

149917

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN  
Plaintiff-Appellee,

v

JOHN OLIVER WOOTEN  
Defendant-Appellant.

No.

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L.C. No. 11-012794-01-FC  
COA No. 314315

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ANSWER IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

KYM L. WORTHY  
Prosecuting Attorney  
County of Wayne

TIMOTHY A. BAUGHMAN  
Chief of Research,  
Training and Appeals  
1441 St. Antoine  
Detroit, MI 48226  
313 224-5792



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**Statement of Jurisdiction**

The People concur in defendant's statement of jurisdiction.

## Counterstatement of the Questions

### I.

A defendant's request for a mistrial allows retrial under the jeopardy clause unless the prosecutor goaded the defendant into the motion to gain a tactical advantage. Though granting the mistrial, the trial judge found no such intent, and in fact the question asked by the prosecutor was entirely proper. Did jeopardy bar retrial after the mistrial?

Defendant answers: "YES"

The People answer: "NO"

### II.

The intent to kill may be inferred from use of a deadly weapon. The defendant shot the victim to death, and wounded another. Taking the evidence in the light most favorable to the People, was there sufficient evidence to find intent to kill beyond a reasonable doubt?

Defendant answers: "NO"

The People answer: "YES"

### III.

Use of prearrest silence of the defendant by the prosecutor does not violate the Fifth Amendment or due process. The prosecutor argued that the defendant left the scene of the shooting, got rid of the gun, and hid, and that this did not sound like one who believed their actions justified. Was any error, let alone plain error, committed by the prosecutor?

Defendant answers: "YES"

The People answer: "NO"

### **Statement of Facts**

The People accept defendant's facts with the addition of those facts stated in the argument, and with the exception of any argumentative statements.

## Argument

### I.

A defendant's request for a mistrial allows retrial under the jeopardy clause unless the prosecutor goaded the defendant into the motion to gain a tactical advantage. Though granting the mistrial, the trial judge found no such intent, and in fact the question asked by the prosecutor was entirely proper. Jeopardy did not bar retrial after the mistrial.

### Standard of Review

The People agree that the trial court's factual findings on the question are reviewed for clear error, and the jeopardy claim is reviewed de nov.

### Discussion

#### A. The Factual Background of the Claim

In the early morning hours, around 2 a.m., of July 5, 2011, officer Jeffrey Bare received a police run regarding a shooting at the Pretty Woman bar, and arrived at the bar five to seven minutes later.<sup>1</sup> Alfonso Thomas had been shot, fatally, as it turned out, and had already been conveyed to the hospital when Officer Bare and his partner arrived, but a wounded man, Omar Madison, was lying on the floor inside the bar.<sup>2</sup> During his three to four hour stay at crime scene he never saw the defendant.<sup>3</sup> There was what appeared to Officer Bare to be blood on the ground outside the door of the bar. The blood was not dry, but pooled.<sup>4</sup> No shell casings were found,

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<sup>1</sup> T 7-25, 15-16.

<sup>2</sup> T 7-25, 16.

<sup>3</sup> T 7-25, 16.

<sup>4</sup> T 7-25, 17-18.

and none are ejected from a revolver, while casings *are* ejected from a semi-automatic weapon.<sup>5</sup> The injured Omar Madison was taken to the hospital.<sup>6</sup>

Officer Raymond Diaz also responded to the bar to “process” the scene.<sup>7</sup> He searched for shell casings, and found none, but discovered a holster in the parking lot, one that was designed for a semi-automatic weapon.<sup>8</sup> Officer Diaz concluded from the lack of casings that no semi-automatic weapon had been fired.<sup>9</sup> Officer Diaz did not see defendant at the scene during his time there.<sup>10</sup> He found three spent bullets, and they were larger than a .22 caliber.<sup>11</sup>

Omar Madison was working at the bar as manager, and the deceased, Alphonso Thomas, was working there as a valet when the homicide occurred; Thomas was not the “bouncer,” did not carry a gun, and in Madison’s opinion was a peaceful person.<sup>12</sup> Defendant patronized the bar and was known to Madison as “slick.”<sup>13</sup> When defendant and another man known as “C” tried to enter the bar, the bar’s security man tried to search them, something that was standard procedure

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<sup>5</sup> T 7-25, 19.

<sup>6</sup> T 7-25, 20.

<sup>7</sup> T 7-25, 26.

<sup>8</sup> T 7-25, 31-32.

<sup>9</sup> T 7-25, 36.

<sup>10</sup> T 7-25, 43.

<sup>11</sup> T 7-25, 49.

<sup>12</sup> T 7-25, 62-64.

<sup>13</sup> T 7-25, 64.

to keep guns out of the bar.<sup>14</sup> Defendant and "C" resisted the search, and so Madison went over to assist, and in so doing felt a gun in defendant's waistband. Madison told them they could not come in the bar with the gun, and defendant became irate.<sup>15</sup> Defendant reached for the gun, and Madison pushed him outside the door; C then jumped on Madison, and the doorman, Anthony Gary, came to his aid. Another customer, "G," came up, and encouraged Madison to let defendant go, saying "I got him, I got him." Thomas [the deceased] then took Gary's gun from Gary's back [apparently in the back of his waistband]; Madison would not have let go unless the situation was "secured" in this fashion.<sup>16</sup> Madison let the defendant go, and he and Thomas turned to go back in the bar, when Madison heard shots. He was struck in the left buttock, and he saw defendant shooting the deceased.<sup>17</sup> No one but defendant fired a gun.<sup>18</sup> Anthony Gary did not fire a gun,<sup>19</sup> and Madison did not pick up the gun, which Thomas had taken from Gary's back, had no access to it later, and thus could not have submitted it to the police for testing.<sup>20</sup>

Anthony Gary, the "doorman," said that he when he was coming back to the bar after walking a woman to her car he saw Madison and the defendant having words and in a tussle. C came out of the bar and grabbed Madison, and Gary grabbed C. Gary was carrying a .380 caliber

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<sup>14</sup> T 7-25, 66.

<sup>15</sup> T 7-25, 66-67.

<sup>16</sup> T 7-25, 66-70.

<sup>17</sup> T 7-25, 70-71.

<sup>18</sup> T 7-25, 73.

<sup>19</sup> T 7-25, 115.

<sup>20</sup> T 7-25, 115-117.

pistol in a holster; the holster found in the parking lot was his.<sup>21</sup> While this was occurring, Thomas took Gary's gun. Gary never saw any guns, and then shooting started, and defendant "just went crazy." He saw defendant shooting at Thomas.<sup>22</sup> The gun was a long, silver revolver.<sup>23</sup> He retrieved his gun after all the shooting, and it had not been fired;. <sup>24</sup> his gun ejected casings when fired.<sup>25</sup>

Shortly after the killing Officer LaTonya Brooks obtained an arrest warrant for the charge of murder for defendant. Extensive efforts were made to find defendant to arrest him, but they were unsuccessful, until defendant was apprehended on December 3<sup>rd</sup>, almost four months from the murder.<sup>26</sup> When the prosecuting attorney asked if officer Brooks had become aware of any reputation the deceased might have had for peacefulness, a rather bizarre exchange took place, with the trial judge saying that because the deceased in a murder case is the "complaining witness," though obviously the murder victim will not be testifying, the murder victim is nonetheless a "witness," the judge thought, for purposes of MCR 6.201.<sup>27</sup>

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<sup>21</sup> T 7-26, 37.

<sup>22</sup> T 7-26, 39.

<sup>23</sup> T 7-26, 40.

<sup>24</sup> T 7-26, 42.

<sup>25</sup> T 7-26, 60-61.

<sup>26</sup> T 7-26, 72-76.

<sup>27</sup> "Under sub paragraph E it indicates any criminal record that the party has in it's possession concerning *witnesses who it has disclosed* or who that party's opponent has disclosed, period. So that means then that the criminal record of any witness, okay. And of course the complaining witness is in fact a witness even though he's deceased," T 7-26, 77-78. Inexplicably, the court also denigrated the Oakland County Prosecutor's Office, saying "Maybe you're trying to play things like the Oakland County Prosecuting Attorney does." T 7-26, 81.

The victim had no record of any crimes of violence, and the prosecutor was allowed to complete his questioning regarding reputation of the victim. Defense counsel was permitted to bring out that the victim had a conviction for carrying a concealed weapon, *and* the fact he had been incarcerated for that conviction, despite the fact that carrying a concealed weapon is not an offense of violence.<sup>28</sup> Officer Brooks did not ask Gary to bring in his firearm for testing in that Gary had not mentioned his firearm in his statement; had he done so, said officer Brooks, that weapon might have been tested.<sup>29</sup> There was, however, no evidence that multiple guns had been fired, and no shell casings were found. The prosecutor asked Brooks "In this case would you have enjoyed talking to the defendant?" and Brooks answered "Yes," after which defense counsel objected.<sup>30</sup> A lengthy discussion then ensued, the trial judge taking the view that the question violated defendant's Fifth Amendment right to remain silent.

The prosecutor argued that the question was proper response to the defense claim that there was a second gun involved, Anthony Gary's, which had not been turned over to the police and tested, and that if so tested it might show it had been fired.

MR. KAPLAN: There's a second gun introduced in the equation by the defense, and they will argue and they have implied, in fact, they've expressively stated that the second gun was fired, and therefore it becomes a proper avenue for me to respond to.

THE COURT: I don't know as to whether or not there was comment either in opening statements or otherwise that the second gun was fired, none.

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<sup>28</sup> T 7-26, 105.

<sup>29</sup> T 7-26, 91-96, 104-105.

MR. KAPLAN: But there was, though, on cross-examination of Detective Brooks. Did you know about the second gun? Would you have tested the second gun to see if it had been fired? That's what --

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MR. KAPLAN: Right. But the defense is not accepting that proposition. The theory of the defense is that second gun was fired and that there was a cover up of some kind where Gary then collects the shells....

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MR. KAPLAN: [responding to the defense motion for mistrial and dismissal] . . . The fact is, he's wrong about the law. And I . . . . People versus Collier and Jenkins versus Anderson both say, and I'll read it, that his peachment(sic) of defendant's testimony with pre-arrest silence is constitutional. It's permissible as a matter of law where under the circumstances it would have been natural for a defendant to come forward. . . . the fact is, the defendant has some play in this too because he's the one who's claiming self-defense, he's the one who has information about the gun if a gun was fired. So, there's no misconduct on my part, I'm trying the case. I don't want to try this case again, I can assure you of that.

The trial judge granted the motion for mistrial:

. . . I find it remarkable that you would go into this line of inquiry with the experience that you've had. . . . [the question and answer] did in fact call into question his Fifth Amendment right to remain silent. The Court is going to grant the motion for mistrial. Not going to, does grant the motion for mistrial.

The trial judge did not find that the prosecutor had goaded the defense into requesting a mistrial to gain a tactical advantage.

Sometimes when we wind up getting involved in the give and take of a trial, the heat of combat overwhelms our rational decision making processes, and I think that may very well have been the situation today. I don't believe that the last question that was posed to Detective Brooks was directly intended to impeach the credibility of the defendant. . . . So, I'm not going to dismiss this case with prejudice. But the motion for mistrial being is hereby granted. . . . I'm giving him the benefit of the doubt.<sup>31</sup>

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<sup>31</sup> T 7-26, 109-124. Though the People had not finished their proofs, and though given the testimony of two witnesses that the defendant had shot the deceased, and though a on a

**B. There Was No “Prosecutorial Misconduct”<sup>32</sup>**

The prosecutor was referring to defendant’s “prearrest silence”; that is, though his defense was now one of justification, he fled the scene and was only apprehended almost four months later. The prosecutor was correct that the question was permissible and the trial judge was mistaken. This court has held this sort of evidence admissible:

The present case involves an issue not directly addressed by our Supreme Court in *Sutton*, *Celinski*, or *McReavy*. The question presented here is whether the admission as substantive evidence of testimony concerning a defendant’s silence before custodial interrogation and before the *Miranda* warnings have been given is a violation of the defendant’s constitutional rights. On the basis of our reading of these cases and certain federal precedent decided since *Bobo*, we conclude that it is not.<sup>33</sup>

Justice Stevens statement concurring in *Jenkins*<sup>34</sup> that “...the privilege against compulsory self-incrimination is simply irrelevant to a citizen’s decision to remain silent when he is under no official compulsion to speak”<sup>35</sup> is both cogent and correct. The United States Supreme Court has

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directed-verdict motion the trial court must take the evidence in the light most favorable to the People, the judge remarked that “had the defendant motioned for a Directed Verdict of acquittal following the People’s proofs concerning count one, you know what my decision would have been, it would have been granted,” the judge adding in a gratuitous insult to the prosecuting attorney, saying “I’d like to see you try a case in Civil Court with an experienced trial lawyer, Mr. Kaplan, you’d have your fanny handed to you in a basket.” Litigants are entitled to expect more from the bench.

<sup>32</sup> And see issue III. It is remarkable that in the retrial the “new” prosecutor trying the case made far more specific reference to defendant’s prearrest silence, which was entirely proper, and did so without objection from defense counsel, who was the same attorney who tried the case the first time.

<sup>33</sup> *People v. Schollaert*, 194 Mich App 158, 164 (1992).

<sup>34</sup> *Jenkins v Anderson*, 447 U.S. 231, 239, 100 S.Ct. 2124, 65 L.Ed.2d 86 (1980).

<sup>35</sup> *Jenkins*, 110 S Ct at 2131.

never held that comment on silence before arrest.<sup>36</sup> after arrest but before Miranda warnings,<sup>37</sup> or after arrest and after Miranda warnings, violates the Fifth Amendment. The Court, rather, has held that only comment on silence after arrest and *after* Miranda warnings violates due process:

while it is true that the Miranda warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives the warnings. In such circumstances, it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial.<sup>38</sup>

But where an “implicit assurance” that silence will not be used in any ways is *not* given—that is, the comment is on silence after arrest but before Miranda warnings—no constitutional issues arises. In *Fletcher v Weir*, *supra*, defendant was cross-examined regarding why, *after arrest* but before Miranda warnings, he had not offered the exculpatory version of events that he had offered at trial, and in *Brecht v Abrahamson*<sup>39</sup> the Court observed that “the Constitution does not prohibit the use for impeachment purposes of a defendant’s silence prior to arrest..., or after arrest if no Miranda warnings are given.... Such silence is probative and does not rest on any implied assurance by law enforcement authorities that it will carry no penalty.”<sup>40</sup> And only last

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<sup>36</sup> *Jenkins v Anderson, supra*.

<sup>37</sup> *Fletcher v Weir*, 455 US 603, 102 S Ct 1309, 71 L Ed 2d 490 (1982).

<sup>38</sup> *Doyle v Ohio*, 426 US 610, 618-619, 96 S Ct 2240,2245, 49 L Ed 2d 91 (1976). But see *Portuondo v Agard*, 529 US 61, 120 S Ct 1119, 146 L Ed 2d 47 (2000), where the Court, in upholding comment that defendant testified after his witnesses giving him the opportunity to tailor his testimony, said that “Although there might be reason to reconsider *Doyle*, we do not do so here.”

<sup>39</sup> *Brecht v Abrahamson*, 507 US 619, 628, 113 S Ct 1710, 123 L Ed 2d 353 (1993).

<sup>40</sup> *Brecht*, 113 S Ct at 1716.

term the United States Supreme Court held that a defendant's silence with regard to some questions posed during noncustodial questioning may be admitted, there being no Fifth Amendment issue unless the person being question expressly declines to answer based on the Fifth Amendment.<sup>41</sup>

This court in *Schollaert* captured the essence of the constitutional implications of "silence":

In the present case, defendant's silence or non-responsive conduct did not occur during a custodial interrogation situation, nor was it in reliance on the *Miranda* warnings. Therefore, we believe that defendant's silence, like the "silence" of the defendant in *McReavy*, was not a constitutionally protected silence. On the basis of our reading of the Michigan Constitution, together with developments in Fifth and Fourteenth Amendment jurisprudence, we conclude

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<sup>41</sup> *Salinas v. Texas*, — U.S. —, 133 S Ct 2174, 186 L Ed 2d 376 (2013). The federal circuit are split on the admissibility of prearrest silence as substantive evidence, and it remains to be seen what effect *Salinas* will have on this area of the law. But in any event, the prosecutor can hardly have engaged in "misconduct" when his line of questioning is supported by Michigan law.

The pre-*Salinas* federal cases break down as follows: The First, Second, Sixth, Seventh, and Tenth Circuits have held that substantive use of silence that is permissible for impeachment violates the constitution; on the other hand, the Fifth, Eighth, Ninth and Eleventh Circuits have held to the contrary; though the Ninth Circuit has held that post-arrest/pre-Miranda silence cannot be used substantively. See *United States ex rel. Savory v. Lane*, 832 F2d 1011 (CA 7, 1987); *United States v. Hernandez*, 948 F2d 316 (CA 7, 1991); *Ouska v. Cahill-Masching*, 246 F3d 1036 (CA 7, 2001); *Coppola v. Powell*, 878 F2d 1562, 1568 (CA 1, 1989); *United States v. Burson*, 952 F2d 1196, 1201 (CA 10, 1991); *United States v. Caro*, 637 F2d 869 (CA 2, 1981); *Combs v. Coyle*, 205 F3d 269 (CA 6, 2000); but compare *United States v. Rivera*, 944 F2d 1563 (CA 11, 1991); *United States v. Zanabria*, 74 F3d 590 (CA 5, 1996); *United States v. Campbell*, 223 F3d 1286 (CA 11, 2000); *Vick v. Lockhart*, 952 F2d 999 (CA 8, 1991); *United States v. Zanabria*, 74 F3d 590, 593 (CA 5, 1996); *United States v. Oplinger*, 150 F3d 1061 (CA 8, 1998). The Ninth Circuit has now held that only pre-arrest silence is admissible as substantive evidence, but not post-arrest/pre-Miranda silence, which is admissible only for impeachment. See *United States v. Whitehead*, 200 F3d 634 (CA 9, 2000); *United States v. Velarde-Gomez*, 269 F3d 1023 (CA 9, 2001).

that defendant's constitutional rights were not violated when evidence of his silence was admitted as substantive evidence.<sup>42</sup>

Here defendant moved for a mistrial, and thus double jeopardy is not offended unless the prosecutor goaded the defense into a mistrial to gain a tactical advantage.<sup>43</sup> Because the prosecutor's question was proper, he plainly was not seeking a mistrial; one cannot goad the defense to request a mistrial by asking a proper question.<sup>44</sup> And the trial judge found that the prosecutor had no such purpose. Double jeopardy did not bar the retrial here.<sup>45</sup> The Court of Appeals properly so held.

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<sup>42</sup> *People v Schollaert*, 194 Mich App 158, 166-167 (1992). And see *People v Collier*, 426 Mich 23 (1986); *People v McReavy*, 436 Mich 197 (1990).

<sup>43</sup> *People v Dawson*, 431 Mich 234 (1990); *Oregon v Kennedy*, 456 US 667, 102 S.Ct 2083, 72 L.Ed 2d 416 (1982).

<sup>44</sup> And see Issue III, where the prosecutor argued defendant's failure to come forward after the shooting before the very same judge, and with the same defense counsel, and with no objection from the defense or insult from the trial judge.

<sup>45</sup> The People would note that defendant's arguments regarding the prosecutor's case "going south," and so the prosecutor wished for a mistrial, are rebutted by the fact that the question was proper; further, they are largely puffery, for on virtually the same evidence—though with the prosecutor allowed to finish his proofs—the defendant was convicted at the second trial of second-degree murder, assault with intent to murder, and felony firearm.

## II.

**The intent to kill may be inferred from use of a deadly weapon. The defendant shot the victim to death, and wounded another. Taking the evidence in the light most favorable to the People, there was sufficient evidence to find intent to kill beyond a reasonable doubt.**

### Standard of Review

The sufficiency of the evidence is reviewed de novo, the question being whether, taking the evidence in the light most favorable to the People, a reasonable juror could find guilt shown beyond a reasonable doubt.<sup>46</sup>

### Discussion

Defendant essentially argues that the killing and assault were done in self-defense, something rejected by the jury. In so doing, he fails to take the evidence in the light most favorable to the People. The use of deadly force against the deceased readily supports the conviction for second-degree murder of Thomas, and also for assault with intent to murder for the shooting of Madison.<sup>47</sup>

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<sup>46</sup> *People v. Nowack*, 462 Mich. 392 (2000).

<sup>47</sup> See *People v. Bulls*, 262 Mich App 618 (2004); *People v. Turner* 62 Mich.App. 467, 470 (1975): The use of a lethal weapon is the kind of evidence which will support an inference of an intent to kill."

### III.

Use of prearrest silence of the defendant by the prosecutor does not violate the Fifth Amendment or due process. The prosecutor argued that the defendant left the scene of the shooting, got rid of the gun, and hid, and that this did not sound like one who believed their actions justified. No error, let alone plain error, was committed by the prosecutor.

#### Standard of Review

Defendant alleges that this issue was preserved by objection, but there is no record evidence that this is true—the People will return to this point. The standard of review for an unpreserved claim is that of plain error; that is, whether the error was plain or obvious, and whether, if it was, it seriously affected the fairness, integrity, or public reputation of the proceedings, or likely resulted in the conviction of an innocent person.<sup>48</sup>

#### Discussion

Defendant says that trial defense counsel “did make an objection” to the portion of the prosecutor’s argument now alleged to be improper, and the prosecutor “chose to move on to a different argument after a bench conference.”<sup>49</sup> This is not accurate; the prosecutor had *already* moved on before the bench conference, and defendant placed no objection on the record to what the prosecutor had said—and had *previously* said without objection. The first portion of argument is:

And before that night was over, Alphonso Thomas, a 36-year-old man, lay dead. Omar Madison lay bleeding from a gunshot wound to his back in his buttocks area, exiting his leg. And where did Mr.

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<sup>48</sup> *People v. Carines*, 460 Mich. 750, 763 (1999).

<sup>49</sup> Defendant’s Brief, p. 36.

Slick Puller go? Well, he ran away, according to his own testimony, and hid for the night in an alley. On Friday he said he put the gun down somewhere; he didn't know where. Today he told us he threw it in the bushes, intentionally disposing of it. And then he hid out for four months before the Fugitive Apprehension Team finally found him in another county. Does that sound to you like he had an honest and reasonable belief that he had to do what he did? Does that behavior sound like the behavior of a killer? We'll get to that more in a minute.<sup>50</sup>

Defense counsel made no objection to these remarks. The prosecutor returned to this point:

He also admitted he ran away, he spent a night in the alley; that he either threw away or lost the murder weapon that night; that he talked to lawyers almost right away; that he didn't turn himself in; that he didn't reach out to anybody in law enforcement prior to his arrest and say, hey, you got this thing wrong. I know you're looking for me. You don't know what's going on. He agreed to all of that. He wants us to believe he did that on advice of counsel? Ladies and gentlemen, use your common sense and reason, please.

*One very important witness that we never did get to hear from.*

MR. TUDDLES: May we approach, Your Honor?

THE COURT: Yes.

[side bar discussion off the record]

MR. HARRISON: As I was attempting to say, there was an important witness we didn't hear from, and that's Mr. Alphonso Thomas, and you never will.<sup>51</sup>

Nothing was ever placed on the record concerning the sidebar conference, and it is clear that the prosecutor did *not* change his line of argument because of that conference, as he had already said "One important witness that we never did get to hear from," referring to the deceased, *before* the sidebar was requested.

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<sup>50</sup> T 11-26, 35.

<sup>51</sup> T 11-26, 83-84.

Defendant must show plain error, then, and fails at the first prong. Defendant refers to the argument made in his Issue I, and the People respond in the same fashion. For the reasons stated in Issue I, the prosecutor committed no error, let alone plain error.

**Relief**

Wherefore, the People respectfully request that leave to appeal be denied.

Respectfully submitted,

KYM L. WORTHY  
Prosecuting Attorney  
County of Wayne

A handwritten signature in black ink, appearing to read 'Timothy A. Baughman', with a long horizontal flourish extending to the right.

TIMOTHY A. BAUGHMAN  
Chief of Research,  
Training, and Appeals  
1441 St. Antoine  
Detroit, MI 48226  
313 224-5792

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

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JOHN OLIVER WOOTEN,

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Lower Court No: 11-012794  
COA: 314315

PROOF OF SERVICE

STATE OF MICHIGAN )  
COUNTY OF WAYNE )<sup>SS</sup>

The undersigned deponent, being duly sworn, deposes and says that [he/she] served a true copy of **Plaintiff's Answer to Defendant's Application for Leave to Appeal**

upon: Kristina Larson Dunne

the above named attorney for defendant, by    / PERSONAL SERVICE or by   X   / DEPOSITING SAID PLEADING IN THE U.S. MAIL IN THE CITY OF DETROIT, ENCLOSED IN AN ENVELOPE BEARING POSTAGE FULLY PREPAID, on **September 5, 2014**, plainly addressed as follows:

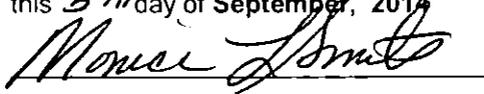
Kristina Larson Dunne  
Attorney at Law  
P.O. Box 97  
Northville, MI 48167

  
Joydelyn Frederick

said pleading was filed in the SUPREME COURT, by    / PONY EXPRESS,    / Next Day Service or    / PERSONAL SERVICE at the following address:

Larry Royster, Clerk  
Michigan Supreme Court  
2<sup>nd</sup> Floor, Law Building  
925 Ottawa Street  
Lansing, Michigan 48902

Subscribed and sworn to before me  
this   5<sup>TH</sup>   day of **September, 2014**



Notary Public, Wayne County, Michigan  
My commission expires:   01-06-19