
Total OV: 10  
OV Level: II

Sentencing Guideline Range

Guideline Minimum Range: 7 to <sup>46</sup>28  
W/B

Minimum Sentence

|            | Months | Life                     |
|------------|--------|--------------------------|
| Probation: |        | <input type="checkbox"/> |
| Jail:      |        | <input type="checkbox"/> |
| Prison:    | 24     | <input type="checkbox"/> |

Sentence Date: 2-7-13  
Guideline Departure: NO  
Consecutive Sentence: FFA & FIP  
Concurrent Sentence: Yes CCW & FFA

Sentencing Judge: Ulysses W. Boykin Date: 2-7-13

Prepared By: TOWNLEY, MICHAEL W

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

C.O.A. No. 315027

-vs-

Lower Court No. 12-10051-01

Charles J. Douglas,

Defendant-Appellant,

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SUPPLEMENTAL PRO SE BRIEF ON APPEAL

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**STATEMENT OF JURISDICTION**

This Honorable Court has jurisdiction to hear these issues under MCR Admin Order 2004-6(4) as a supplement to the brief on appeal filed by Attorney VanHoek

**STATEMENT OF QUESTIONS PRESENTED**

ISSUE I: WAS DEFENDANT DENIED DUE PROCESS OF LAW AND EQUAL PROTECTION UNDER THE U.S. CONST WHERE INSUFFICIENT EVIDENCE WAS PRESENTED?.....1-3

ISSUE II: WAS DEFENDANT DENIED HIS DUE PROCESS RIGHTS UNDER U.S. CONST. AMS. V & XIV WHERE THE PROSECUTOR FAILED TO PROVIDE EXCULPATORY EVIDENCE? 3-5

**STATEMENT OF FACTS**

Defendant-Appellant in Pro se adopts the statement of facts presented by apponited appellate counsel.

## ISSUE I

DEFENDANT WAS DENIED HIS DUE PROCESS RIGHTS UNDER U.S. CONST  
AMS V & XIV TO DUE PROCESS AND EQUAL PROTECTION WHERE THERE  
WAS INSUFFICIENT EVIDENCE TO CONVICT ON WEAPONS POSSESSION

The Court of Appeals reviews insufficient evidence claims de novo: *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992).

Defendant-Appellant Charles Douglas in Pro se (hereinafter Defendant) adopts the statement of facts set forth by appellate counsel. Those facts as they apply herein are as follows:

On October 9, 2012 police spotted defendant after hearing several shots. Officers Ibrahimovic & Lewis saw defendant and made assumptions based on race and proximity and attempted to question defendant. Defendant fled in fear for his life. Officers Ibrahimovic & Lewis testified to seeing defendant throw a gun over a fence. A gun was found in the area defendant was near and defendant was arrested for possession.

At no time prior to, or during trial was this "alleged" weapon ever shown to defendant, the court or jury. No forensics expert testified as to the fingerprints of defendant being on the weapon. No evidence of any kind was shown to the Court, jury, defendant or his attorney of ownership of the "alleged" weapon, or any weapon. A Sgt. Todd Eby did give testimony to an evidence tag number and identified the Michigan State Police Crime Lab this weapon was allegedly sent to. A jury found defendant guilty based on officer testimony.

It should first be noted the social stigma any defendant must face when officers testify. 99% of citizens want to believe police officers, even when they know they are lying see *Crim.Def.News*, Vol36, Issues 5 & 6 Feb-March 2013. There is also the attached news article from the New York Times "Why police lie under oath" *N.Y.Times*, 2/4/13 (Exhibit A). The article is based on facts of

officer false testimony in court.. This court is fully aware of the problems in Detroit, and the need for convictions to show the new police chief is being effective. When combined with an aggressive prosecutor, this is a barrier that indigent criminal defendants cannot overcome. There is a valid issue against defendant's trial counsel, brought by appellate counsel. There is also the fact that Wayne County was one of the ten counties randomly picked by the National Association of Criminal Defense Lawyers (N.A.C.D.L.) that conducted a study on court appointed attorneys. N.A.C.D.L. found that Wayne County did in fact provide ineffective attorneys for indigent defense (Exhibit B report), and Governor Synder only recently signed legislation to remedy the situation.

Convictions must be based on facts, not conjecture. A State may not obtain a conviction without sufficient factual evidence. Such a conviction violates U.S. Const. Ams. V & XIV, see Jackson v Virginia, 443 U.S 307; 99 S.Ct. 2781; 61 L.Ed.2d 560 (1979).

In Parker v Renico, 506 F3d 444 (CA 6 Mich 2007), Citing Michigan Law MCL 750.224f, Parker challenged the sufficiency of the evidence to convict him. The Sixth Circuit found that: "A with the Federal rule, a person has constructive possession if there is a proximity to the [weapon] together with indicia of control". The Court also found that Parkers "flight" or attempted flight, had no bearing on the possession of the weapon, Id at 450-451.

Herein, the arresting officers testified they saw defendant throw a weapon over the fence. Defendant indicated that he had in fact thrown marijuana over the fence. Defendant did not testify to this fact realizing that comparing his testimony to that of several officers was a "speculative gesture of futility". However, as with Parker, there is nothing but testimony to link defendant with this gun

A requirement of conviction of Felon in possession of a firearm, MCL

750.224f, under either CJI2d 11.38, or 11.38A (1) "First that defendant possessed/used/transported/sold/received s firearm in this state. Sgt. Todd Eby testified that the weapon was entered into the Detroit Police Dept. as evidence tag no. E45565704 (see Exhibit C Police Report). Sgt. Todd eby then reports that the weapon, a "chrome Cobra, .380 caliber" was sent to Michigan State Police crime Lab, See Trial Trans pages 58-62. Sgt. Eby identifies the lab having control of this weapon as the Northville, MI division, and indicates that he spoke to a lab technician who informed him that the weapon was "backlogged" and no tests had been conducted. Sgt. Eby did not testify whether standard fingerprint tests had been conducted, or show a receipt for the weapon to the Michigan State Police Crime Lab. Herein, it should also be noted that at no time did defense counsel Barrett ever cross exam or question Sgt. Todd Eby.

Given that testimony alone was the basis of the conviction, it was crucial that trial counsel do everything within her power to show the jury the conflicting statements of the officers. This was fully addressed in Appellate Attorneys Brief. There is insufficient evidence to maintain the conviction under Jackson v Virginia, 443 U.S 307 (1979).

" DEFENDANT WAS DENIED HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL IN VIOLATION OF U.S. CONST AMS. V & XIV WHERE THE PROSECUTOR FAILED TO PROVIDE PHYSICAL EVIDENCE AT TRIAL"

The Court of Appeals reviews prosecutor misconduct de novo; People v Tracey 221 Mich App 321; 561 NW2d 673 (1996).

Defendant-Appellant Charles Douglas in Pro se (hereinafter Defendant) adopts the statement of facts set forth by appellate counsel. Those facts as they apply herein are as follows:

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MCR 6.201(B):" Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant (1) any exculpatory information or evidence known to the prosecuting attorney."

The U.S. Supreme Court stated in *Strickler v Greene*, 527 U.S 263; 119 S Ct 1936; 144 L.Ed2d 286 (1999), the Court stated: ".....We have since held the duty to disclose ..evidence is applicable even absent a request.....Moreover, the rule encompasses evidence known only to police investigators..." 119 S Ct at 1948. In short it is the duty of the State to provide evidence and that does not mean just an evidence report. Blacks Law Dictionary 9TH Ed defines "Evidence: 1: Something including testimony, documents and tangible objects....., and defines "Tangible evidence: Physical evidence that is either real..."

The only thing real shown here is an evidence tag number and Sgt. Todd Eby testimony. Nothing in these rules allows a prosecutor to avoid his responsibility to provide physical evidence with testimony alone.

**RELIEF REQUESTED**

**A0. REMAND FOR A NEW TRIAL AND ANY OTHER APPROPRIATE RELIEF.**

I, Charles Douglas swear under penalty of perjury the foregoing is true & correct.

Respectfully Submitted,

DATED: March 25, 2014

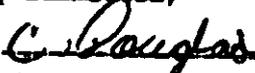
  
\_\_\_\_\_  
Charles Douglas in Pro se

exhibit 1

**The New York Times**

February 2, 2013

# Why Police Lie Under Oath

By MICHELLE ALEXANDER

THOUSANDS of people plead guilty to crimes every year in the United States because they know that the odds of a jury's believing their word over a police officer's are slim to none. As a juror, whom are you likely to believe: the alleged criminal in an orange jumpsuit or two well-groomed police officers in uniforms who just swore to God they're telling the truth, the whole truth and nothing but? As one of my colleagues recently put it, "Everyone knows you have to be crazy to accuse the police of lying."

But are police officers necessarily more trustworthy than alleged criminals? I think not. Not just because the police have a special inclination toward confabulation, but because, disturbingly, they have an incentive to lie. In this era of mass incarceration, the police shouldn't be trusted any more than any other witness, perhaps less so.

That may sound harsh, but numerous law enforcement officials have put the matter more bluntly. Peter Keane, a former San Francisco Police commissioner, wrote an article in The San Francisco Chronicle decrying a police culture that treats lying as the norm: "Police officer perjury in court to justify illegal dope searches is commonplace. One of the dirty little not-so-secret secrets of the criminal justice system is undercover narcotics officers intentionally lying under oath. It is a perversion of the American justice system that strikes directly at the rule of law. Yet it is the routine way of doing business in courtrooms everywhere in America."

The New York City Police Department is not exempt from this critique. In 2011, hundreds of drug cases were dismissed after several police officers were accused of mishandling evidence. That year, Justice Gustin L. Reichbach of the State Supreme Court in Brooklyn condemned a widespread culture of lying and corruption in the department's drug enforcement units. "I thought I was not naïve," he said when announcing a guilty verdict involving a police detective who had planted crack cocaine on a pair of suspects. "But even this court was shocked, not only by the seeming pervasive scope of misconduct but even more distressingly by the seeming casualness by which such conduct is employed."

Remarkably, New York City officers have been found to engage in patterns of involving charges as minor as trespass. In September it was reported that the attorney's office was so alarmed by police lying that it decided to stop prosecutions. Officers were stopped and arrested for trespassing at public housing projects, unless p



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interviewed the arresting officer to ensure the arrest was actually warranted. Jeannette Rucker, the chief of arraignments for the Bronx district attorney, explained in a letter that it had become apparent that the police were arresting people even when there was convincing evidence that they were innocent. To justify the arrests, Ms. Rucker claimed, police officers provided false written statements, and in depositions, the arresting officers gave false testimony.

Mr. Keane, in his Chronicle article, offered two major reasons the police lie so much. First, because they can. Police officers “know that in a swearing match between a drug defendant and a police officer, the judge always rules in favor of the officer.” At worst, the case will be dismissed, but the officer is free to continue business as usual. Second, criminal defendants are typically poor and uneducated, often belong to a racial minority, and often have a criminal record. “Police know that no one cares about these people,” Mr. Keane explained.

All true, but there is more to the story than that.

Police departments have been rewarded in recent years for the sheer numbers of stops, searches and arrests. In the war on drugs, federal grant programs like the Edward Byrne Memorial Justice Assistance Grant Program have encouraged state and local law enforcement agencies to boost drug arrests in order to compete for millions of dollars in funding. Agencies receive cash rewards for arresting high numbers of people for drug offenses, no matter how minor the offenses or how weak the evidence. Law enforcement has increasingly become a numbers game. And as it has, police officers' tendency to regard procedural rules as optional and to lie and distort the facts has grown as well. Numerous scandals involving police officers lying or planting drugs — in Tulia, Tex. and Oakland, Calif., for example — have been linked to federally funded drug task forces eager to keep the cash rolling in.

THE pressure to boost arrest numbers is not limited to drug law enforcement. Even where no clear financial incentives exist, the “get tough” movement has warped police culture to such a degree that police chiefs and individual officers feel pressured to meet stop-and-frisk or arrest quotas in order to prove their “productivity.”

For the record, the New York City police commissioner, Raymond W. Kelly, denies that his department has arrest quotas. Such denials are mandatory, given that quotas are illegal under state law. But as the Urban Justice Center's Police Reform Organizing Project has documented, numerous officers have contradicted Mr. Kelly. In 2010, a New York City police officer named Adil Polanco told a local ABC News reporter that “our primary job is not to help anybody, our primary job is not to assist anybody, our primary job is to get those numbers and come back with them.” He continued: “At the end of the night you have to come back with something. You

have to write somebody, you have to arrest somebody, even if the crime is not committed, the number's there. So our choice is to come up with the number."

Exposing police lying is difficult largely because it is rare for the police to admit their own lies or to acknowledge the lies of other officers. This reluctance derives partly from the code of silence that governs police practice and from the ways in which the system of mass incarceration is structured to reward dishonesty. But it's also because police officers are human.

Research shows that ordinary human beings lie a lot — multiple times a day — even when there's no clear benefit to lying. Generally, humans lie about relatively minor things like "I lost your phone number; that's why I didn't call" or "No, really, you don't look fat." But humans can also be persuaded to lie about far more important matters, especially if the lie will enhance or protect their reputation or standing in a group.

The natural tendency to lie makes quota systems and financial incentives that reward the police for the sheer numbers of people stopped, frisked or arrested especially dangerous. One lie can destroy a life, resulting in the loss of employment, a prison term and relegation to permanent second-class status. The fact that our legal system has become so tolerant of police lying indicates how corrupted our criminal justice system has become by declarations of war, "get tough" mantras, and a seemingly insatiable appetite for locking up and locking out the poorest and darkest among us.

And, no, I'm not crazy for thinking so.

*Michelle Alexander is the author of "The New Jim Crow: Mass Incarceration in the Age of Colorblindness."*

**The New York Times**

February 10, 2013

# Police Dishonesty in the Courtroom

**To the Editor:**

Re "Why Police Lie Under Oath," by Michelle Alexander (Sunday Review, Feb. 3):

Police lie under oath because they're cynical. To posit that the average police officer is motivated by some system of "rewards," or to give credence to the argument by a former San Francisco police commissioner, Peter Keane, that police lie because they can, is simplistic at best. Police officers also lie because they believe, albeit often wrongly, that they're performing a public service by ensuring that defendants are convicted.

Ms. Alexander is correct that this is a problem. But to ignore the cynicism created by a legal system, a government and a larger society (think of the Wall Street scandals) where bad behavior is commonplace and very often goes unpunished is to miss the point. And excoriating the police while ignoring the rest is tantamount to treating the symptoms of a disease while overlooking root causes.

**ANDY ROSENZWEIG**

Newport, R.I., Feb. 3, 2013

*The writer is a retired New York Police Department lieutenant and a former chief investigator for the Manhattan district attorney.*

**To the Editor:**

The tone of Michelle Alexander's essay offers yet another example of how American law enforcement and its academic critics keep talking past each other, to their and society's detriment. While there are far too many police officers who are arrogantly convinced they can do no wrong, there are also far too many pundits who believe the police can do no right.

To give Professor Alexander her due, the enduring problem of police corruption demands urgent attention through improved standards for hiring, training, leadership and accountability.

With that said, to argue as she does that police witnesses might deserve less than not only to impugn the integrity of the vast majority of officers, but also to be uncomfortable reality that most people arrested for conspicuous street crimes are guilty that their actions need hardly be embellished by police lies.

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**JONATHAN M. WENDER**

Seattle, Feb. 4, 2013

*The writer is a former police officer and a professor of sociology at the University of Washington.*

**To the Editor:**

Michelle Alexander suggests two explanations for why officers lie: because they can, and to increase arrests. I would like to suggest a third.

Our system openly embraces certain police lies, such as undercover lies and lies to induce confessions. Given that officers also lie under oath, one has to wonder: Does the acceptance of lying in the field have a spillover effect into the courtroom? Can an officer who is trained to live an undercover lie fairly be expected to turn off the duplicity spigot upon crossing the threshold into the courtroom?

While ending all investigative lies is probably an unrealistic goal, it may be time to question our reflexive assumption that these lies are "good" lies. If we can nudge the police toward a stronger culture of honesty in the field, then perhaps we can better rely on them to maintain honesty in the courtroom.

**DANIEL E. MONNAT**

Wichita, Kan., Feb. 5, 2013

*The writer is a lawyer.*

**To the Editor:**

For poor people of color trapped in the criminal justice system, the fact that police lie is a self-evident truth. They do so routinely and with impunity.

Last fall, the criminal defense clinic at Benjamin N. Cardozo School of Law represented a young black man charged with possession of a knife (recovered from his pants pocket) after he was searched by a police officer who swore — under penalty of perjury — that the client was blocking the entrance to a building in violation of a disorderly conduct statute. A video obtained from an adjacent store revealed a very different reality — just a young kid talking with friends, never blocking anyone's way.

Too often, though, without a video, our clients' accounts of the lies told by police fall on deaf ears. Prosecutors and judges engage in cognitive dissonance — on the one hand understanding

that police lie; on the other, failing to address the issue in any meaningful way.

Perhaps this is because our criminal justice system relies so heavily on the assumption of police as truth tellers. Acknowledging the problem threatens the very foundation of an already dysfunctional system.

For those who have experienced the corrupting effect of police lies, however, the question remains: what will it take to break a police practice that leads to so much injustice?

**JENNIFER BLASSER**

New York, Feb. 4, 2013

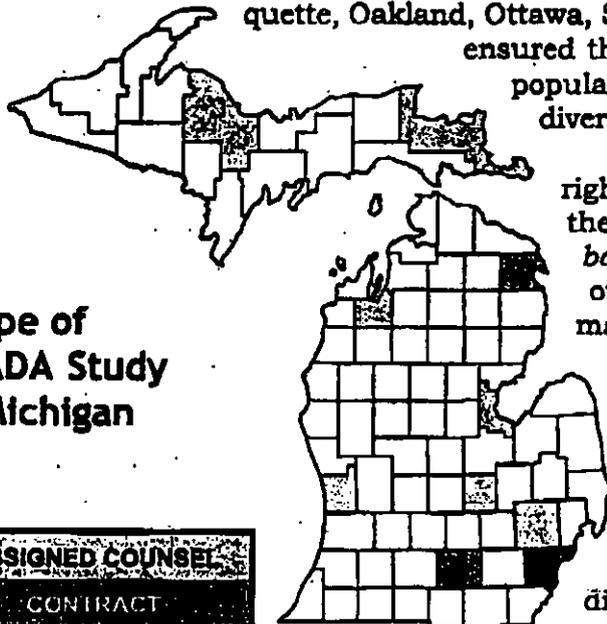
*The writer is a clinical assistant professor at Benjamin N. Cardozo School of Law.*

# Executive Summary

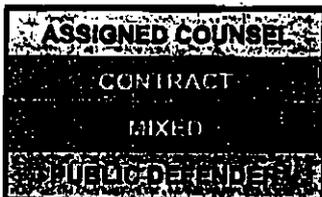
Exhibit 2

**T**he National Legal Aid & Defender Association (NLADA) finds that the state of Michigan fails to provide competent representation to those who cannot afford counsel in its criminal courts. The state of Michigan's denial of its constitutional obligations has produced myriad public defense systems that vary greatly in defining who qualifies for services and the competency of the services rendered. Though the level of services varies from county to county – giving credence to the proposition that the level of justice a poor person receives is dependent entirely on which side of a county line one's crime is alleged to have been committed instead of the factual merits of the case – NLADA finds that none of the public defender services in the sample counties are constitutionally adequate.

These conclusions were reached after an extensive year-long study of indigent defense services in ten representative counties in partnership with the State Bar of Michigan and on behalf of the Michigan Legislature under a concurrent resolution (SCR 39 of 2006). To ensure that a representative sample of counties was chosen to be studied, and to avoid criticism that either the best or worst systems were cherry-picked to skew the results, NLADA requested that an advisory group be convened to choose the sample counties. Created by SCR 39-sponsor Senator Alan Cropsey, the advisory group was composed of representatives from the State Court Administrator's Office, the Prosecuting Attorneys Association of Michigan, the State Bar of Michigan, the State Appellate Defender Office, the Criminal Defense Attorneys of Michigan, and trial-level judges. Ten of Michigan counties were studied: Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne. The advisory group ensured that the county sample reflected geographic, population, economic and defense delivery model diversity.



Scope of  
NLADA Study  
in Michigan



The report opens with a retelling of the first right to counsel case in America – the case of the “Scottsboro Boys” in 1932, (*Powell v. Alabama*). Chapter I (pp. 1-4) presents an overview of our findings and concludes that many of the systemic deficiencies identified over three quarters of a century ago in the Scottsboro Boys’ story permeate the criminal courts of Michigan today: judges hand-picking defense attorneys; lawyers appointed to cases for which they are unqualified; defenders meeting clients on the eve of trial and holding non-confidential discussions in public courtroom corridors; attorneys failing to identify obvious conflicts of interest; failure of defenders to properly prepare for trials or sentencings; attorneys violating their ethical canons to zeal-

## EXECUTIVE SUMMARY

ously advocate for clients; inadequate compensation for those appointed to defend the accused; and, a lack of sufficient time, training, investigators, experts and resources to properly prepare a case in the face of a state court system that values the speed with which cases are disposed of over the needs of clients for competent representation.

Chapter II (pp. 5-14) presents the obligations that all states face under *Gideon v. Wainwright* – the mandate to make available to indigent defense attorneys the resources and oversight needed to provide constitutionally-adequate legal representation. Unfortunately, the laws of Michigan require county governments to pay for the state's responsibilities under *Gideon* at the trial-level without any statewide administration to ensure adequacy of services rendered. This stands in contradistinction to the majority of states, thirty of which relieve their counties entirely from paying for the right to counsel at the trial-level.

Collectively, Michigan counties spend \$74,411,151 (or \$7.35 per capita) on indigent defense services; 38 percent less than the national average of \$11.86. Michigan ranks 44th of the 50 states in indigent defense cost per capita. The practical necessity of state funding and oversight for the right to counsel is premised on the fact that the counties most in need of indigent defense services are often the ones that least can afford to pay for it. The financial strains at the county level in Michigan have led many counties to choose low-bid, flat-fee contract systems as a means of controlling costs. In low-bid, flat-fee contract systems an attorney agrees to accept all or a fixed portion of the public defense cases for a pre-determined fee – creating a conflict of interests between a lawyer's ethical duty to competently defend each and every client and her financial self-interests that require her to invest the least amount of time possible in each case to maximize profit. Chapter II ends with a documentation of Michigan's historic, but ultimately ineffective, struggles to implement *Gideon*, including previous reports, case law, state bar actions and pending litigation.

The United States Supreme Court extended the right to counsel to misdemeanor cases in two landmark cases: *Argersinger v. Hamlin* and *Alabama v. Shelton*. The third chapter of the report (pp. 15-34) documents abuses of the right to counsel found throughout Michigan's misdemeanor courts – the district courts. People of insufficient means in Michigan are routinely processed through the criminal justice system without ever having spoken to an attorney in direct violation of both *Argersinger* and *Shelton*. Many district courts throughout Michigan simply do not offer counsel in misdemeanor cases at all, while others employ various ways to avoid their constitutional obligation to provide lawyers in misdemeanor cases. These include uninformed waivers of counsel, offers by prosecutors to "get out of jail" for time served prior to meeting or being approved for a publicly-financed de-

### Trial-Level Indigent Defense Funding, By State



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## EVALUATION OF MICHIGAN'S TRIAL-LEVEL INDIGENT DEFENSE SYSTEMS

fense counsel and the threat of personal financial strains through the imposition of unfair cost recovery measures. district courts across the state are prioritizing speed, revenue generation and non-valid waivers of counsel over the due process protections afforded by the United States Constitution. In fact, the emphasis on speed of case processing has led one jurisdiction – Ottawa County – to colloquially refer to the days on which the district court arraigns people as “MoJustice Day” (their terminology, not ours). Our general observations across the state suggest that the Ottawa local vernacular is apt for describing Michigan’s valuing of speed over substance.

The American Bar Association’s *Ten Principles of a Public Defense Delivery System* constitute the fundamental standards that a public defense delivery system should meet if it is to deliver – in the ABA’s words – “effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.” To show the interdependence of the ABA *Ten Principles*, NLADA chose one jurisdiction – Jackson County – around which to explain the importance of the *Principles* and to document how Michigan counties fail to meet them. That analysis, set forth in Chapter IV (pp. 35-56) extensively details how judicial interference impacts attorney workload and performance. In so doing, Jackson County becomes the poster child for reform in the state – not because county officials and policy-makers are inured to the problems of the poor, but because they fail to

### Per-Capita Spending

|     |                         |                |
|-----|-------------------------|----------------|
| 33. | Tennessee               | \$9.30         |
| 34. | Alabama                 | \$9.17         |
| 35. | North Dakota            | \$8.80         |
| 36. | Rhode Island            | \$8.67         |
| 37. | Kansas                  | \$8.53         |
| 38. | Hawaii                  | \$8.26         |
| 39. | Maine                   | \$8.20         |
| 40. | Pennsylvania            | \$8.10         |
| 41. | Oklahoma                | \$8.02         |
| 42. | Idaho                   | \$7.83         |
| 43. | South Carolina          | \$7.65         |
| 44. | Michigan                | \$7.35         |
| 45. | Texas                   | \$7.04         |
| 46. | Indiana                 | \$6.77         |
| 47. | Arkansas                | \$6.65         |
| 48. | Utah                    | \$5.22         |
| 49. | Missouri                | \$5.20         |
| 50. | Mississippi             | \$4.15         |
|     | <b>NATIONAL AVERAGE</b> | <b>\$11.86</b> |

Comparing indigent defense systems across state lines is difficult, at best, given jurisdictional variances related to delivery model, population, geographic size, prosecutorial charging practices, crime rates, county versus state funding, three strikes laws, and the death penalty (among others). For example, the state of Alaska has the highest cost per capita indigent defense spending – (\$40.96) due almost entirely to the fact that public defenders must travel by air for many court appearances. So, whereas a high cost per capita may not necessarily guarantee that a state is providing adequate representation, a low indigent defense cost per capita certainly is an indicator of a system in trouble. Michigan ranks 44th of the 50 states.

## EXECUTIVE SUMMARY

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provide constitutionally adequate services despite their desire to do so.

Chapter V (pp. 57-82) is a documentation of how the other representative counties fail the ABA *Ten Principles* highlighted in the previous chapter. This section begins with an analysis of how Bay County is devolving from a public defender model into a flat-fee contract system because of undue political interference. The chapter also recounts the lack of an adversarial process in Ottawa County, where indigent defense services has devolved to the point where defense attorneys call the prosecuting attorney and ask him to have law enforcement conduct further investigations rather than conducting independent investigations themselves. Despite the overall dedication and professionalism of thousands of citizens employed in the police and prosecution functions in Michigan, it is simply impossible to always arrest and prosecute the right defendant for the right crime and mete out accurate and just sentences in every instance. Without a functioning adversarial justice system, everyday human error is more likely to go undiscovered and result in the tragedy of innocent people being tried, convicted and imprisoned.

In addition, Chapter V discusses many other systemic deficiencies in the delivery of the right to counsel across the state, including:

- The failure of the representative counties to ensure that their public defenders are shielded from undue judicial interference, as required by *Principle 1*. In Grand Traverse County, for example, the judiciary forces public defense attorneys to provide certain legal services for which they are not compensated if they wish to be awarded public defender contracts.
- The failure of the representative counties to manage and supervise its public defense attorneys' workload as required by ABA *Principles 5* and *10*. In Oakland County, one judge indicated that because attorneys are not barred from private practice or taking public cases in other counties or courts, attorneys are overworked, spread too thin and frequently not available on the date of a preliminary examination. Quality of representation is left to the defense attorney to define, balance and sometimes struggle with. Beyond that nothing is done to ensure the rendering of quality representation.
- The failure of the representative counties to provide public defense attorneys with sufficient time and confidential space to attorney/client meetings as required by *Principle 4*. The district court in Chippewa County, for example, provides no confidential space within which an attorney may meet with clients. For out-of-custody clients, most attorneys wait in line to bring their clients one-by-one into the unisex restroom across from judge's chambers to discuss the charges, while others will talk softly in the corridor.
- The failure of Michigan counties to adhere to ABA *Principles 6* and *9* requiring that public defense attorneys have experience and training to match the complexity of the case. It is difficult, at best, to construct an in-depth analysis of the lack of training in Michigan when the bottom line is that there is no training requirement in virtually any county-based indigent defense system outside of the largest urban centers. Even the training provided in the large urban centers is inadequate. Criminal law is not static - and public defense practice in serious felony cases has become far more complex over the past three decades. Developments in forensic evidence require significant efforts to understand, defend against and present scientific evidence and testimony of expert witnesses.
- The failure of the representative counties to provide indigent defense clients with vertical representation, i.e., continuous representation by the same attorney from the time

## EVALUATION OF MICHIGAN'S TRIAL-LEVEL INDIGENT DEFENSE SYSTEMS

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counsel is appointed until the client's case is resolved as recommended in ABA *Principle 7*. Judges in Wayne County, for example, spontaneously appoint attorneys in courtrooms as "stand-ins" when attorneys fail to appear or remove the appointed attorney from the case and appoint an attorney who happens to be in the courtroom.

One of the reasons why *Gideon* determined that defense lawyers were "necessities" rather than "luxuries" was the simple acknowledgement that states "quite properly spend vast sums of money" to establish a "machinery" to prosecute offenders. This "machinery" – including federal, state and local law enforcement (FBI, state police, sheriffs, local police), federal and state crime labs, state retained experts, etc. – can overwhelm a defendant unless she is equipped with analogous resources. Without appropriate resources, the defense is unable to play its role of testing the accuracy of the prosecution evidence, exposing unreliable evidence, and serving as a check against prosecutorial or police overreaching. Chapter VI (pp. 83-90) looks specifically at the ABA *Ten Principles'* call for parity of the defense and prosecution functions. In detailing the great disparity in resources all across the state, the report notes that an NLADA representative had the privilege of attending a conference of the Prosecuting Attorneys Association of Michigan (PAAM) in which prosecuting attorneys made presentations on how prosecutors are underpaid, overworked, lack sufficient training, and work under stringent time guidelines which make the proper administration of justice difficult. The deficiencies of the prosecution function highlight how exponentially worse is the underfunding of the defense function.

Our constitutional rights extend to all of our citizens, not merely those of sufficient means. The majority of people requiring appointed counsel are simply the unemployed or underemployed – the son of a co-worker, the former classmate who lost her job, or the member of your congregation living paycheck-to-paycheck to make ends meet. Though we understand that policy-makers must balance other important demands on their resources, the Constitution does not allow for justice to be rationed due to insufficient funds. The issues raised in this report illustrate the failure on the part of the state of Michigan to live up to the mandate of the U.S. Supreme Court's *Gideon* decision. Though some may argue that it is within the law for state government to pass along its constitutional obligations to its counties, it is also the case that the failure of the counties to meet constitutional muster regarding the right to counsel does not absolve state government of its original responsibility to assure its proper provision.

# DETROIT POLICE DEPARTMENT ARREST REPORT

exhibit 3

DETROIT POLICE DEPARTMENT

Case No. 1210090006  
 Report No. 1210090006.1  
 Report Date: 10/9/2012

2

Page 2 of 3

Weapons 12 - HANDGUN

## Arrestee A1: DOUGLES, CHARLES JEROME

|                          |  |                      |   |                   |   |
|--------------------------|--|----------------------|---|-------------------|---|
| Arrestee Number          | A1   | DOB                  | 12/14/1979  | Place of Birth    |   |
| Name                     | DOUGLES, CHARLES JEROME                        | Age                  | 32  | SSN               |   |
| AKA                      |  | Sex                  | M - MALE  | DLN               |   |
| Alert(s)                 |  | Race                 | B - BLACK   | DLN State         |   |
|                          |  | Ethnicity            | U - UNKNOWN   | DLN Country       |   |
| Address                  | 19303 Ferrer                                   | Ht.                  | 5' 9"   | Occupation/Grade  |   |
| City                     | DETROIT, MI 48227                              | Wt.                  | 165   | Employer/School   |   |
| Home Phone               |  | Eye Color            | BRO - BROWN   | Employer Address  |   |
| Work Phone               |  | Hair Color           | BLK - BLACK   | Employer CSZ      |   |
| Email Address            |  | Hair Style           |   | Res. Country      |   |
|                          |  | Hair Length          |   | Res. Country      |   |
|                          |  | Facial Hair          | 03 - FULL BEARD AND MUSTACHE                        | Resident Status   | R - RESIDENT OF THE COMMUNITY, CITY, OR TOWN WHERE THE OFFENSE OCCURRED |
|                          |  | Complexion           | DRK - DARK  |                   |   |
|                          |  | Build                | S - SMALL   |                   |   |
|                          |  | Teeth                | 5 - WHITE   |                   |   |
| Scars/Marks/Tattoos      |  |                      |   |                   |   |
| Modus Operandi           |  |                      |   |                   |   |
| Other MO                 |  |                      |   |                   |   |
| Attire                   | BLUE JEANS GRAY T-SHIRT/ RED LONG SLEEVE SHIRT |                      |   |                   |   |
| Mutual Offender Status   |  |                      |   |                   |   |
| Arrest No.               | 237240   | Arrested For         | 5202 - CONCEALED WEAPONS - CARRYING CONCEALED (CCW) | Arrested On       | 10/9/2012 12:10:56 AM   |
| Arrest Type              | T - TAKEN INTO CUSTODY                         | Count                |   | Arrest Location   |   |
| Force Level              | 01 - LEVEL 1                                   | Fingerprints         |   | Booked On         |   |
| FBI No.                  |  | Photos               |   | Booked Location   |   |
| State No.                |  | Miranda Read         |   | Released Location |   |
| Armed With               | 01 - UNARMED                                   | Miranda Waived       |   | Released On       |   |
| Multi. Clearance         | N - NOT APPLICABLE                             | Number of Warrants   |   | Released By       |   |
| Multi. Clearance Offense |  | Juvenile Disposition |   | Release Reason    |   |
| Prev. Suspect No.        |  | Adult Present        |   | Held For          |   |
| Notified                 |  |                      |   |                   |   |
| Arrest Notes             |  |                      |   |                   |   |

## Property Description Item 1: 3711 - HANDGUN - 1 HANDGUN CHROME

|                   |                                 |
|-------------------|---------------------------------|
| Item No.          | 1                               |
| Property Category | 3711 - HANDGUN                  |
| Property Class    | 13                              |
| IBR Type          | 13 - FIREARMS                   |
| UCR Type          | G - FIREARMS                    |
| Status            | I - INFORMATION ONLY            |
| Count             | 1                               |
| Value             | 1                               |
| Manufacturer      | COBRA                           |
| Model             | .380                            |
| Serial No.        | DEFACED                         |
| License No.       |                                 |
| Color             | COM - CHROME OR STAINLESS STEEL |
| Description       | 1 HANDGUN CHROME                |
| Vehicle Year      |                                 |
| Body Style        |                                 |

# DETROIT POLICE DEPARTMENT ARREST REPORT

DETROIT POLICE DEPARTMENT

Case No. 1210090006  
Report No. 1210090006.1  
Report Date: 10/9/2012

**3**

Page 3 of 3

State  
License Year

Recovered Date/Time  
Owner

Disposition  
Evidence Tag

**E45566704**

Lock Seats

Evidence Recovered Date/Time

**10/9/2012 12:10:20 AM**

Evidence Recovered By

**236656 - ALLEN, IBRAHIMOVIC**

Evidence Recovered From

**CHARLES JEROME DOUGLES**

Evidence Location

**SWD - SOUTHWEST DISTRICT 2**

Alert(s)

Drug Type  
Drug Quantity  
Drug Measure

Property Notes

# DETROIT POLICE DEPARTMENT ARREST REPORT

DETROIT POLICE DEPARTMENT

Case No. 1210090006  
 Report No. 1210090006.1  
 Report Date: 10/9/2012



Subject: SWD SWD 230 1 ARR CCW -P

|                           |                       |                   |                             |                   |                             |
|---------------------------|-----------------------|-------------------|-----------------------------|-------------------|-----------------------------|
| Case Report Status        | V - VERIFIED          | Date Entered      | 10/9/2012 12:35:13 AM       | Reporting Officer | 238855 - ALLEN, IBRAHIMOVIC |
| County                    | 82 - WAYNE            | Entered By        | 238855 - ALLEN, IBRAHIMOVIC | Assisted By       | 236995 - LEWIS, CALVIN      |
| City/Township             | 99 - DETROIT          | Date Verified     | 10/9/2012 3:11:27 AM        | Assist Agency     |                             |
| Occurred On (and Between) | 10/9/2012 12:05:40 AM | Verified By       | 231014 - ROBINSON, GERALD   |                   |                             |
| Location                  | 19410 ST MARYS        | Date Approved     |                             |                   |                             |
| CSZ                       | DETROIT, MI 48235     | Approved By       |                             |                   |                             |
| Census/Geo Code           | 8005                  | Connecting Cases  |                             |                   |                             |
| Grid                      | NW5 - 0806            | Disposition       | ARREST                      |                   |                             |
| Call Source               |                       | Tactical Actions  |                             |                   |                             |
| Vehicle Activity          |                       | Clearance Reason  |                             |                   |                             |
| Vehicle Traveling         |                       | Date of Clearance |                             |                   |                             |
| Cross Street              |                       | Reporting Agency  | DETROIT POLICE DEPARTMENT   |                   |                             |
|                           |                       | Division          | 8TH PRECINCT                |                   |                             |
|                           |                       | Notified          |                             |                   |                             |
| Means                     |                       |                   |                             |                   |                             |
| Other Means               |                       |                   |                             |                   |                             |
| Motive                    |                       |                   |                             |                   |                             |
| Other Motives             |                       |                   |                             |                   |                             |

Report Narrative  
 IBRAHIMOVIC A 1417  
 LEWIS C 1063  
 SGT OSMAN S8

NO FORCE USED

A -YES CHARLES JEROME DOUGLAS B/M 12-14-79

S- R/P

C- ON ABOVE DATE AND TIME I PO IBRAHIMOVIC WAS ASSIGNED TO SCOUT 230 IN FULLY MARKED POLICE CAR WEARING SPECIAL OPS UNIFORM WITH MY BADGE DISPLAYED ON MY CHEST. CREW WAS TRAVELING W/B 7 MILE APPROACHING ST. MARYS WHEN I HEARD SEVERAL GUN SHOTS JUST NORTH OF 7 MILE. CREW IMMEDIATELY BEGAN CANVASSING AREA AND OBSERVED OFFENDER LATER ID AS MR DOUGLAS WALKING IN THE MIDDLE OF THE STREET WHILE SIDE WALK PROVIDED. AS CREW PULLED UP TO INVESTIGATE FOR SAME, I ASKED OFFENDER IF HE HEARD ANY SHOTS BEING FIRED IN THE AREA, OFFENDER THEN LOOKED IN MY DIRECTION AND BEGAN RUNNING W/B BETWEEN THE HOUSES WHILE AGGRESSIVELY CLUTCHING HIS RIGHT SIDE AS IF ARMED, DUE TO MY PREVIOUS ARREST MR. DOUGLAS ACTION WAS CONSISTENT WITH A ARMED PERSON. I ALONG WITH PARTNER FOLLOWED OFFENDER IN THE REAR OF 19410 ST MARYS AND OBSERVED THE OFFENDER REACH INTO HIS RIGHT WAIST AREA PULLED OUT A SILVER HAND GUN AND TOSS IT OVER 6 FOOT TALL FENCE INTO THE REAR OF 19411 MANSFIELD. SGT OSMAN DETAINED OFFENDER WHILE I RECOVERED HANDGUN FROM THE REAR OF 19411 MANSFIELD. OFFENDER WAS UNABLE TO PRODUCE A VALID CCW PERMIT AND WAS ARRESTED AND CONVEYED TO 2ND PCT FOR PRISONER PROCESSING.

O-SAME

T- 1 CHROME/ SILVER HAND GUN WITH BLACK HANDLE .380 DEFACED S# NUMBER LOADED W/ 8 LIVE ROUNDS AND 6 LIVE ROUNDS IN CLEAR PLASTIC BAG FROM HIS RIGHT COAT POCKET PLACED ON E 48665704

## Offense Detail: 5202 - CONCEALED WEAPONS - CARRYING CONCEALED (CCW)

|                     |   |                    |                         |
|---------------------|---|--------------------|-------------------------|
| Offense Description | 5202 - CONCEALED WEAPONS - CARRYING CONCEALED (CCW) |                    |                         |
| IBR Code            | 520 - WEAPON LAW VIOLATIONS                         | Location           | 13 - HIGHWAY/ROAD/ALLEY |
| IBR Group           | A   | Offense Completed? | YES                     |
| Crime Against       | SO  | Hate/Bias          | 00 - NONE (NO BIAS)     |
| Offense File Class  | 52001 - WEAPONS OFFENSE- CONCEALED                  | Domestic Violence  | NO                      |
| PACC                |   | No. Prem. Entered  |                         |
| Local Code          |   | Entry Method       |                         |
|                     |   | Type Security      |                         |
| Using               |   | Tools Used         |                         |
| Criminal Activity   | P - POSSESSING/CONCEALING                           |                    |                         |

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellee

-vs-

**CHARLES JEROME DOUGLAS**

Defendant-Appellant.

---

Supreme Court No. \_\_\_\_\_

Court of Appeals No. 315027

Lower Court No. 12-10051-01

**NOTICE OF HEARING**

TO:

**WAYNE COUNTY PROSECUTOR**

Appellate Division

1100 Frank Murphy Hall of Justice

1441 St Antoine

Detroit, MI 48226

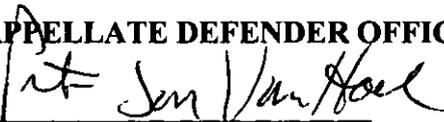
**PLEASE TAKE NOTICE** that on **February 3, 2015**, the undersigned will move this Honorable Court to grant the within

**APPLICATION FOR LEAVE TO APPEAL**

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY:



**PETER JON VAN HOEK (P26615)**

**Assistant Defender**

3300 Penobscot Building

645 Griswold

Detroit, Michigan 48226

(313) 256-9833

Date: January 8, 2015

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellee

-vs-

**CHARLES JEROME DOUGLAS**

Defendant-Appellant.

Supreme Court No. \_\_\_\_\_

Court of Appeals No. 315027

Lower Court No. 12-10051-01

**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF WAYNE     )

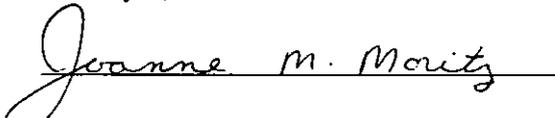
**PETER JON VAN HOEK**, being first sworn, says that on January 8, 2015, he mailed one copy of the following:

**NOTICE OF HEARING  
APPLICATION FOR LEAVE TO APPEAL  
PROOF OF SERVICE**

TO:  
**WAYNE COUNTY PROSECUTOR**  
Appellate Division  
1100 Frank Murphy Hall of Justice  
1441 St Antoine  
Detroit, MI 48226

  
\_\_\_\_\_  
**PETER JON VAN HOEK**

Subscribed and sworn to before me  
January 8, 2015.

  
\_\_\_\_\_  
Notary Public, Wayne County, Michigan  
My commission expires: 9-2-2019  
26579T-J

# STATE APPELLATE DEFENDER OFFICE

Detroit

DAWN VAN HOEK  
DIRECTOR

JONATHAN SACKS  
DEPUTY DIRECTOR

www.sado.org  
Client calls: 313.256.9822



**MAIN OFFICE:**  
PENOBSCOT BLDG., STE 3300  
645 GRISWOLD  
DETROIT, MI 48226-4281  
Phone: 313.256.9833 • Fax: 313.965.0372

**LANSING OFFICE:**  
101 N. WASHINGTON, 14<sup>TH</sup> FLOOR  
LANSING, MI 48913-0001  
Phone: 517.334.6069 • Fax: 517.334.6987

January 8, 2015

Clerk  
Michigan Supreme Court  
P. O. Box 30052  
Lansing, MI 48909

Re: **People v Charles Jerome Douglas**  
Supreme Court No. \_\_\_\_\_  
Court of Appeals No. 315027  
Lower Court No. 12-10051-01

Dear Clerk:

Enclosed please find an original and seven (7) copies of the Notice of Hearing, Application for Leave to Appeal, and Proof of Service for filing in the above-referenced cause.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Peter Jon Van Hoek".

Peter Jon Van Hoek  
Assistant Defender

pvh  
Enclosures

cc: Wayne County Prosecutor  
Court of Appeals Clerk  
Wayne County Circuit Court Clerk  
Charles Jerome Douglas  
File

