MICHIGAN CRIMINAL
CASE LAW UPDATE
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TRIAL PROCEDURE

Jury Selection

Batson violated by defense counsel

Defense counsel attempted to peremptorily dismiss three Caucasian males in a row from the jury. The trial court sua sponte raised a *Batson* issue. Defense argued that because the majority of the remaining jurors were Caucasian, there was no violation. The Supreme Court held that a trial court may raise a *Batson* issue sua sponte. In addition, because defense counsel did not offer a race neutral reason for the dismissals, *Batson* had been violated.

People v Bell, 473 Mich 275 (2005), reversing 259 Mich App 583 (2003)

Batson not violated by prosecutor

Defense counsel challenged the prosecution's dismissal of three African-American women under *Batson*. The prosecutor responded that she had also excluded four Caucasian venire members and offered race-neutral reasons for excluding the African-American venire members. The Supreme Court finds no *Batson* violation by the prosecutor. Even if the jury pool is predominately Caucasian, a *Batson* violation does not occur when a majority of the African-American members are dismissed if there are race-neutral reasons for the dismissals.

People v Knight, 473 Mich 324 (2005)

Witnesses

Prosecutor's failure to call res gestae witnesses

Because of the amendments to M.C.L. 767.40(a), *People v Pearson*, 404 Mich 698 (1979), requiring a post-conviction hearing when the prosecutor fails to produce a res gestae witness, is no longer good law. Because the prosecutor now only has a duty to disclose known witnesses and provides reasonable assistance to the defense to produce witnesses, an evidentiary hearing is not required simply because the prosecution failed to produce a res gestae witness.

People v Cook, 266 Mich App 290 (2005)

Replacement of Judge After Trial

Prejudice required

The defendant is not entitled to reversal where a visiting judge presided over the actual trial portion of the case and a different judge took the verdict. Defendant failed to show any prejudice and, since he did not object to the different judge, forfeited this issue for appeal. However, plain error did occur when a judge other than the one who presided over the trial sentenced defendant. While having a new judge impose sentence constitutes plain error (since a defendant has the right to be sentenced by the judge who presided over the trial), resentencing is not required; the defendant in this case did not establish prejudice. Dissenting judge says defendant should not have to establish prejudice.

People v Wilson, 265 Mich App 386 (2005)

Prosecutor's Duty to Disclose Exculpatory Evidence

No violation

The defendant was convicted of CSC III involving a mentally incapable victim. The defense alleged after trial that the prosecutor had information showing that the victim had pled guilty to larceny. Defendant argued that this evidence was improperly withheld by the prosecutor in violation of *Brady v Maryland*, or alternatively, that it was newly discovered evidence. The Court holds that there was no *Brady* violation, as the prosecutor did not learn of the plea until the morning of defendant's sentencing. Although the evidence may have been newly discovered, a new trial was not warranted, as there was insufficient evidence to show that the results would have been different.

People v Cox, — Mich App ----, 2005 WL 2716548 (2005)

INSTRUCTIONS

Lesser Included Offenses

Assault with intent to rob while armed and felonious assault

Felonious assault is not a necessarily included offense of assault with intent to rob while armed. The trial court did not err in refusing to instruct on felonious assault.

People v Walls, 265 Mich App 642 (2005)

Defense Theory

Accident as a defense to murder

In a murder trial where there was evidence to support the defendant's theory that he was not guilty of murder because the shooting was an accident, the trial court erred in refusing to instruct the jury on accident as a defense to murder, even if the defendant's actions still amounted to criminal negligence. Precedent establishes that "failure to give an accident instruction requires reversal when that defense is a central issue to the case," so the court reversed the conviction and remanded for a new trial. It is important to note that the court questioned the viability this rule in light of *People v Lukity*, 460 Mich 484; 596 NW2d 607 (1999), which says that where there is a preserved, nonconstitutional error, the defendant must prove a miscarriage of justice using a "more probable that not" standard. If *Lukity* were applied, the court said that the defendant would not have established reversible error because the "jury instructions made it clear that a finding of accident would be inconsistent with a finding that [the] defendant possessed the intent needed for murder."

People v Hawthorne, 265 Mich App 47, 692 NW2d 879 (2005)

CSC III as a lesser offense of CSC I

No due process violation

The defendant was not prejudiced by unfair surprise, nor was there a lack of adequate notice, when the trial court instructed the jury on CSC III as a necessarily included lesser offense of CSC I, as charged. The Court acknowledges that CSC III is not necessarily included within CSC I and therefore is not available as a lesser offense pursuant to *People v Cornell.* However, the defendant's conviction here of the uncharged offense of CSC III did not deprive defendant of due process because all the elements of the uncharged crime were proved at the preliminary examination and trial without objection, providing the defendant with adequate notice. The Court also notes that the trial court denied the prosecutor's motion to amend the information to include CSC III as an alternative charge.

People v Apgar, 264 Mich App 321; 690 NW2d 312 (2004)

Accomplice Testimony

No automatic reversal rule

In regard to accomplice testimony, the court rejects the rule of *People v McCoy*, 392 Mich 231; 220 NW2d 456 (1974), where the Michigan Supreme Court held that reversal is required when the trial court fails to give a cautionary instruction when it is either (1) requested by the defense or (2) when the issue of guilt is "closely drawn" requires reversal, even when not requested by the defense. The court states "an unpreserved claim of failure to give a cautionary accomplice instruction may be reviewed only in the same manner as other unpreserved arguments on appeal." This means that appellate courts must limit review in cases where the defendant fails to preserve his claim to the plain-error test of *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994), and *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999).

People v Young, 472 Mich 130 (2005)

EVIDENCE

Transcript Of Unavailable Witness's Guilty Plea

Harmless error

Defendant was convicted of perjury based in part on the admission of the transcript of an unavailable witness's guilty plea to subornation of perjury. The Court finds the admission of the transcript harmless error in light of other evidence of guilt.

People v Shepherd, 472 Mich 343 (2005), reversing 263 Mich App 665 (2004)

Crawford Error

New trial required

The defendant was convicted of CSC I and II for molesting his twelve-year-old granddaughter. At trial, the prosecution presented a state police serologist who, without objection, testified about results obtained by a different serologist regarding a stain found on the defendant's swimsuit. The testimony was inadmissible hearsay and violated the defendant's right of confrontation under *Crawford v Washington*. The trial court's denial of defendant's motion for new trial on this issue was an abuse of discretion. The error was not harmless as the prosecutor not only relied on this inadmissible evidence but also mischaracterized it to defendant's disadvantage. Also worth noting: only one judge signed the opinion. The other two concurred in result only.

People v Lonsby, — Mich App ---- 2005 WL 2649748 (2005)

MRE 803(2)

Statement properly admitted

The trial court did not abuse its discretion or deny defendant the right of confrontation when it admitted the domestic assault victim's statement that had been written out by a neighbor after the victim was too upset to write her own statement. The court found that the statement was an excited utterance and that it was not testimonial within the meaning of *Crawford v Washington*, 541 U.S. 36; 124 S Ct 1354; 158 L.Ed.2d 177 (2004), because it was not made to an authority figure.

People v Walker, 265 Mich App 530 (2005)

SENTENCING

Sentencing Guidelines

Sentence imposed after a probation violation

Legislative sentencing guidelines apply to sentences for probation violation. Therefore, the defendant's acts that gave rise to the PV may constitute substantial and compelling reasons for sentencing guideline departures. The Court of Appeals' conclusion in this case that the factors used to justify the departure had already been considered by the guidelines variables was erroneous.

People v Hendrick, 472 Mich 555 (2005),* reversing in part *261 Mich App 673 (2004)

Hendrick applies retroactively

The defendant was convicted of several crimes in 2001. In 2002 he pled guilty to violating his probation and was sentenced to prison. The sentencing judge did not utilize the sentencing guidelines and imposed a sentence greater than that permitted under the guidelines. In 2004, the Court of Appeals in *People v Hendrick* held that the sentencing guidelines applied to sentences imposed after probation violations if the underlying crimes were committed after January 1, 1999. This panel holds that *Hendrick* applies retroactively and remands for resentencing.

People v Parker, 267 Mich App 319 (2005)

Offense Variable 3

At the sentencing of a defendant who pled guilty for driving with a suspended license and causing death, the trial court erred in scoring Offense Variable (OV) 3, physical injury to a victim, at one hundred points under M.C.L. §777.33. "[T]he proper score for OV 3 in cases where a victim is killed, but the sentencing offense is homicide not falling under M.C.L. §777.33(2)(c), is zero points." The trial court's assessment of one hundred points constituted plain error.

People v Brown, 265 Mich App 60, 692 NW2d 717 (2005)

Offense Variable 7

After choking the victim to death but believing him to still be alive, defendant removed the victim's clothing and placed him outdoors naked. Because defendant's admitted intent was to humiliate the victim, OV 7 was properly scored at 50 pts. Points are to be assessed when a victim *was treated with...* torture, or excessive physical abuse or with conduct designed to increase a victim's fear and anxiety. It does not require that the victim *experienced* those things.

People v Kegler, -- Mich App ----, 2005 WL 2237782 (2005)

Presentence Investigation Reports

Multiple offenses

The defendant was convicted of one count of CSC III and one count of assault with intent to commit CSC. He was sentenced as a fourth habitual offender to concurrent terms. It was not error for the court to prepare only one presentence investigation report (PSIR) for the CSC III. The Court finds that the Legislature intended that in concurrent sentencing situations, a PSIR only has to be prepared for the highest crime class felony conviction.

People v Mack, 265 Mich App 122 (2005)

Appellate Review of Sentence

Upward departure without reasons

The trial court erred in sentencing the defendant to life imprisonment for the felon in possession of a firearm conviction, a conviction for which the sentencing guidelines recommend twenty four to seventy six months as a minimum sentence. The sentencing judge did not indicate that there was even a departure from the guidelines or any facts to justify such a departure. Even though the appellate court may find that there are certain factors that create substantial and compelling reasons to depart, "[t]he sentencing court must articulate on the record a substantial and compelling reason for its particular departure and explain why that reason justifies that particular departure." Because of the trial court's failure to do so, the panel remanded for resentencing.

People v Johnigan, 265 Mich App 463 (2005)

Unjustified upward departure

The defendant pled guilty to four counts of delivery of less than 50 grams of heroin to a minor. The trial court sentenced her to 15 to 40 years, a departure from the guidelines recommended minimum range of 19 to 38 months. The trial court's reason for the departure, that the Legislature did not contemplate injection of heroin as delivering heroin, was clearly erroneous. Because injection may constitute delivery for purposes of conviction, it also constitutes delivery for purposes of sentencing. Therefore it was not a compelling and substantial reason to deviate from sentencing guidelines.

People v Havens, -- Mich App ----, 2005 WL 2089847 (2005)

Upward departure pursuant to a sentence agreement

When the sentence is imposed as part of a valid plea agreement, M.C.L. §769.34(3) does not require the specific articulation of additional "substantial and compelling" reasons by the sentencing court. Additionally, the defendant waives his right to appellate review of a sentence that exceeds the guidelines when the defendant accepts the plea and sentence agreement.

People v Wiley, 472 Mich 153 (2005)

Credit for Time Served

No credit for disciplinary credits earned on an illegal sentence

The defendant was convicted by a jury of CSC III, and originally sentenced to one year in jail. That sentence was reversed by the Court of Appeals and defendant was resentenced to prison. Defendant sought credit for not only the actual days he spent in jail on the illegal sentence but also for the 61 days in good-time credit he had earned in jail. While the actual days spent must be credited to the new sentence, defendant is not entitled to the good time earned while serving the illegal sentence.

People v Tyrpin, — Mich App ----, 2005 WL 2649482 (2005)

Controlled Substance Sentences

Departure from the presumptive minimum

The defendant was sentenced to a mandatory ten years for possession with intent to distribute cocaine. Although the Court rejects his argument that the amendments to the mandatory minimum provisions should be applied retroactively, the Court still remands for resentencing. The trial court abused its discretion in refusing to find substantial and compelling reasons for departure where defendant had no prior criminal record, had a good work history and family support, and a willingness to cooperate with the police.

People v Michielutti, 266 Mich App 223 (2005)

Consecutive sentence for possession of marijuana, second offense

Because possession of marijuana, second offense, is punishable by two years in prison, it is "another felony" within the meaning of the consecutive sentence provision of the Controlled Substances Act. Since the statute makes consecutive sentencing mandatory, the trial court did not err in imposing consecutive sentences in this case.

People v Wyrick, 265 Mich App 483 (2005)

Sexually Delinquent Persons

Probation is a valid alternative sentence

The trial court convicted the defendant of indecent exposure by a sexually delinquent person. The court concluded that because the defendant could control himself when he was not drinking, and he was maintaining sobriety, a sentence of probation rather than prison was proper. Pursuant to the prosecutor's appeal of the probationary sentence, the panel holds that a trial court is not required to sentence a defendant to an indeterminate prison term under M.C.L. 750.335(a), and a sentence of probation is proper.

People v Buehler, --- Mich App ----, 2005 WL 2844885 (2005)

Restitution

Impaired driving causing serious injury

For the offense of operating a vehicle while visibly impaired due to the consumption of alcohol causing serious injury, M.C.L. 257.625(5) allows the court to "order up to three times the amount of restitution otherwise allowed by [the] statute" if the victim experiences death or serious impairment of a body function. The victim in this case suffered serious impairment of a body function, so the trial court had discretion to award three times the otherwise-allowed restitution. Therefore, since the court potentially could have tripled the restitution amount of $659,128.09, the cost of medical expenses and lost wages paid for the victim, the trial court did not err by awarding $250,000 to the victim in addition to the amount of $659,128.09 to be paid to the insurance company. However, the court did remand the case for determination of the sufficiency of evidence on the $30,000 lost wage award, and it reversed the order that the defendant pay Allstate when Michigan Catastrophic Claims Association (MCCA) had reimbursed Allstate. Instead, the court directed that the defendant be ordered to reimburse the MCCA directly and to pay only $250,000 to Allstate.

People v Byard, 265 Mich App 510 (2005)

CRIMES

Felonious Driving

Definition of "operating"

The court affirmed the dismissal of the charge of felonious driving against the defendant because the defendant was not "operating" the vehicle in the context of M.C.L. 257.626c. Even though the defendant, a front-seat passenger, grabbed and turned the steering wheel without permission, this did not constitute operation of the vehicle. The "defendant was not in actual physical control of the vehicle. Rather, defendant was interfering with the actual physical control of the vehicle."

People v Yamat, 265 Mich App 555 (2005)

Ethnic Intimidation

Specific intent to intimidate or harass

The ethnic intimidation statute, M.C.L. 750.147b, requires only that the underlying predicate criminal act be committed "with specific intent to intimidate or harass." The court determined that the statute does not require the intent to intimidate or harass to be the sole motivating factor underlying the predicate criminal act. "[T]he statute [is] satisfied if this specific intent is formed before the commission of the underlying predicate criminal act. That is so regardless of any other additional motivations for the underlying predicate criminal act that may have existed earlier." In this case, road rage was a motivating factor in the defendant's assault, but the use of racial epithets that the defendant uttered before beating the victim gave rise to a reasonable inference that the defendant specifically intended to assault victim because of the victim's race. Therefore, the intent requirement could be inferred from the defendant's actions.

People v Schutter, 265 Mich App 423 (2005)

Driving With A Revoked License Causing Death

Causation required

The court agreed with the defendant's argument that the offense of driving with a revoked license and causing death, M.C.L. 257.904(4), "requires actual causation, not mere involvement." The court declined to impose a penalty on a driver "when his wrongful decision to drive with a suspended license had no bearing on the death that resulted."

People v Schut, 265 Mich App 446 (2005); rev'd 703 NW2d 471 (2005) in light of People v Schaefer, Mich (2005)

Controlled Substances

Possession

The defendant was convicted of possession with the intent to deliver marijuana. Police discovered a small amount of marijuana in the defendant's bedroom, and a large bag of marijuana divided into six portions in the attic. The defendant did not need to have actual possession of the marijuana, constructive possession is enough to sustain a conviction.

People v Williams, --- Mich App ----, 2005 WL 2649898 (2005)

Financial Transaction Devices

Deviceholder

The defendant used a company credit card to make several personal purchases. Because the company requested the card be issued with her name on it, she was a deviceholder. Therefore, she was not in violation of M.C.L. 750.157(n)(1), knowingly using a financial transaction device without the consent of the deviceholder, because she was the deviceholder.

People v Anderson, --- Mich App ----, 2005 WL 2649888 (2005)

Criminal Sexual Conduct

Consent not a defense

Defendant was charged with assault with intent to commit criminal sexual conduct involving penetration, M.C.L. 750.520(g)(1). The victim, being only 13-years old, could not give consent, because the charge carries strict liability. Therefore, *Worrell's* conclusion that consent is always a defense to the crime of assault with intent to commit criminal sexual conduct involving penetration is no longer good law.

People v Starks, 473 Mich 227 (2005)

Because consent is not a valid defense to producing child sexually abusive material, it cannot be argued as a defense to M.C.L. 750.520(b)(1)(C), CSC I, penetration during the commission of any other felony.

People v Wilkens, -- Mich App ---- , 2005 WL 2030873 (2005)

Family Relationship

The defendant, the victim's uncle by marriage, fondled his 'of age' niece. That they were unrelated by blood does not matter under M.C.L. 750.520(e)(1)(d), CSC IV. They were related by affinity as used in the statute.

People v Russell, 266 Mich App 307 (2005)

Child Sexually Abusive Material

Distribution

The defendant stored images of child pornography on the hard drive of his work computer. To convict a defendant of distributing or promoting child sexually abusive material, M.C.L. 750.145(c)(3) it must be established that the defendant 1) distributed or promoted child sexually abusive material, 2) knew the material to be child sexually abusive, and 3) had distributed or promoted the material with a criminal intent. Merely leaving stored images on a hard drive that others may access is not enough to satisfy criminal intent.

People v Tombs, 472 Mich 446 (2005)

Open and Indecent Exposure

Televised Images

The defendant distributed a video to a public access channel which contained a three minute segment of a character named "Dick Smart", played by genitalia. The defendant was convicted under M.C.L. 750.325(a), "open and indecent exposure". The court held the statute to properly apply to televised images as well as real life.

People v Huffman, 266 Mich App 354 (2005)

Private Home

The wording of Michigan's open and indecent exposure act should be read to mean indecent exposure or open exposure. Thus, the defendant's indecent exposure of himself in a private home would come under the meaning of indecent exposure, and need not be open exposure also.

People v Neal, 266 Mich App 654 (2005)

Vehicle Code

OUIL Causing Death

Defendants were convicted of OUIL causing death, M.C.L. 257.625(4). The court held that *Lardie's* requirement that the intoxicated driving caused the death is no longer good law. Intoxication is instead a separate element of the crime. The three elements of OUIL causing death are now: 1) Defendant was operating a vehicle while intoxicated. 2) Defendant voluntarily chose to drive knowing he had consumed an intoxicating substance. 3) Defendant's operation of a motor vehicle caused the victim's death. To show cause under the statute, the prosecutor must show both factual and proximate cause.

People v Schaefer, 473 Mich 418 (2005)

OUICS Causing Death

M.C.L. 257.625(4), OUIL causing death, and (5), OUICS causing death, contain identical language and are to be interpreted the same. M.C.L. 257.625(8) is strict liability because it imposes sanctions for any amount of a controlled substance in the body. Because carboxy THC is evidence of THC, evidence of carboxy THC is enough to sustain a conviction of OUICS causing death.

People v Derror, et al., -- Mich App ---- 2005 WL 2138548 (2005)

Vehicular operation

The defendant, a front seat passenger in the vehicle, grabbed and turned the steering wheel, causing the vehicle to swerve off the road and strike a jogger. The court held that the defendant's actions did not constitute operation of a vehicle under M.C.L. 257.626(c). Operation of a vehicle involves more than simply steering, it includes all functions necessary to make the vehicle operate.

People v Yamat, 265 Mich App 555 (2005)

Revoked License

The defendant was driving a snowplow while he had a revoked license. The decedent was on a snowmobile and crossed the road into the path of the defendant, causing a collision. The court found that under M.C.L. 257.904(4) there must be a causal link, not mere involvement, between the driving and the death.

People v Schut, 265 Mich App 446 (2005); **Rev'd** ***People v Schut 703 NW2d 471 (2005)*** **in light of** ***People v Schaefer, 473 Mich 418 (2005)***

Felon In Possession

Specified Felony

Larceny from a person is a "specified felony" within the meaning of M.C.L. 750.224(f), felon in possession, because it involves a degree of force.

People v Perkins, 473 Mich 626 (2005)

Ethnic Intimidation

Racial slurs

The defendants beat the victim while yelling racial slurs at him. The court held that what may have started out as a simple case of road rage became ethnic intimidation under M.C.L. 750.147(b) when the defendants continued beating the victim because of his race.

People v Schutter, et al., 265 Mich App 423 (2005)

Carrying a Concealed Weapon

Momentary possession resulting from disarming a wrongful possessor not a defense

The defendant was convicted of carrying a concealed weapon. *People v Coffey*, 153 Mich App 311 (1986), which allowed brief possession of a weapon if it was taken from a wrongful possessor, is no longer good law.

People v Hernandez-Garcia, 266 Mich App 416 (2005)

False Pretenses and Larceny

Not preempted by Federal Election Campaign Act

Defendant was convicted of false pretenses, $1000 or more but less than $20,000, false pretenses less than $200, common law fraud and larceny by conversion, $20,000 or more in connection with his operation of two political action committees during the 2000 election campaign. Because the Federal Election Campaign Act does not conflict with, or expressly preempt state law, his convictions are to be upheld.

People v Dewald, -- Mich App ----, 2005 WL 1123581 (2005)

CONSTITUTIONAL ISSUES

Search and Seizure

Scope of "seized"

An officer did not seize the defendant by asking for identification and keeping defendant's ID to make a LEIN inquiry. The defendant was not told to remain there or that he was required to answer the officer's questions. The encounter did not turn into an investigatory stop until the officer "actually hindered [the] defendant's attempt to leave the scene." The defendant was only seized when the officer "followed [the] defendant as he tried to walk away, orally discouraged him from leaving, and, finally, put a hand on his back and told him to wait for the results of the LEIN inquiry." But, at this point, the officer had reasonable suspicion to make the investigatory stop because the totality of the circumstances: (1) a resident said she had not consented to his presence on her porch, (2) the defendant began to act nervously and reached toward his pocket when the officer initiated the LEIN check, (3) the defendant attempted to walk away from the officer, intending to leave his identification card, (4) and even though the defendant was not a resident in the neighborhood, many people invited him into their homes to evade police questioning.

People v Jenkins, 472 Mich 26 (2005)

Search

A police officer shining his flashlight into a hole in the shower while conducting a consent search is not unreasonable. The detective was lawfully searching the shower, the device was in plain view, was suspicious, and the detective knew that female tenants used the shower.

People v Wilkens, -- Mich App ---- , 2005 WL 2030873 (2005)

Consent

When a traffic stop and the following questions are reasonable, the defendant's consent to search is valid. The defendant was stopped for speeding, and gave inconsistent answers to the officer. The officer called for a drug dog, which indicated drugs in the car. The defendant gave his consent to search the car, then withdrew his consent, at which time the officer obtained a warrant. Cocaine and marijuana were found in the vehicle.

People v Williams, 472 Mich 308 (2005)

Ex Post Facto

Life means Life

Defendant was convicted of armed robbery and was given a choice between serving a term of forty to sixty years or parolable life. Defendant chose the life sentence under advice from counsel that life did not mean life, and that he would be eligible for parole sooner than if he took the forty to sixty year sentence. There was no *ex post facto* violation because parole board testimony before the legislature was only offered to show that life did in fact mean life in Michigan, and not to signal a change in policy.

People v Hill, -- Mich App ----, 2005 WL 1630066 (2005)

Double Jeopardy

Dual sovereignty doctrine

The majority adopts the United States Supreme Court's "dual sovereignty" doctrine. The Double Jeopardy Clause under the state constitution does not bar successive prosecutions by two States for the same conduct. Noting, " …we overrule precedent with caution," the Court overrules *People v Cooper*, 398 Mich 450; 247 NW2d 866 (1976).

People v Davis, 472 Mich 156 (2005)

Felony murder and the underlying felony

There is no double jeopardy violation when a defendant is sentenced for one first-degree murder when that conviction is based on both premeditated and felony murder because a single conviction for murder can be based on two alternative theories. However, per *People v Bigelow*, 229 Mich App 218, 220-21; 581 NW2d 744 (1998), conviction and sentence for the underlying larceny offense and felony murder do violate double jeopardy even in a situation where the jury convicts on both first-degree murder theories. In dicta, the court questions the applicability of this double-jeopardy analysis (and thereby the process of vacating the underlying felony) to situations where the defendant was convicted under both theories.

People v Williams, 265 Mich App 862 (2005)

Operating or maintaining a methamphetamine laboratory and operating or maintaining a methamphetamine laboratory within five hundred feet of a residence

Convictions and sentences for both operating or maintaining a methamphetamine laboratory and operating or maintaining a methamphetamine laboratory within five hundred feet of a residence, arising out of the operation of a single methamphetamine laboratory, violate a defendant's double jeopardy protections against multiple punishments.

People v Meshell, 256 Mich App 616 (2005)