

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff/Appellee,

vs.

Supreme Court No. _____
Court of Appeals No. 317697
Wayne County Circuit Court
Criminal Case No. 13-3955
Hon. Vera Massey Jones, Circuit Court
Judge

TIMOTHY ALLEN MARCH,

Defendant/Appellant.

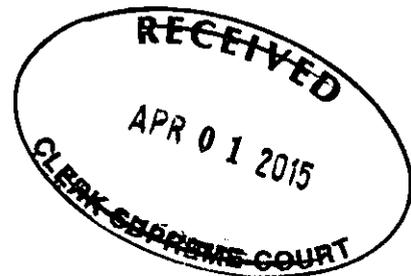
DEFENDANT/APPELLANT TIMOTHY
ALLEN MARCH'S APPLICATION
FOR LEAVE TO APPEAL

Respectfully submitted,

M. Michael Koroι

M. MICHAEL KOROι (P44470)
Attorney for Defendant/Appellant
Timothy Allen March
150 North Main Street
Plymouth, MI 48170-1236
(734) 459-4040

April 1, 2015



II. TABLE OF CONTENTS

| | <u>Page</u> |
|--|--------------------|
| I. Title | 1 |
| II. Table of Contents | 2 |
| III. Statement of Date and Nature of Order Appealed From | 4 |
| IV. Index of Authorities | 5 |
| V. Statement of Questions Presented | 7 |
| VI. Background | |
| VII. Concise Statement of Maternal Proceedings and Facts | |
| VIII. Concise Arguments | 17 |
| A. INTRODUCTION | 17 |
| B. THE VERY NATURE OF LARCENY REQUIRES A TRESPASSORY "TAKING" AS AN ESSENTIAL ELEMENT TO SUSTAIN A CONVICTION AND THAT ELEMENT IS LACKING HEREIN | 16 |
| C. THE ITEMS PLEADED IN THE FELONY WARRANT ARE FIXTURES CONSTITUTING REALTY WHICH MAY NOT BE SUBJECT TO GUILT FOR LARCENY | 21 |
| D. LEGAL, TITLE, POSSESSION, AND CONTROL OF 6090 NORTH CARLSON IN WESTLAND RESIDED WITH DEFENDANT/APPELLANT'S FATHER WHOSE HOME TIMOTHY MARCH HAD CONTROL OVER VIA A POWER OF ATTORNEY INSTRUMENT, AS AN AGENT, SO AS TO BAR CRIMINAL | |

PROSECUTION FOR LARCENY 23

**E. DEFENDANT/APPELLANT CLEARLY
HAD CONSENT OF THE OWNER OF
THE PROPERTY TO REMOVE THE
FIXTURES AT ISSUE HEREIN 23**

**F. MCL 600.3278 OF REVISED
JUDICATURE ACT PROVIDES NO
BASIS FOR CRIMINAL CULPABILITY
FOR A LARCENY IN A BUILDING CHARGE 24**

IX. Conclusion and Relief Requested 28

**III. STATEMENT OF DATE AND NATURE OF
ORDER APPEALED FROM AND RELIEF SOUGHT**

This application for leave to appeal is from an opinion order from the Michigan Court of Appeals issued on December 4, 2014 (Exhibit A) reversing a circuit court order of dismissal entered on August 9, 2013 (see Exhibit B) and remanding the case to the trial court. An order denying reconsideration of the Michigan Court of Appeals opinion was issued on February 4, 2015 (see Exhibit C).

Defendant/Appellee Timothy Allen March seeks for this Honorable Court to grant the instant application for leave to appeal and, further, reverse the December 4, 2014 order and reinstating the aforesaid circuit court order of dismissal Defendant/Appellant believes that the “taking” element is so clearly lacking in this case which respect to the charge of larceny that peremptory reversal is appropriate and, likewise, sought as relief in conjunction with the instant application. The decision of the Michigan Court of Appeals is clearly erroneous and will cause material injustice as specified in MCR 7.302(B)(5).

IV. INDEX OF AUTHORITIES

A. CASE LAW

| | |
|--|----------------|
| <u>Adams vs. Cleveland Cliffs Iron Co</u> , 237 MichApp 51, 602 NWd 215(1999) | 22, 26 |
| <u>Bankers Trust of Detroit vs. Rose</u> , 322 Mich 256, 331NW2d 783 (1948) | 26 |
| <u>Bennos vs. Waderlow</u> , 291 Mich 595, 298 NW267 (1939) | 27 |
| <u>Boardman vs. Dept of State Police</u> , 243 MichApp 351, 622 NW2d 97 (2001) | 23 |
| <u>Byker vs. Mannes</u> , 465 Mich 637, 646-647; 641NW2d 210 (2002) | 25 |
| <u>Fleischman vs. State</u> , 89 TexCrR 259 SW 397 (1921) | 28, 29 |
| <u>Hart vs. Countrywide Home Loans Inc</u> , 735 FSupp2d 741 (ED Mich 2010) | 14 |
| <u>Iwanski vs. Federal Home Loan Mortgage Assn</u> , 477 BR 67 (ED Mich 2012) | 27 |
| <u>Kubczak vs. Chemical Bank & Trust Co</u> , 456 Mich 653, 575 NW2d 745 (1998) | 26 |
| <u>Massachusetts Mutual Life Ins Co vs. Sutton</u> , 278 Mich 457, 270 NW 748 (1936) | 26 |
| <u>Manufacturers Hanover Corp vs. Snell</u> , 142 MichApp 548, 370 NW2d 40 (1978) | 27 |
| <u>People vs. Christenson</u> , 412 Mich 81, 312 NW2d 681 (1981) | 19 |
| <u>People vs. Goforth</u> , 222 MichApp, 306, 564 NW2d 526 (1997) | 24 |
| <u>People vs. Halcomb</u> , 395 Mich 326, 333; 235 NW2d 343 (1997) | 16 |
| <u>People vs. Hardman</u> , 132 MichApp 382, 384, 384 NW2d 460(1984) | 18 |
| <u>People vs. Hatch</u> , 156 MichApp 265, 267-68; 41 NW2d 344 (1987) | 23 |
| <u>People vs. Heft</u> , 299 MichApp 69, 829 NW2d 266 (2012) | 22, 23, 25, 27 |
| <u>People vs. Pohl</u> , 202 MichApp 203, 205; 507NW2d 819 (1993) | 14, 16 |
| <u>People vs. Sheldon</u> , 208 MichApp 331, 527 NW2d 76 (1995) | 14 |
| <u>People vs. Taugher</u> , 102 Mich 598, 61 W66 (1894) | 19 |

| | |
|--|--------|
| <u>People vs. Tennyson</u> , 487 Mich 730, 741; 790 NW2d 354(2010) | 24-25 |
| <u>People vs. Walker</u> , 38 Mich 156 (1878) | 16 |
| <u>People vs. Wilbourne</u> , 44 MichApp 376. 2-5 NW2d 250(1973) | 15, 18 |
| <u>Ruby & Associates PC vs. Shone Financial Services</u> , 276 MichApp 110, 741NW2d 72 (2007) vacated in part on other grounds 480 Mich 1107, 745(2007) | 15 |
| <u>United States vs. One 1941 Chrysler Brougham Sedan</u> , 741 FSupp 970 (ED Mich 1947) | 27 |
| <u>United States vs. Russell-Taylor Inc</u> , 64 FSupp 748 (EDMich1948) | 18 |

B. STATUTES

| | |
|------------------------|-----------------------|
| MCL 600.3240(8) | 12 |
| MCL 600.3278 | 2, 11, 19, 20, 24, 25 |
| MCL 750.356 | 15, 18, 23 |
| MCL 750.359 | 21, 22, 25 |
| MCL 750.360 | 13, 17 |
| MCL750.535(4)(a) | 17 |
| MCL 767.2 | 17 |
| MCL 767.76 | 18 |

C. LEGAL TREATISES

| | |
|---|----|
| 50 <u>AmJur2d</u> , Larceny, Sect. 18, p. 29 | 20 |
| 52B, CJS, Larceny, Sect 19, p. 297 | 22 |
| 52B, CJS, Larceny, Sect. 29, p. 306 | 22 |
| 52B, CJS, Larceny, Sect. 59, p. 329 | 20 |
| <u>Wharton's Criminal Law</u> , Sect. 342, p. 347 | 20 |

D. COURT RULES
STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. WAS THERE ANY ALLEGATION IN THE TRIAL COURT RECORD TO SUGGEST THAT THE "TRESPASSORY TAKING" ELEMENT OR LARCENY OCCURRED WHERE (A) THE POSSESSION STIPULATED IN OPEN COURT THAT A VALID POWER OF ATTORNEY INSTRUMENT WAS IN FORCE OVER THE FIXTURES ENUMERATED IN THE FELONY WARRANT AND (B) THE PROSECUTION FURTHER AGREED IN OPEN COURT THAT DEFENDANT/APPELLANT MARCH HAD A "RIGHT TO POSSESSION" OVER THE PROPERTY IN QUESTION.

DEFENDANT/APPELLANT TIMOTHY MARCH ANSWERS NO
PLAINTIFF/APPELLEE WOULD RESPOND YES
THE TRIAL COURT HELD NO
THE COURT OF APPEALS HELD YES

II. ARE THE ITEMS PLED IN THE FELONY WARRANT FIXTURES CONSTITUTING REALTY WHICH MAY NOT BE SUBJECT OF GUILT FOR LARCENY?

DEFENDANT/APPELLANT TIMOTHY MARCH ANSWERS YES
PLAINTIFF/APPELLEE WOULD RESPOND NO
THE TRIAL COURT DID NOT REACH THIS QUESTION
THE COURT OF APPEALS HELD NO

III. DID LEGAL TITLE, POSSESSION, CONTROL OF THE 6090 NORTH CARLSON REALTY RESIDE WITH DEFENDANT'S FATHER WHOSE HOME DEFENDANT/APPELLEE HAD CONTROL OVER VIA POWER OF ATTORNEY INSTRUMENT AS AN AGENT SO AS TO BAR CRIMINAL PROSECUTION FOR LARCENY?

DEFENDANT/APPELLANT TIMOTHY MARCH ANSWERS YES
PLAINTIFF/APPELLEE WOULD RESPOND NO

THE TRIAL COURT HELD YES

THE COURT OF APPEALS HELD NO

IV. DID DEFENDANT/APPELLANT CLEARLY HAVE
CONSENT OF THE OWNER OF THE PROPERTY TO
REMOVE THE FIXTURES AT ISSUE HEREIN?

DEFENDANT/APPELLANT ANSWERS YES

PLAINTIFF/APPELLEE WOULD ANSWER NO

THE TRIAL COURT HELD YES

THE COURT OF APPEALS HELD NO

V. DOES MCL 600.3278 PROVIDE A BASIS FOR CRIMINAL
CULPABILITY FOR A LARCENY IN A BUILDING CHARGE?

DEFENDANT/APPELLANT ANSWERS NO

PLAINTIFF/APPELLEE WOULD ANSWER YES

THE TRIAL COURT HELD NO

THE COURT OF APPEALS HELD YES

VIII. CONCISE STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Frank E. March was an 80-year old homeowner that was the longtime owner of the residence of 6090 North Carlson in the City of Westland.

On July 29, 2011, a General Power of Attorney (see Exhibit D of Amended Motion For Dismissal) was executed by Frank E. March to his son, Defendant Timothy Patrick March. This General Power of Attorney document is signed by Frank E. March and notarized as well as witnessed by two additional individuals. The document names Defendant “as my attorney-in fact, TO ACT in my name, place and stead in any way which I could do, if I were personally present...”

(g) to possess, recover, manage, hold, control, develop, subdivide, partition, mortgage, lease, or otherwise deal with any real property belonging to me or which I may be entitled..... assign, transfer, abandon, encumber or otherwise dispose of any property of any nature and wherever situate... to abandon property if deemed to be worthless or not of sufficient value to warrant keeping or protecting...

John Hamood is an alleged sheriff's sale purchaser of 6090 North Carlson as part of a mortgage foreclosure proceeding; the auction sale purportedly occurred on August 9, 2012 for the amount of \$33,425.80; Frank March had until February 9, 2013 to redeem the realty - this was stipulated to, per John Hamood (see p. 8 of 14, Case Report).

The Case Report at p. 9 of 14, indicates that Sheriff's Sale purchaser John Hamood made his report to the Westland Police Department on February 10, 2013 and alleging a stripping of several items at the 6090 North Carlson address.

On February 22, 2013 a Search Warrant and Affidavit (see Exhibit E of Amended Motion for Dismissal) issued; the affidavit therein asserted, in relevant part;

2. John Hamood made a police incident report claiming the interior of residence 6090 N. Carlson, Westland, MI 48184 had been stripped of several items. The items taken were all of the kitchen cabinets, kitchen counter top, furnace, duct work, hot water tank, exterior air conditioner, doors.

The search warrant portion of the document commands seizure of:

- (A) wood kitchen cabinets;
- (B) kitchen counter top;

- (C) Carrier furnace;
- (D) duct work;
- (E) hot water tank;
- (F) air conditioning unit;
- (G) two faucets;
- (H) two bedroom interior doors;
- (I) one bi-fold closet door;
- (J) one exterior door;
- (K) one interior door.

The search warrant was executed on February 25, 2013 by the Westland Police Department Detective Bureau resulting in the seizure of Kenmore washer and dryer, refrigerator, counter-top, stainless steel sink with faucet, cabinetry, stove vent fan, dishwasher, doors, furnaces, central air conditioning unit, 40-gallon hot water tank, laundry tub with drawers and faucet (pp. 13-14, Case Report).

Shortly thereafter, Defendant was named in a 2-count Felony Warrant (see Exhibit A of Amended Motion for Dismissal):

(A) Count I- Larceny in a building, Date of Offense 2/01/13-2/10/13, crime of larceny in a dwelling house by stealing counter-tops, sink, furnace, doors, hot water heater, grab bars, cabinets, contrary to MCL 750.360;

(B) Stolen Property- Receiving and concealing \$200.00 or more but less than \$1,000.00. Date of offense 2/01/13-2/25/13 did buy receive, possess, conceal, or aid in the concealment.

An "Affidavit of Purchaser" excerpt produced during criminal discovery (see Exhibit C of Amended Motion for Dismissal) confirms that the redemption period did not end as to the 6090

North Carlson Property:

4. The last date the Property may be redeemed is February 9, 2013....

Defendant March filed his Motion for Dismissal on June 21, 2013 in the circuit court, seeking quashing of the information and discharge of the Defendant for the following grounds:

(A) Defendant is incapable of larceny as to property he and his father possess and control and are “owners” of the items under relevant law;

(B) the items that are allegedly taken are fixtures that are realty and cannot be the subject of criminal guilty under the law of larceny in Michigan;

(C) the power of attorney instrument grants Defendant “consent” by Frank March to remove the items;

(D) there is no evidence that Defendant acted with a “felonious intent” required for larceny as he clearly acted in good faith under a relevant power of attorney instrument and no statute clearly bars the conduct alleged.

The prosecution at June 28, 2012 hearing agreed the power of attorney instrument was validly executed but disputed defense arguments to dismiss of Defendant citing case law and MCL 600.3278. The court requested Defendant file an Amended Motion For Dismissal which was filed and heard on July 12, 2013. The court requested “one case” to illustrate that the mortgagor has rights of “possession and control” during the six-month redemption period, but had been unpersuaded by defense counsel’s two cases cited. Defendant then filed his motion for reconsideration to cite additional case authority as to possessory rights of mortgagor during the redemption period. This reconsideration was heard on August 9, 2013.

At the August 9, 2013 hearing on the motion for reconsideration, the following dialogue between the prosecution and Judge Vera Massey Jones occurred:

MS. POWELL: Your Honor, I do have to concede that the Defendant did have a right to possession of the property during the redemption period.

THE COURT: Then if he has a right he can't steal his own property,

MS. POWELL: I understand, Your Honor. I would like to make a record.

The COURT: Well, that means this case is dismissed.

MS. POWELL: May I make a record, Your Honor, because I am going to ask the Court for a stay. Your Honor, I'm going to ask the Court not to - -

The Court: Why should I stay it, because you can always find this guy.

MS. POWELL: May I make a record?

THE COURT: I am going to let you make the record out you can come pick up the telephone and call the Court of Appeals in one second. And as soon as you tell me he had possessory interest in the property, therefore I'm going to dismiss. Go ahead and make your record.

MS. POWELL: Thank you, your Honor, your Honor I do concede that the Defendant had a possessory interest that he was the legal title holder. The complainant in this case was the applicable (sic) title holder. He basically owned security interest in the property.

I did cite a statute to the court, that is a civil statute MCL 600.3278 (sic) that gives the applicable(sic) title holder a legal remedy against the legal title holder. We believe that when the Defendant looked the property, when he stripped out the duets, the refrigerator, the counter tops, the doors, the water heater, the air conditioning, when those items are severed from the personal property those items reverted back to personal property and could have been stolen from the property. And because of that statute that was enacted in 2011 the interest that it gives the applicable(sic) title holder, we believe that the legal title holder can steal from the applicable(sic) title holder and there is--

THE COURT: You didn't cite a single case

MS. POWELL: There is no case law in Michigan, your Honor, I would like the opportunity to make law and I'm asking the Court --

THE COURT: I don't have time for that. You can go talk to the Court of Appeals

MS. POWELL: Thank you, your Honor.

THE COURT: This case is dismissed. Thank you very much
pp. 11-13, August 9, 2013 transcript

The prosecution filed its appeal in the Michigan Court of Appeals on August 15, 2012. Defendant March defended and also raised issues that were argued but not ruled upon in the trial court, including whether the fixtures alleged to be subject of larceny were realty and hence not subject to being considered objects of the crime of larceny.

In the Court of Appeals, the panel relied heavily on the fact the complaint had an equitable interest during the redemption period which was subject to protection under the larceny statute given the holding of People vs. Sheldon, MichApp 331, 527 NW2d 76 (1995), where the owner of two cars had forcibly recovered those vehicles by a business that held them via a garagekeeper's lien. The Court of Appeals also held that once fixtures were removed from the realty, they lost their character as real property and became personally, hence no defense existed that the items could be construed as outside the scope of the charges field against Defendant herein.

Citing People vs. Sheldon, supra, the appeals panel reversed the lower court dismissal order and ordered the case remanded to the trial court. Defendant filed a timely motion for consideration and on February 4, 2015 the Court denied the aforesaid reconsideration motion. That motion (Exhibit D) relied on the fact that the "taking" element was not established in the pleadings or given the stipulated facts placed upon the record at the June 28, 2013 and August 9, 2013 hearings.

Defendant/Appellant files the instant Application for Leave to Appeal seeking reversal of the aforesaid Michigan Court of Appeals opinion and orders.

A. CHRONOLOGY

1. July 29, 2011 - Frank Edward March, approximately 79 years old and homeowner of 6090 Carlson in Westland executes "General Power of Attorney" (Exhibit D of Amended Motion for Dismissal) in favor of his son, Defendant Timothy March, granting him general possession and control over all his real and personal property.

2. August 9, 2012 - 6090 Carlson mortgage is in default and sheriff's sale occurs; sheriff's deed allegedly issued in favor of "Vonelle Ventures, LLC" purportedly operated by John Hamoud; six-month redemption period beings to run under MCL 600.3240(8).

3. February 9, 2013 - redemption period expires, previous to which Frank March and his son, Timothy March, had possession and control over the premises.

4. February 12, 2013 - John Hamoud goes to Westland Police Dept. complaining that Carlson home was stripped of certain fixtures.

5. February 22, 2013 - Search Warrant and Affidavit issues by 18th District Court Judge Mark McConnell for Timothy March's residence in Ecorse.

6. February 25, 2013 - Search Warrant executed at Timothy March's Ecorse residence; items seized and Timothy March arrested for larceny.

7. February 28, 2013 - Defendant March arraigned in 18th District Court for larceny in a building (felony) and receiving stolen property(misdemeanor).

B. OPERATIVE LAW AND FACTS

1. Defendant is named in a 2-count Felony Warrant (Exhibit A of Amended Motion for Dismissal):

(A) Count I- Larceny in a Building, Date of Offense: 2/01/13-2/10/13

did commit the crime of larceny in a dwelling house by stealing counter-tops, sink, furnace, doors, hot water heater, grab bars, cabinets; contrary to MCL 750.360;

(B) Count II - Stolen Property - Receiving and concealing \$200.00 or more but less than \$1,000.00. Date of Offense: 02/01/2013 - 02/25/13 did buy, receive, possess, conceal, or aid in the concealment of counter tops, sink, furnace, doors, grab bars, hot water heater, etc., stolen, embezzled, or converted property, knowing or having reason to know or reason to believe that the property was stolen embezzled, or converted, and the value of the property was \$200.00 or more but less than \$1,000.00; contrary to MCL 750.535(4)(a).

2. The allegations arise out of fixtures that were attached and incorporated in the dwelling-house realty of Defendant's father, one Frank March, who is now deceased.
3. The alleged "victim" in police report is John Hamood, a purported sheriff's sale purchaser (actually a "Vonelle Ventures, LLC" is described as the purchaser at sheriff's sale) on August 9, 2012 on a mortgage foreclosure for \$33,425.80 for the residence; Frank March had until February 9, 2013 to redeem the realty- this was stipulated to, per John Hamood (p. 8 of 14, Case Report, Exhibit B of Amended Motion For Dismissal; also see Affidavit of Purchaser excerpt, Exhibit C, id).
4. Under Michigan law, a sheriff's deed ripens into legal title when realty is not redeemed within six months of foreclosure sale absent certain limited exceptions. Hart vs. Countrywide Home Loans Inc., 735 FSupp2d 741 (ED Mich 2010); legal title remains in the mortgagor until redemption period expires, mortgagors retain possession and the benefits of ownership of the realty, in addition to the statutory right of redemption. Ruby & Associates PC vs. Shore Financial Services, 276 MichApp 110, 741 NW2d 72 (2007) vacated in part on other grounds 480 Mich 1107, 745 NW2d 752 (2007).

5. Larceny requires intent to take and carry away someone else's property without that person's consent; for purposes of larceny the "owner" is the person who has "rightful possession and control" of the property, People vs. Pohl, 202 MichApp 203, 205, 507 NW2d 819 (1993); an "owner" can be for purposes of the larceny statute, an agent or employee of the owner who, at the time of the alleged larceny, had custody and possession of the property for the owner, People vs. Hatch, 156 MichApp 265, 41 NW2d 344 (1987); in the case at bar Defendant had a general power of attorney over Frank March's affairs (see Exhibit D of Amended Motion for Dismissal); Frank March and his father are, therefore, the "owners" under the larceny statute.
6. A Search Warrant and Affidavit (see Exhibit E, id.) issued on February 22, 2013 against Defendant's home to locate fixtures; this warrant was executed and certain fixtures seized on February 25, 2013 (see p. 10 of 14 Exhibit B, id.).
7. Defendant is incapable of larceny as to property he and his father possess and control and are "owners" of under relevant law.
8. Further, the "subject matter must be the goods or personal property of another" People vs. Wilbourne, 44 MichApp 376, 378; 205 NW2d 250 (1973); in the case at bar the items enumerated in the Felony Warrant (Exhibit A, id.), all constitute fixtures of realty.
9. Chapter LII of the Michigan Penal Code governs larceny and Sect. 356 (MCL 750.356) governs the types of property which may be the subject of the crime of larceny; fixtures or realty in general are not contained therein as enumerated types of property that may be the general subject of larcenous conduct under which a person

may be guilty of a crime.

10. The only reference in said chapter to the stealing of fixtures, attachment or property connected with a structure or building, is set forth at MCL 750.359 which involves “any vacant structure” and renders such conduct a misdemeanor; such a charge has not been made herein against Mr. March.
11. No “goods or personal property” are at issue herein as being stolen, only fixtures or attachments to realty, which cannot form the basis of a larceny prosecution under MCL 750.360.
12. Lastly, one required element of larceny is “felonious intent”; People vs. Wilbourne, id.; “..... if the Defendant in good faith believed that the property ... was his... and that he was entitled to its possession, he could not be guilty of... larceny in taking it, because there would be no felonious intent, and if the Defendant for any reason whatsoever, indulged in no such intent, the crime cannot have been committed”. People vs. Halcomb, 395 Mich 326, 333; 235 NW2d 343 (1975) quoting People vs. Walker, 38 Mich 156 (1878), also People vs. Pohl, supra.
13. The Case Report at p. 9 of 14, indicates that sheriff’s sale purchaser John Hamood made his report to the Westland Police Department on February 10, 2013 and alleging a “stripping” of several items; this suggests that alleged “stripping” must necessarily have occurred during the redemption period when Frank March (and by extension his son, Defendant Timothy March) had possession and control as well as legal title to the realty in question, including all fixtures and attachments thereto.
14. The fixtures and attachments to realty disclosed in the Felony Warrant cannot be the

subject of larceny under MCL 750.360.

15. There is no proof of any felonious intent herein as John Hamood was not the “owner” of the fixtures and attachments at 6090 N. Carlson in Westland at the time they may have been taken.
16. People vs. Wilbourne, supra, establishes the elements of larceny in a building:
 - (A) an actual or constructive taking of goods or property;
 - (B) a carrying away or asportation;
 - (C) the carrying away must be with a felonious intent;
 - (D) the subject matter must be the goods or the personal property of another;
 - (E) the taking must be without the consent and against the will of the owner;
 - (F) the taking must be done within the confines of the building.
17. The facts alleged in the felony warrant do not constitute a crime as to Count I and it is apparent the elements numerated at (A) (C) (D) and (E) at Paragraph Fourteen cannot be established at trial.
18. Further, Count II must necessarily be subject to dismissal for the same reasons argued supra as to Count I.

IX. CONCISE ARGUMENTS

A. INTRODUCTION

MCL 767.2 applies the law governing indictments to “...information and all prosecutions thereon”. MCL 767.76 allows for quashing of defective indictments.

Where information charges no crime, court lacks jurisdiction to try accused, and motion to quash information or charge” is always timely, “People vs. Hardiman, 132 MichApp 382, 384; 347

NW2d 460 (1984). In considering motion to quash information and demurrer thereto, the allegations of the information are to be taken as true. see United States vs. Russell-Taylor Inc. 64 FSupp 748 (ED Mich 1946).

In the case at bar the allegations pled in the Felony Warrant and information clearly do not and cannot allege the crime of larceny or receiving stolen property for the reasons cited in this brief - the foremost being that no "goods or proeprty" are alleged to be invovled , no "felonious intent" is pled, not ownership or possession "of another" is claimed, and no lack of consent of the owner is alleged; no trespass is alleged either.

The putative facts that have been alleged herein contain insufficient allegations to make out a case for either larceny or receiving stolen property and this objection via motion and can be made anytime prior to trial, in the case at bar, was entertained and the action dismissed by the circuit court.

Chapter LII of the Michigan Penal Code governs larceny and Section 356 9 (MCL 750.356) govern the types of property that may be subject of the crime of larceny; fixtures or realty in general are not contained therein as enumerated types of larceny.

People vs. Wilbourne, 44 MichApp 376, 205 NW2d 250(1973) established the elements of larceny in a building:

- (A) an actual or constructive taking of goods or property;
- (B) a carrying away or asportation;
- (C) the carrying away must be with a felonious intent;
- (D) the subject matter must be the goods or person property of another;
- (E) the taking must be without the consent and against the will of the owner;
- (F) the taking must be done within the confines of the building.

The following issues briefed herein establish that the circuit court's dismissal herein was correct and justified.

B. THE VERY NATURE OF LARCENY REQUIRE
A TRESPASSORY "TAKING" AS AN ESSENTIAL
ELEMENT TO SUSTAIN A CONVICTION AND
THAT ELEMENT IS LACKING HEREIN.

In the trial court (see p. 9, Amended Brief in Support of Motion For Dismissal) and also in the Court of Appeals (see p. 27, Defendant/Appellee Timothy Patrick March's Brief on Appeal) Defendant/Appellee March raised the issue of whether the "taking" element of larceny was satisfied herein - and that no "taking" can occur with out a trespass - and no trespass could occur since Timothy March operated under a valid power of attorney to possess, given to him by his father; without any right of possession, the sheriff's sale purchaser cannot complain of larceny under MCL 750.356.

The Court of Appeals decision herein, while recognizing an "ownership interest" by the sheriff's sale purchaser, never addressed the "taking" element of larceny or that the sheriff's sale purchaser lacked any right of possession, unlike the situation in Sheldon.

The Court's opinion herein is stunning and surprising, given the fact that the very nature of larceny requires a trespassory "taking" as an essential element to sustain a conviction and where a defendant's possession is lawful, he or she may not be convicted of common-law larceny; see People vs Taugher, 102 Mich 598, 61 NW 66 (1894) and People vs. Christenson, 412 Mich 81, 312 NW2d 618 (1981).

As stated in Christenson at n. 3 p. 86:

A felonious taking or "trespass" is essential to the crime of larceny at common law [citation omitted]. Consequently, larceny was not the proper charge at common law if a person lawfully

acquired possession of property belonging to another and subsequently converted to his own use.....

At common law, larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive; see Wharton's Criminal Law, Sect. 342, p. 347.

“There must be a trespass in the taking of another’s goods in order to constitute larceny - a trespass to the possession of the owner... there can be no trespass unless the property was in the possession of the one whom it was allegedly stolen...” 50 AmJur2d, Larceny, Sect. 18, p. 29.

“Generally, one who lawfully acquires possession of the goods or money of another cannot commit larceny by feloniously converting them to his or her own use. The rationale is that larceny, being a criminal trespass on the right of possession, cannot be committed by one who, being invested with that right, is consequently incapable of trespassing on it...” (emphasis supplied) CJS, Larceny, Sect. 59, p. 329.

On the record of the June 28, 2012 trial court hearing, the assistant prosecuting attorney on the record conceded the existence of the power of attorney instrument as validly executed and at the August 9, 2013 hearing conceded the right of possession of Defendant; there was no pleading or argument in the trial court, nor any assertion herein by the prosecution that the complainant sheriff’s sale purchaser enjoyed any right of possession to the items delineated in the Felony Warrant.

The relevant power of attorney instrument was prepared over 1 1/2 years prior to the alleged larceny occurring and there has been no argument advanced that Defendant March acquired possession in anything other than a lawful and good-faith manner.

The Court of Appeals’ failure to address the “taking” element of larceny and the trespassory requirement of that element constitutes “palpable error” as to an issue not ruled upon by this Court, as the Court and parties have been misled into addressing an “ownership” issue in lieu thereof;

correction of this error results in a different disposition - one of affirmance of the trial court dismissal order.

C. THE ITEMS PLEADED IN THE FELONY
WARRANT ARE FIXTURES CONSTITUTING
REALTY WHICH MAY NOT BE SUBJECT TO
GUILT FOR LARCENY

Defendant/Appellee contends that the items pled in the felony warrant are fixtures which cannot form the basis of a larceny prosecution under either Count I (larceny in a building) or Count II (receiving stolen property).

MCL 750.356 denominates the objects which may form the subject of larceny and neither realty nor fixtures are delineated therein; nor are realty or fixtures delineated in MCL 750.535(4)(a) as subjects of receiving and concealing stolen property.

A respected legal treatise has pointed out:

Unless otherwise provided by statute, larceny does not include the severance, taking, and carrying away of chattels real. Therefore things that the law regards as constituting a part of the land in which they are contained, or on which they are deposited, were not the subjects of larceny at common law until they become severed from the realty of which they were constructively a part, when the severance is made by the thief himself or herself, the question whether the subsequent asportation of the severed article is larceny at common law or only a continuation of the trespass depends in most jurisdictions of the continuity of the felonious act. If severance and asportation are separate and independent acts, the asportation is larceny because by the severance and before the asportation, the article has become personalty. However, if the severance and asportation are but different parts of a continuous act, the article retains its character as realty and hence is not the subject of larceny.....

52B, CJS, Larceny, Sect. 29, p. 306

The same legal treatise has also expounded upon the character of the item and the requirement that it be personalty, rather than real estate:

In order for a thing to be the subject of larceny, it must be capable of individual ownership since if the thing stolen is something which no one can have property, the act of taking it, although it may constitute some other crime, is not larceny. A further requirement is that the thing taken must be personal property and not something partaking of the nature of realty. Larceny as an offense is concerned with personal property only, and its nature has not been altered by statutes making it larceny to steal things affixed to realty and severed therefrom by the thief.....

52B, CJS, Larceny, Section 19. p. 297

Under Chapter LII, which governs the crime of larceny, there is only one statutory section which governs fixtures; it renders taking of a “fixture, attachment, or other property belonging, connected with or used in the construction of any vacant structure”- MCL 750.359. That section is a misdemeanor offense and, at least arguably, does not apply herein since the structure at issue was not “vacant”.

Applying the above authority it is clear that the facts alleged in the Felony Warrant cannot constitute a criminal offense since they refer to fixtures; conversely to the extent they may have been personal property, neither John Hamood or the limited liability company that purchased the realty had any ownership interest therein. The prosecution, further, has no witnesses to establish when or how these fixtures were removed from the 6090 North Carlson address and, therefore, are unable to plead any prima facie case. Being there can be no larceny of realty or fixtures, the case herein should be dismissed as the information should be quashed and the Defendant discharged.

This is a question of law which is reviewed de novo by the appellate court; see People vs. Heft, supra.

D. LEGAL TITLE POSSESSION CONTROL OF
6090 NORTH CARLSON IN WESTLAND RESIDED
WITH DEFENDANT/APPELLANT’S FATHER
WHOSE HOME TIMOTHY MARCH HAD CONTROL
OVER VIA A POWER OF ATTORNEY INSTRUMENT

Defendant/Appellee contends that the purported sheriff's sale purchaser during foreclosure proceedings never acquired legal title nor had possession or control over the realty at 6090 North Carlson and therefore cannot be the victim of any larceny as the prosecution suggests.

E. DEFENDANT/APPELLANT CLEARLY
HAD CONSENT OF THE OWNER OF THE
PROPERTY TO REMOVE THE FIXTURES
AT ISSUE HEREIN

One element of larceny is that taking must have been without consent and against will of owner. People vs. Hatch, 156 MichApp 265, 401 NW2d 344 (1987). It has been argued supra that Frank March had legal title to the relevant house as well as lawful possession and control over it making him an "owner" of the house and its fixtures. Hatch also established that an authorized agent of an owner is also an "owner" for purposes of a larceny prosecution and in this case Defendant/Appellee, by virtue of his power of attorney instrument is also an "owner" of that realty and its fixtures.

In the instant case, a power of attorney instrument was prepared by an attorney, signed by Frank March, notarized and witnessed, giving Defendant/Appellee general control over the elder March's affairs, including realty matters. The power of attorney instrument was conceded as genuine by the prosecution during the June 28, 2012 hearing. There is no requirement under the law that the sheriff's sale purchaser's consent is required to remove fixtures from realty or any other items from the house.

In sum, the "lack of consent" to taking element in larceny is not present herein nor is any trespass shown as Defendant/Appellee is not barred under the larceny statutes from removing fixtures prior to the expiration of the mortgagor's redemption period.

Consent and the validity thereof in a criminal context are reviewed under a "clear error"

standard; People vs. Goforth, 222 MichApp 306 564 NW2d 526 (1997).

F. MCL 600.3278 OF REVISED JUDICATURE
ACT PROVIDES NO BASIS FOR CRIMINAL
CULPABILITY FOR LARCENY CHARGE

The prosecution also has cited MCL 600.3278 as supposed authority for its proposition that Defendant has committed larceny, that statutory section sets for at subsection (1):

During the period of redemption following a foreclosure sale of property under this chapter, the mortgagor and any other person liable under the mortgage is liable to the purchaser at the sale....if the mortgagee, payee, or other holder has taken title to the property at the sale either directly or indirectly, for any physical injury to the property beyond wear and tear resulting from the normal use of the property if the physical injury is caused by or at the direction of the mortgagor or other person liable on the mortgage.

MCL 600.3278 is inapplicable herein for several reasons. Firstly, it is a codified civil remedy, not a criminal statute. Secondly, Defendant/Appellee is not “a mortgagor and any other person liable on the mortgage” for the realty in question. Thirdly, no “physical injury” occurred - only fixtures, allegedly being removed. No physical damage to the house is alleged as a result of fixture removal. Since 600.3278 creates no criminal liability, only civil causes of action and only applies to a “mortgagor and any other person liable on the mortgage” as well as not covering situations where fixtures are removed, the prosecution’s citation of this section of the Revised Judicature Act bears no relevance to this proceeding.

Statutes must be construed to avoid absurd consequences; People vs. Tennyson, 487 Mich 730, 741; 790 NW2d 354(2010). “It is a well-established rule of statutory construction that this Court will not read words into a statute” Byker vs. Mannes, 465 Mich 637, 646-647, 641 NW2d 210 (2002).

In the instant case, applying MCL 600.3278 to impliedly create a criminal violation of larceny both leads to absurd results and requires the court to add language that is not present in the enactment. Under the prosecution's theory, a homeowner who removes a fixture from his house one day before a sheriff's sale is legal, but is larcenous felon if he does so the day after a foreclosure sale of the home. A homeowner who removes a shower nozzle, a telephone jack, or a toilet paper dispenser the he may have installed himself during his pre-auction sale ownership of the home is also a larcenous felon under the prosecution's theory advanced herein. This is a ludicrous interpretation of a civil remedy statute that cannot be adopted by this Court. This is especially so given the fact that Chapter LII of the Michigan Penal Code has a larceny section proscribing removal or damaging fixtures of a vacant structure or building (MCL 750.359) rendering such conduct a misdemeanor. It would be ludicrous to suggest that a homeowner removing or damaging home fixtures during a foreclosure redemption period would be guilty of a felony, larceny in a building, but trespassers stripping or vandalizing fixtures of a vacant property following foreclosure and subsequent eviction would only be guilty of a mere misdemeanor violation. The fact that the Michigan Penal Code is silent on imposing criminal guilt for foreclosed homeowners during the redemption period in cases when fixtures are removed is indicative of legislative intent.

The most common scenario where fixtures are removed is in a landlord-tenant context. It is likely for example, that a mall leasing a unit to a barbershop will have mirrors and chairs installed as fixtures and that those fixtures are to be removed by the tenant when the tenancy terminates unless the lease specifies otherwise. Compare that scenario to the instant case where handicapped railings installed to assist Mr. March may have been removed during the redemption period to accommodate him in his envisioned new residence after he vacated the foreclosed home he had lived

in. It is absurd to label this conduct to be felonious larceny in a building. The prosecution cannot point to any case law or similar statutory section within Michigan or outside Michigan that imposes criminal liability on a homeowner or other person removing fixtures from a home during the redemption period of a statutory foreclosure process.

At any time during a mortgagor-mortgagee relationship a homeowner may install or remove fixtures, such as doors, cabinets, or calling without seeking consent of the mortgagee - there is no legislative proscription against a homeowner removing such fixtures during a redemption period following a sheriff's sale. To interpret such conduct as larceny in a building is absurd as it would criminalize the unscrewing of a light bulb or disconnection of a mounted pencil sharpener - or other household items which are ordinarily removed when a homeowner vacates his residence for a new location. Under the prosecution's theory, a farmer harvesting his crops during a redemption period following foreclosure would be guilty of larceny as crops are affixed to the land. These are absurd interpretations of the larceny statutes argued by the prosecution.

The prosecution cited Adams vs. Cleveland-Cliffs Iron Co, 237 MichApp 51, 603 NW2d 215 (1999) as purported authority in support of its theory that right of possession does not necessarily imply right to dispose of the property in question, however Adams is neither a criminal case nor does it involve a mortgage foreclosure or deal with redemption periods following thereafter.

In sum, there is no case law or legislative enactment which supports the prosecution's position that the larceny in a building section of the Michigan Penal Code, or receiving stolen property section has been violated by Mr. March.

This issue is a question of law which the appellate court reviews on a de novo basis. See People vs. Heft, 299 MichApp 69, 829 NW2d 266 (2012).

IX. CONCLUSION AND RELIEF

REQUESTED

Defendant/Appellant Timothy Patrick March believes that error occurred under MCR 7.302 (B)(5), appellant is entitled to relief from this Honorable Court and request that this Honorable Court reverse and/or vacate the December 4, 2014 opinion and order of the Michigan Court of Appeals and reinstate the order of dismissal of the Wayne County Circuit Court entered on August 9, 2013. In the alternative, Defendant/Appellant believes a peremptory reversal is warranted herein as the Michigan Court of Appeals decision is clearly erroneous and will cause material injustice as set forth at MCR 7.302 (B)(5).

Respectfully submitted,



M. MICHAEL KOROI (P44470)
Attorney for Defendant/Appellant
Timothy Allen March
150 North Main Street
Plymouth, MI 48170
(734) 459-4040

April 1, 2015
march.af

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TIMOTHY PATRICK MARCH,

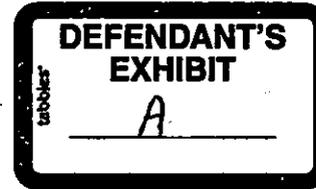
Defendant-Appellee.

UNPUBLISHED
December 4, 2014

No. 317697
Wayne Circuit Court
LC No. 13-003955-FH

Before: BORRELLO, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.



The prosecution appeals as of right the trial court order granting defendant's motion for dismissal of all charges. Defendant was charged with larceny from a building, MCL 750.360, and buying, receiving, possessing, or concealing stolen property valued at \$200 or more but less than \$1,000, MCL 750.535(1), (4)(a). For the reasons set forth in this opinion, we reverse and remand this matter to the trial court for further proceedings consistent with this opinion.

This appeal arises from the theft of fixtures from a residence in Westland, Michigan. Defendant's father had previously owned the home, but pursuant to a power of attorney granted defendant on July 29, 2011, he placed his father into an assisted living home and let the Westland home fall into arrears. The home was allowed to go into foreclosure, and eventually put up for sale through the Wayne County sheriff's department.

On August 9, 2012, John Hamood purchased the Westland home, pursuant to a sheriff's sale, for \$33,425.80. The home was not redeemed by defendant. On February 10, 2013, Hamood went to the residence and saw that the side door to the attached garage had been kicked in and that the door connecting the garage to the house was unlocked. Once inside the house, Hamood noticed numerous items missing, including a Whirlpool dishwasher, a vent fan for the oven, a Frigidaire refrigerator, a Kenmore washing machine, a plastic laundry tub, oak kitchen cabinets, the kitchen counter top, numerous interior doors, and one bi-fold closet door. Hamood called the police, and the investigation led them to get a search warrant for defendant's home.

Pursuant to the warrant, police searched defendant's home and property in Ecorse, finding a sink and white countertops matching the description of some items missing from the kitchen of the Westland home. Defendant arrived on the scene and was asked about the sink and countertops. Defendant responded that he bought a lot of things on "craglist," and denied any theft from the Westland home. A continuing search of the home in Ecorse revealed three kitchen

cabinets and interior doors matching the description of those missing from the Westland home. Further, in the basement, police found a furnace, air conditioning unit, hot water tank, and white wash tub which Hamood identified as some of the items missing from the Westland home.

On July 3, 2013, defendant filed an amended motion for dismissal of all charges. The amended motion moved for dismissal on the grounds that defendant and defendant's father still had the right to possession and control of the items in the home during the statutory redemption period following the sheriff's sale, the items taken from the home were properly characterized as fixtures, not "goods or property" as required to support a conviction for larceny, and the prosecution could not establish any "felonious intent" under the circumstances. The trial court, for a third time, denied defendant's motion for dismissal. On July 22, 2013, defendant filed a motion for reconsideration with the trial court. In his motion for reconsideration, defendant cited case law to support his prior contention that he maintained the legal right to possession and control of the premises during the redemption period, the time when the prosecution claimed defendant stole the items. Therefore, defendant argued, he could not have committed a larceny against himself. The trial court granted the motion for reconsideration, and dismissed all charges against defendant. This appeal then ensued.

On appeal, the prosecution argues that the trial court erred in finding that defendant could not be prosecuted for allegedly removing items from his father's home after it had been purchased at a sheriff's sale, but prior to the conclusion of the six-month statutory redemption period, because defendant had title and the right to possess the items.

A trial court's decision on a motion to dismiss is reviewed by this Court for an abuse of discretion. *People v Hartwick*, 303 Mich App 247, 255-256; 842 NW2d 545 (2013), lv gtd 496 Mich 851 (2014). To the extent that the trial court's decision rested on issues of statutory interpretation, this Court reviews those issues de novo. *People v Loper*, 299 Mich App 451, 463-464; 830 NW2d 836 (2013). To the extent the prosecution's argument requires the interpretation of MCL 750.356, MCL 750.360, and MCL 600.3278, this Court's "primary purpose in construing statutes is to discern and give effect to the Legislature's intent." *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006) (internal quotation marks omitted). "The fair and natural import of the provision governs, considering the subject matter of the entire statute." *People v McGraw*, 484 Mich 120, 124; 771 NW2d 655 (2009). The Legislature is presumed to have intended the plainly expressed meaning of the statute, and clear statutory language shall be enforced as it is written. *Loper*, 299 Mich App at 464. "[W]hen statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed." *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004).

MCL 750.360 provides:

Any person who shall commit the crime of larceny by stealing in any dwelling house, house trailer, office, store, gasoline service station, shop, warehouse, mill, factory, hotel, school, barn, granary, ship, boat, vessel, church, house of worship, locker room or any building used by the public shall be guilty of a felony.

The basic elements of larceny from a building are:

[1] an actual or constructive taking of goods or property; [2] a carrying away or asportation; [3] the carrying away must be with a felonious intent; [4] the goods or property must be the personal property of another; [5] the taking must be without the consent and against the will of the owner; and [6] the taking must occur within the confines of the building [*People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998).]

Further, larceny is a specific intent crime, and the prosecution must prove that a defendant specifically intends to steal another person's property. *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999). The question of a defendant's specific intent to commit larceny is a matter for the jury to determine. *Id.* at 119. The basis of the dispute below was whether the items that defendant allegedly stole belonged to anyone other than defendant, i.e., element (4), because defendant maintained the right to possession and control of the Westland property during the redemption period. We note that defendant's father, not defendant, allegedly owned the home in Westland, Michigan, prior to the sheriff's sale. However, defendant had full control to the property through his power of attorney over his father's affairs, and therefore, he can be considered the owner of the property. See *People v Pohl*, 202 Mich App 203, 205; 507 NW2d 819 (1993) ("The 'owner' is the person who has rightful possession and control of the property.")

MCL 750.535(1), (4)(a) provides, in pertinent part:

(1) A person shall not buy, receive, possess, conceal, or aid in the concealment of stolen, embezzled, or converted money, goods, or property knowing, or having reason to know or reason to believe, that the money, goods, or property is stolen, embezzled, or converted.

* * *

(4) If any of the following apply, a person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the property purchased, received, possessed, or concealed, whichever is greater, or both imprisonment and a fine:

(a) The property purchased, received, possessed, or concealed has a value of \$200.00 or more but less than \$1,000.00.

To convict a defendant of receiving, possessing, or concealing stolen goods or property, the prosecution is required to prove: "(1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the defendant that the property received or concealed was stolen." *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866, 868 (2002). Much of the lower court's discussion at the hearings on defendant's motion centered on the requirements to prove the charge of larceny from a building, not the charge of possessing stolen property. However, because the trial court found that defendant was incapable of

committing a larceny by taking property that he owned, the charge for possessing stolen property failed the requirement that “the property was stolen.” *Id.*

In *People v Sheldon*, 208 Mich App 331, 333-334; 527 NW2d 76 (1995), the defendant was charged with larceny for removing two Cadillacs he had just purchased from an impound lot without paying the impound fees. This Court held that “[l]arceny is not limited to taking property away from the person who holds title to that property, but also includes taking property from a person who has a rightful possession and control of the property.” *Id.* at 334. This Court further held that larceny included an expansive definition of “owner” which could mean “the actual owner of the property [or any other person whose consent was necessary before the property could be taken].” *Id.* at 334-335, quoting CJ12d 22.2 (brackets in original). This Court reversed the trial court’s order dismissing the larceny charge against the defendant because a civil statute gave the impound lots the authority to hold the vehicle, and therefore, the impound lots held an interest in the Cadillacs to the extent of their lawful impound fees. *Id.* at 335-336.

Sheldon is analogous to the instant case. Here, the complainant purchased the home of defendant’s father pursuant to a sheriff’s sale. As this Court recently held in *Fed Nat’l Mtg Ass’n v Lagoons Forest*, 305 Mich App 258, 268-269; 852 NW2d 217 (2014), “a sheriff’s deed grants the holder an equitable interest in the foreclosed property,” which this Court has described as “equitable title.” Further, the complainant’s interest in the property is supported by MCL 600.3278(1), which provides, in pertinent part:

During the period of redemption following a foreclosure sale of property under this chapter, the mortgagor and any other person liable on the mortgage is liable to the purchaser at the sale . . . for any physical injury to the property beyond wear and tear resulting from the normal use of the property if the physical injury is caused by or at the direction of the mortgagor or other person liable on the mortgage.

Under this provision, the complainant had the right to a purchased property free of physical injury by defendant. Pursuant to both MCL 600.3278(1), and the complainant’s equitable interest or title in the property, *Fed Nat’l Mtg Ass’n*, 305 Mich App at 268-269, it is clear that the complainant meets the definition of “any other person whose consent was necessary before the property could be taken,” *Sheldon*, 208 Mich App at 334-335, and therefore, defendant could not simply remove the items from his father’s home without the complainant’s permission. Thus, the items that defendant allegedly removed from the home were at least partially the “property of another,” *Cain*, 238 Mich App at 120, and the trial court abused its discretion in dismissing the larceny and possession of stolen property charges against defendant on that basis, *Hartwick*, 303 Mich App at 255-256.

In his brief on appeal, defendant contends that the trial court's order could be affirmed on the alternative ground that the items allegedly stolen were "fixtures," and therefore, could not support a charge of larceny.¹

The simple larceny statute, MCL 750.356(1), provides:

A person who commits larceny by stealing any of the following property of another person is guilty of a crime as provided in this section:

- (a) Money, goods, or chattels.
- (b) A bank note, bank bill, bond, promissory note, due bill, bill of exchange or other bill, draft, order, or certificate.
- (c) A book of accounts for or concerning money or goods due, to become due, or to be delivered.
- (d) A deed or writing containing a conveyance of land or other valuable contract in force.
- (e) A receipt, release, or defeasance.
- (f) A writ, process, or public record.
- (g) Scrap metal.

Based on these delineated types of property found in the simple larceny statute, defendant is correct that this subsection does not list fixtures as property that, once stolen, can form the basis for criminal charges for larceny. However, MCL 750.356(1)(a) does provide that the theft of "[m]oney, goods, or chattels," can support a conviction for larceny. The criminal statute does not define goods or chattels. When an undefined term has a unique legal meaning, it "shall be construed and understood according to such peculiar and appropriate meaning." MCL 8.3a; see also *People v Flick*, 487 Mich 1, 11; 790 NW2d 295 (2010) (stating same). In defining an undefined term of art, it is appropriate for this Court to resort to a legal dictionary. *People v Steele*, 283 Mich App 472, 488; 769 NW2d 256 (2009).

Black's Law Dictionary (9th ed) defines "chattel" as "[m]ovable or transferable property; personal property," and "goods" as "[t]angible or movable personal property other than money." *Black's Law Dictionary* (9th ed) also defines "fixture" as:

Personal property that is attached to land or a building and that is regarded as an irremovable part of the real property, such as a fireplace built into a home. Historically, personal property becomes a fixture when it is physically fastened to

¹ A party is not required to file a cross-appeal to argue alternative bases for affirmance. *People v Brown*, 297 Mich App 670, 678 n 6; 825 NW2d 91 (2012).

| | | |
|---|-------------------------------------|--|
| STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY | ORDER DENYING/GRANTING MOTION | CASE NO. 13-003955-01-FH |
| ORI MI- 821095J Court Address | 1441 St. Antoine, Detroit MI 48226 | Courtroom Court Telephone No. 313-224-2487 |

THE PEOPLE OF THE STATE OF MICHIGAN

vs.

Timothy Patrick March

Defendant

At a Session of Said Court held in The Frank Murphy Hall of Justice
at Detroit in Wayne County on 8-9-13

PRESENT: Honorable Vera Massey Jones

A Motion for: To Dismiss

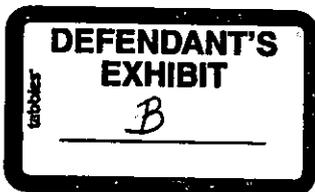
_____ having been filed; and

the People having filed and answer in opposition; and the Court having reviewed the briefs and records in the Cause and being fully advised in the premises;

IT IS ORDERED THAT the Motion for _____

_____ be and

is hereby denied granted. Case Dismissed



Vera Massey Jones

 Honorable Vera Massey Jones

A TRUE COPY
 CATHY M. GARRETT
 WAYNE COUNTY CLERK
 BY *M. C. [Signature]*
 DEPUTY CLERK

Court of Appeals, State of Michigan

ORDER

People of MI v Timothy Patrick March

Docket No. 317697

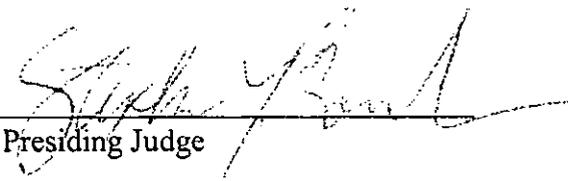
LC No. 13-003955-FH

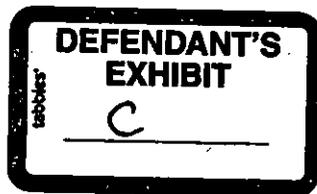
Stephen L. Borrello
Presiding Judge

Kurtis T. Wilder

Cynthia Diane Stephens
Judges

The Court orders that the motion for reconsideration is DENIED.

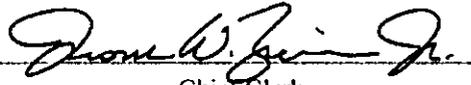

Presiding Judge



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

FEB 04 2015

Date


Chief Clerk

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff/Appellee,

vs.

Supreme Court No. _____
Court of Appeals No. 317697
Wayne County Circuit Court
Criminal Case No. 13-3955
Hon. Vera Massey Jones, Circuit Court
Judge

TIMOTHY ALLEN MARCH,

Defendant/Appellant.

CERTIFICATE OF SERVICE

The undersigned certifies that on April 1, 2015 copies of Defendant/Appellant Timothy Allen March's Application for Leave to Appeal and the instant Certificate of Service were served by ordinary first class mail to the attorney for Plaintiff at the following address:

David A. McCreedy, Esq.
Wayne County Prosecutor's Office
1441 St. Antoine St., Rm. 1233
Detroit, MI 48226


HUDA SHARIF

April 1, 2015
march5.cos