

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT
On Appeal From The Court of Appeals

PEOPLE OF THE STATE OF MICHIGAN,

v Plaintiff-Appellee,

SEAN HARRIS and WILLIAM LITTLE,

Defendants-Appellants.

SC: 149872 - 149873
COA: 317158 - 317272
WCC: 13-001620-AR

APPELLANTS' BRIEF
(Oral Argument Requested)



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BASIS OF JURISDICTION

The basis for jurisdiction is MCR 7.301(A)(2) which provides for the review of a case in which the Court of Appeals has issued an opinion. The issues involve legal principles of major significance to the state's jurisprudence.

On February 4, 2015, this Court granted leave to appeal.

STATEMENT OF QUESTIONS PRESENTED

1. Does MCL 15.391 et seq preclude the use of false statements by a law enforcement officer in a prosecution for obstruction of justice?

The district court and circuit court answered "yes."

The majority of the Court of Appeals answered "no."

The dissenting opinion of the Court of Appeals answered "yes."

Defendant-Appellants answer "yes."

The prosecution answers "no."

2. Do the waivers signed by the defendants bar the use of their statements in a criminal prosecution as violative of state or federal rights against self-incrimination?

The district court and circuit court answered "yes."

The majority of the Court of Appeals answered "no."

The dissenting opinion of the Court of Appeals answered "yes."

Defendant-Appellants answer "yes."

The prosecution answers "no."

STATEMENT OF FACTS

On November 19, 2009 at approximately 4:50pm, an incident occurred in the parking lot of the Zoom gas station located at 9100 Chalmers that involved one civilian, Dejuan Lamar, and

three Detroit Police officers, Nevin Hughes, Sean Harris, and William Little. The incident resulted in the issuance of a traffic ticket to Mr. Lamar for driving without proof of insurance. The incident did not result in an arrest or the confiscation of any evidence; hence, no police reports were filed by the officers. The officers did, however, note the incident on their activity log for that day.

On January 11, 2010, approximately two months later, Mr. Lamar provided a recorded statement about the incident to the Office of the Chief Investigator. In his statement, he claimed that he had been assaulted by Officer Hughes. He made no claim that either Officer Harris or Officer Little participated in the assault.

On August 5, 2010, approximately seven months later, and approximately nine months after the incident, Officers Harris and Little were interviewed by an investigator from the Office of Chief Investigator. Prior to being interviewed, and pursuant to Detroit Police Department policy, each officer signed a form entitled Certificate of Notification of Constitutional Rights - Departmental Investigation. The fourth paragraph of that form discusses the mandatory nature of the interview process and the consequences of refusal as follows:

If I refuse to testify or to answer questions in relation to;
(a) my duties as a member of the department, (b) investigations of violations of state and federal laws and/or ordinances of the City of Detroit, and/or (c) my fitness for office or the fitness for office of another member of the department, **I will be subject to departmental charges which could result in my dismissal from the police department.** (Emphasis added)

The fifth paragraph of that form guarantees each officer that his answers will not be used against him criminally as follows:

If I do answer, and immunity, federal, state, or other has not been given, **neither my statements or any information or evidence which is gained by reason of such statements can be used against me in any subsequent criminal proceedings.** (Emphasis added)

In addition to the Certificate of Notification of Constitutional Rights form, each officer also signed a form entitled Reservation of Rights Addendum. That form contains the following language with respect to the mandatory nature of the interview process:

I am giving the attached Statement and/or Preliminary Complaint Report by reason of receipt of an Order from a superior officer **threatening me with immediate suspension as well as other disciplinary action for refusal to obey.**

In view of possible job forfeiture, I have no alternative but to abide by this Order. However, it is my belief and understanding that the Department requires this statement solely and exclusively for internal purposes and will not release it to any other agency. (Emphasis added)

After signing the forms, Officers Harris and Little were then interviewed by an investigator from the Office of Chief Investigator. The parties agree that the answers provided by the officers in those interviews form the basis for the charge in the instant case.

On September 29, 2011, almost two years after the original incident, Officers Harris and Little were again interviewed pursuant to Garrity. The parties agree that the answers provided by the officers in those interviews did **not** form the basis for the charge in the instant case.

On October 6, 2011, a warrant request was presented to the Prosecutor's Office by Internal Affairs which only named Officer Hughes. The names of Officers Harris and Little were added to the Investigator's Report by the Prosecutor's Office. A complaint and warrant was subsequently issued against all three officers.

Preliminary examination was originally scheduled for October 25, 2012. Prior to preliminary examination, Officers Harris and Little moved to dismiss the case against them, arguing that the use of their Garrity-protected statements against them in a criminal prosecution was prohibited by a Michigan statute (MCL 15.393) and the Reservation of Rights Addendum.

The parties agreed that the charge against Officers Harris and Little was based solely on the Garrity statements given by the officers. After argument on the motion to dismiss and completion of the preliminary examination,¹ the district court dismissed the charges against Officers Harris and Little, ruling that the use of the officers' Garrity-protected statements in a criminal prosecution was prohibited by MCL 15.393.² The Court also ruled that a district court judge had no authority to overrule the State Legislature and/or the Michigan Court of Appeals.

The prosecution appealed the district court's dismissal of the charges against Officers Harris and Little to the Wayne Circuit Court. On June 27, 2013, the circuit court issued an order affirming the decision of the district court.

The prosecution appealed the circuit court's order to the Court of Appeals. On July 15, 2014, in a 2-1 decision, the Court of Appeals reversed the circuit court, and remanded the case to the district court for reinstatement of the obstruction of justice charges. The majority overruled

¹ The evidence at the examination consisted of the audio of each of the officers' interviews, the video of the original incident at the gas station, and the testimony of the complainant.

² The district court also ruled that the use of the statements was prohibited by People v Allen, 15 Mich App 387 (1968).

People v Allen, and further ruled that MCL 15.393 did not apply to the instant case because “the plain language of MCL 15.393 establishes than an ‘involuntary statement’ includes only truthful and factual information.”

In a spirited dissent, Judge Wilder wrote that although he agreed with overruling Allen, MCL 15.393 barred the use of Defendants’ involuntary statements against them in the instant case. He indicated that the Court of Appeals was “bound to interpret the plain language set forth by the Legislature.....even if we disagree with the result.”³

Defendants-Appellants filed an Application for Leave to Appeal, asking this Court to reverse the Court of Appeals and reinstate the circuit court’s order affirming the district court’s dismissal of the obstruction of justice charge. On February 4, 2015, this Court granted the application for leave to appeal, and ordered that briefs be submitted on the following issues: (1) whether MCL 15.391 et seq. precludes the use of false statements by a law enforcement officer in a prosecution for obstruction of justice; and (2) whether the waivers signed by the defendants bar the use of their statements in a criminal prosecution as violative of state or federal rights against self-incrimination.

ARGUMENT

I. MCL 15.391 et seq. precludes the use of false statements by a law enforcement officer in a prosecution for obstruction of justice.

³ Judge Wilder concluded his dissent by urging the Legislature to revisit the statute to address the anomaly of permitting law enforcement officers to make false denials with impunity. (Court of Appeals opinion, dissent, p. 5-6)

Standard of Review: The interpretation and application of statutes and court rules are reviewed de novo. In re Mason, 486 Mich 142, 152 (2010); Estes v. Titus, 481 Mich. 573, 578-579 (2008).

The prosecution has conceded that its entire case against Officers Harris and Little is based on their Garrity statements given during the August 5, 2010 interview. The use of those statements is prohibited by MCL 15.393 which provides that “[a]n involuntary statement made by a law enforcement officer, and any information derived from that involuntary statement, **shall not be used against the law enforcement officer in a criminal proceeding.**” (Emphasis added).

The statute constitutes a hard-and-fast rule and lists no exceptions. MCL 15.391(1)(a) defines an involuntary statement as “information provided by a law enforcement officer, if compelled under threat of dismissal from employment or any other employment sanction, by the law enforcement agency that employs the law enforcement officer.”

The statute does not just refer to the use of coerced “information” against an officer in a criminal proceeding. The statute also provides that “an involuntary statement” may not be used. Regardless of the spin the prosecution and the Court of Appeals majority attempts to put on the word “information,” it certainly could not apply to the phrase “involuntary statement.” The statements of the officers were coerced under Garrity, and were, therefore, “involuntary statements” regardless of their alleged truth or falsity. And the statute bars the use of such statements in all cases.

The suggestion that the officers did not provide “information” in their statements deserves comment as well. The officers were interviewed on August 5, 2010 about an incident

that occurred on November 19, 2009, some nine months earlier. They were questioned about the incident, and answered the questions.⁴ When they answered those questions, they clearly provided “information” as contemplated by the statute. Any other interpretation of the word “information” as used in the statute would require turning the English language on its head.

The prosecution and the Court of Appeals majority state that because the information provided by the officers to the Office of Chief Investigator was allegedly false, it was, therefore, misinformation rather than information and not covered by MCL 15.393. Unfortunately, no such distinction is made in the statute. If the Legislature intended to exempt Garrity statements that the prosecution contends are false, it could have and would have said so in the statute. Since it did not, and since the statute contains no language that would justify a conclusion that such an exemption exists, this Court should reverse the Court of Appeals majority.

In the lower courts and the Court of Appeals, the prosecution argued that MCL 15.393 should not apply in this case because “defendants provided no ‘information’ which is being used against them; indeed, what they provided was ‘misinformation.’”⁵ That dubious proposition was adopted by the majority in the Court of Appeals which concluded “that the statute internally limits the phrase ‘involuntary statement’ to include true statements only, and that false statements and lies therefore fall outside the scope of the statute’s protection”⁶

⁴ As indicated in the prosecution’s Statement of Facts in its brief to the Court of Appeals, the officers indicated that they recalled the incident and denied that any type of physical altercation took place.

⁵ Prosecution’s Brief to the Court of Appeals, p 8

⁶ Court of Appeals majority opinion, p 7

The majority accepted the prosecution's definition of the word "information" with the following analysis:

But when an officer is compelled to make a statement during an internal investigation, and provides only misinformation and lies, he or she has not provided any "information" at all within the commonly understood meaning of that word. Among other things, "information" is defined as "knowledge communicated or received concerning a particular fact or circumstance." (dictionary citation omitted). The word "knowledge," in turn, is defined as "The body of truths or facts accumulated in the course of time."⁷

The majority then concluded:

Because an officer's lies do not impart any truth or facts, they necessarily do not constitute "information." In other words, an officer's lies and false statements do not qualify as "involuntary statements" under MCL 15.393, and consequently may be used as evidence in a subsequent criminal prosecution.

The majority then proceeded to interpret what it believed to be the Legislature's intent in passing the statute:

We conclude that the **Legislature's manifest intent** was to create a mechanism for facilitating internal police investigations and to provide an incentive for officers who cooperate by providing needed facts. **The Legislature certainly did not intend to immunize police officers by precluding the use of their lies and false statements in criminal proceedings.** Indeed, such a strained construction of MCL 15.393 **would be wholly contrary to the Legislature's purpose** in enacting the statute. (Emphasis added)

The majority's attempt to read the collective minds of the Legislature and contort the plain language of the statute has no basis in law or fact. As thoroughly discussed in Judge

⁷ Court of Appeals majority opinion, p 7

Wilder's dissent, it is contrary to established Michigan Supreme Court case law, United States Supreme Court case law, and the Legislature's use of the term "information" in other Michigan statutes.

Judge Wilder first discussed the concept of statutory interpretation:

The principles of statutory interpretation are well established. The "goal in interpreting a statute 'is to ascertain and give effect to the intent of the Legislature. The touchstone of legislative intent is the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written.' People v Hardy, 494 Mich 430, 439 (2013), quoting People v Gardner, 482 Mich 41, 50 (2008).⁸

Judge Wilder went on to discuss the Legislature's use of the indefinite article "a" in MCL 15.393 in concluding that the Legislature did not limit the application of the statute solely to the criminal proceeding being investigated or other crimes already committed:

The Legislature used the indefinite article "a", not "the", to modify the phrase "criminal proceeding." "'The' and 'a' have different meanings. 'The' is defined as 'definite article. 1. (Used, [especially] before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an)... Robinson v City of Lansing, 486 Mich 1, 14 (2010), quoting Massev v Mandell, 462 Mich 375, 382, n 5 (2000).

By using the indefinite article, the Legislature did not limit the application of the statute to **the** criminal proceeding being investigated or **the** other crimes already committed. Rather, by choosing the phrase "a criminal proceeding," the Legislature expressed its intention to require a more generalized application of the statute than the narrower protection the Fifth Amendment would afford, and therefore bars the use of involuntary statements in subsequent prosecutions for perjury or obstruction of justice.⁹

⁸ Court of Appeals dissenting opinion, p 2

⁹ Court of Appeals dissenting opinion, pp 2-3

Judge Wilder then reached what he believed to be the obvious conclusion about the Legislature's intent:

If the Legislature intended involuntary statements and information derived from them to be used in collateral proceedings for obstruction of justice or perjury, the Legislature could and would have expressly excluded those proceedings from the statute. People v Underwood, 278 Mich App 334, 338 (2008) (“[P]rovisions not included in a statute by the Legislature should not be included by the courts.”)¹⁰

Judge Wilder next took issue with the majority's agreement with the prosecution that an officer's false denials do not constitute “information” as contemplated by the statute:

The majority agrees, relying on the Random House Webster's College Dictionary (1997), which defines “information” as “knowledge communicated or received concerning a particular fact or circumstance.” The majority concludes that an officer's false denials do not impart any truth or facts, so they cannot constitute “information.” I disagree.

The word “misinform” is defined as “giv[ing] false or misleading **information** to.” Random House Webster's College Dictionary (1997) (emphasis added). Therefore, the term “information” as used in MCL 15.393 must be interpreted to include the giving of “misinformation.”¹¹

Judge Wilder then made reference to the United States Supreme Court's interpretation of the federal immunity statute to make the same point:

Our United States Supreme Court has ruled that similar language in the federal immunity statute, 18 USC 6002, “makes no distinction between truthful and untruthful statements made during the course of the immunized testimony.” United States v Apfelbaum, 445 US 115, 122 (1980). Section 6002 provides, in relevant part, “no testimony or other **information** compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be

¹⁰ Court of Appeals dissenting opinion, p 3

¹¹ Court of Appeals dissenting opinion, p 3

used against the witness in any criminal case. (Emphasis added).¹²

Judge Wilder also pointed out that in addition to using the dictionary, courts look to the use by the Legislature of the same or similar terms in other statutes “to divine Legislative intent.” He indicated that courts “make every effort to interpret clear and unambiguous language in accordance with its plain meaning because “[c]ourts may not read or include provisions into a statute that the Legislature did not.” People v Haynes, 281 Mich App 27, 32 (2008). In support of that notion, he quoted People v Underwood, *supra*, at 338: “The omission of a provision in one statute that is included in another statute should be construed as intentional.”¹³

Judge Wilder then cited specific examples of statutes where the Legislature referred to inaccurate or misleading information and discussed them as follows:

The Legislature’s specific references to inaccurate or misleading information in the above-cited provisions demonstrate that the distinction between accurate and inaccurate information was relevant to those legislative schemes, and that when such a distinction is important to the Legislature to make, it will do so. The Legislature’s failure to make a distinction between accurate and inaccurate information here demonstrates its intent that MCL 15.393 broadly apply to defendants’ involuntary statements, regardless of their accuracy. Underwood, 278 Mich App at 338.¹⁴

Judge Wilder correctly held that when it crafted MCL 15.393, the Legislature “used broad language that did not just protect factually true statements, but “involuntary statements,” and did not only protect statements made during the investigation of crimes already committed, but more generally, statements made “in a criminal proceeding.” He then concluded that by the plain

¹² Court of Appeals dissenting opinion, p 3

¹³ Court of Appeals dissenting opinion, pp 3-4

¹⁴ Court of Appeals dissenting opinion, p 4

language of the statute, “the Legislature intended MCL 15.393 to protect a law enforcement’s officer’s false denials, even in a subsequent, collateral criminal proceeding such as perjury or obstruction of justice.”¹⁵

Judge Wilder recognized that although MCL 15.393 as presently written clearly bars the use of the officers’ statements in the instant case, it may seem untenable to permit law enforcement officers to make false denials with impunity. However, he also acknowledged the limits of appellate review, concluding his dissent as follows:

But we are bound to interpret the plain language set forth by the Legislature. We cannot rewrite the law and must apply the statutory text even if we disagree with the result. (citation omitted). Therefore, I would affirm the district court and urge the Legislature to revisit MCL 15.393 to address this anomaly.¹⁶

What the dissent recognized, and what the majority failed to recognize, is the permissible extent of judicial authority, to wit; while courts have great power to adjudicate, they do not have the power to legislate. This Court undoubtedly recognizes that statutes are passed by the Legislature and not the appellate courts, and it is not the job of appellate courts to rewrite statutes any more than it is the job of the Legislature to write appellate opinions.

The prosecution has continuously argued that MCL 15.393 should not apply in this case because “defendants provided no ‘information’ which is being used against them; indeed, what they provided was ‘misinformation.’”¹⁷ That dubious proposition is supported by neither case law nor common sense.

¹⁵ Court of Appeals dissenting opinion, p 5

¹⁶ Court of Appeals dissenting opinion, pp 5-6

¹⁷ Prosecution’s Brief on Appeal, p 8

To begin with, the statute does not just refer to the use of coerced “information” against an officer in a criminal proceeding. The statute also provides that “an involuntary statement” may not be used. Regardless of the spin the prosecution attempts to put on the word “information,” it certainly could not apply to the phrase “involuntary statement.” The statements of the officers were coerced under Garrity, and were, therefore, “involuntary statements” regardless of their alleged truth or falsity. And the statute bars the use of such statements in all cases. End of story.

Still, the suggestion that the officers did not provide “information” in their statements deserves comment as well. The officers were interviewed on August 5, 2010 about an incident that occurred on November 19, 2009, some nine months earlier. They were questioned about the incident, and answered the questions.¹⁸ When they answered those questions, they clearly provided “information” as contemplated by the statute. Any other interpretation of the word “information” as used in the statute would require turning the English language on its head.

The prosecution argues that because the information provided by the officers to the Office of Chief Investigator was allegedly false, it was, therefore, misinformation rather than information and not covered by MCL 15.393. Unfortunately, no such distinction is made in the statute. If the Legislature intended to exempt Garrity statements that the prosecution contends are false, it could have and would have said so in the statute. Since it did not, and since the statute contains no language that would justify a conclusion that such an exemption exists, the Court should decline to adopt the prosecution’s reasoning.

¹⁸ As indicated in the prosecution’s Statement of Facts, the officers indicated that they recalled the incident and denied that any type of physical altercation took place.

This Court should correct the majority's error by ruling that unless and until the Legislature repeals MCL 15.393 or changes its wording to conform to the prosecution's theory, courts do not have the authority to do so on their own. This Court should, therefore, reverse the Court of Appeals and reinstate the circuit court's order affirming the district court's dismissal of the obstruction of justice charge.

II. The waivers signed by the officers bar the use of their statements in a criminal prosecution as violative of state or federal rights against self-incrimination.

Standard of Review: Constitutional questions are reviewed de novo. People v Abraham, 256 Mich App 265, 272 (2003); McDougall v Schanz, 461 Mich 15, 24 (1999).

On August 5, 2010, prior to being interviewed, and pursuant to Detroit Police Department policy, each officer signed a form entitled Certificate of Notification of Constitutional Rights - Departmental Investigation. The fourth paragraph of that form discusses the mandatory nature of the interview process and the consequences of refusal as follows:

If I refuse to testify or to answer questions in relation to;
(a) my duties as a member of the department, (b) investigations of violations of state and federal laws and/or ordinances of the City of Detroit, and/or (c) my fitness for office or the fitness for office of another member of the department, **I will be subject to departmental charges which could result in my dismissal from the police department.** (Emphasis added)

The fifth paragraph of that form guarantees each officer that his answers will not be used against him criminally as follows:

If I do answer, and immunity, federal, state, or other has not been given, **neither my statements or any information or evidence which is gained by reason of such statements can be used against me in any subsequent criminal proceedings.** (Emphasis added)

In addition to the Certificate of Notification of Constitutional Rights form, each officer also signed a form entitled Reservation of Rights Addendum. That form contains the following language with respect to the mandatory nature of the interview process:

I am giving the attached Statement and/or Preliminary Complaint Report by reason of receipt of an Order from a superior officer **threatening me with immediate suspension as well as other disciplinary action for refusal to obey.**

In view of possible job forfeiture, I have no alternative but to abide by this Order. However, it is my belief and understanding that the Department requires this statement solely and exclusively for internal purposes and will not release it to any other agency. (Emphasis added)

The defense contends that the Certificate of Notification of Constitutional Rights form, coupled with the Reservation of Rights Addendum, bars the use of their statements in any criminal prosecution. Since it is uncontested that they only gave the statements because they were promised that they would be used "solely and exclusively for internal purposes" and not released to any other agency, allowing the statements to be used against them would violate their state and federal rights against self-incrimination. US Const. Ams. V, XIV; Mich Const. 1963, Art. 1, Secs. 11, 17.

A similar situation arose in Mansfield, Ohio, where a police officer was questioned in a Garrity-type situation concerning the alleged illegal use of police scanners by members of the Police Department. Prior to questioning, the officer was presented with a document that contained the following language:

I, Jeffrey, T. McKinley, am giving the following statement by reason of an order from a superior officer, advising me that refusal to obey could result in disciplinary action. In view of possible job forfeiture, I have no alternative but to abide by this order. However, it is my belief and understanding

that the Division of Police requires this statement solely and exclusively for internal administrative purposes; that it will be held as confidential and not released to any other agency without my approval unless mandated to do so by competent authority, or as necessary for disciplinary proceedings and appeals of such proceedings.

Because this is an administrative and not a criminal investigation, the Division of Police will not use any of the answers or information gained from the interview in any criminal proceeding against you. Further, the Division of Police will not release this information to any other agency without your approval and will hold it as confidential except as mandated by an appropriate and competent authority or as necessary for disciplinary proceedings and appeals of such proceedings.

As a result of McKinley's allegedly false answers at the subsequent interrogation, the Prosecutor's Office charged McKinley with falsification, obstruction of official business, and interference with civil rights. McKinley filed a motion to suppress the two recorded statements, but the trial judge denied the motion. After a one-day trial in which the inconsistent statements McKinley made during the two interviews played the central role, a jury convicted him on two counts of falsification and one count of obstructing official business.

The Court of Appeals vacated McKinley's conviction on the ground that it was error for the trial court to admit McKinley's statements. State v. McKinley, No. 01CA98, 2002 - Ohio - 3825 (Ohio Ct. App, 2002). See also McKinley v. City of Mansfield, 404 F 3d 418, (6th Cir. 2005)

The appellate court rejected McKinley's claim that the statements were inadmissible by virtue of the Fifth Amendment as interpreted by Garrity. Instead, the Court based its holding of inadmissibility on its conclusion that the parties entered a contract whereby McKinley agreed to answer truthfully, and the Police Department agreed not to use his statements in a prosecution

against him. Interpreting the contract to preclude use of the statements in any prosecution, even a prosecution for lying during the interviews and obstructing the department's lawful investigation, the court reversed the trial court and vacated McKinley's convictions.

After its discussion of Garrity, the Court set forth its reasons for reversal:

Our inquiry cannot stop with this answer. Within the warning given by the investigators is the promise "the Division of Police will not use any of the answers or information gained from the interview in any criminal proceeding against you." With this statement, appellant was assured that he could speak freely without the threat of criminal prosecution. The "Division of Police" specifically promised not to use "any of the answers" against appellant. By so promising, they precluded the use of any of appellant's statements against him in a criminal proceeding. Although we find such a promise to be contra to the philosophy of Garrity, any statements given with this carte blanc promise of immunity are protected. One must assume that the voluntariness of appellant's answers were predicated on this promise of unconditional immunity. Such a promise can be as coercive as a direct threat or the exertion of subtle pressure. (Citations omitted)

The Ohio Court of Appeals recognized that its ruling might not be well-received.

However, the Court clearly stated that regardless of the consequences, McKinley's statements could not be admitted given the parameters of the agreement between him and the Police Department:

We realize that our ruling today may send a message that it is all right to give false information in a Garrity area. We do not mean to condone such possibility. Our ruling is limited to the unnecessary "carte blanc" immunity given in this case to force the statements from appellant. We find it was error to permit the use of appellant's statements at trial.

McKinley presents a factual situation that is almost identical to the instant case. Like McKinley, Officers Harris and Little were interviewed pursuant to Garrity. Like McKinley, the

officers had the additional protection of a "contract" with the Police Department (the Certificate of Notification of Constitutional Rights and the Reservation of Rights Addendum) that guaranteed them that their answers would not be used against them in **any** subsequent criminal proceeding. And like McKinley, their answers were in fact used against them to form the sole basis for the charged offense.

The rationale of the Ohio Court of Appeals is compelling and should be adopted by this Court in the instant case. No one forced the Police Department to include the language in the Certificate of Notification of Constitutional Rights form that guaranteed the officers that "neither my statements or any information or evidence which is gained by reason of such statements can be used against me in any subsequent criminal proceedings." Once that language was included, it precluded the Police Department (and by extension, the Prosecutor's Office) from using the officers' statements as a basis for criminal charges.

Therefore, this Court should conclude that the forms signed by the officers bar the use of their statements in a criminal prosecution as violative of their state and/or federal rights against self-incrimination. US Const. Ams. V, XIV; Mich Const. 1963, Art. 1, Secs. 11, 17.

RELIEF SOUGHT

Wherefore, for the reasons set forth above, Defendants-Appellees Harris and Little request that this Court reverse the 2-1 decision of the Court of Appeals, and reinstate the circuit court's order affirming the district court's dismissal of the obstruction of justice charge.

Respectfully submitted,



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